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25 October 2012

David Charnock
Health and Safety Executive
1.3.73 Redgrave Court
Merton Road
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Dear David

HSE Consultative Document (CD243) on proposals to revise the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended)

This letter is the Office of Rail Regulation's (ORR) response to HSE's proposals.

ORR is the regulator for health and safety on the railways and other guided transport systems in Great Britain and we have considered the impact of HSE's proposals on our remit.

Deaths

We agree with HSE's proposal to remove the reporting of suicides from RIDDOR.

Non-fatal Injuries to People at Work

(i) Major Injuries

The major injuries that ORR investigates are listed in paragraph 11 of the 'Mandatory investigation' tab of the spreadsheet at: www.rail-reg.gov.uk/upload/xls/investigation-process-web.xls. The list that HSE proposes to replace schedule 1 of RIDDOR is similar (but not exactly the same as) our Mandatory Investigations list.

The Rail Accident and Investigation Branch's definition of 'serious injury' is defined in Reg 2(4) of the Railways (Accident Reporting and Investigation) Regulations 2005. This is more detailed than the ORR list in paragraph 11 of the Mandatory investigation tab and it may be worth aligning the HSE list with the RAIB list or failing that with ORR's list.

(ii) Lost-Time Injuries

We agree with HSE's proposal for no further changes.

Non-fatal Injuries to People Not at Work

We recommend that the reporting of non-fatal injuries to people not at work should remain reportable under RIDDOR in relation to the railways.

There is a very high passenger/public interface with railway operations, which is not the case in other industries, which may not have the same level of accessibility by the public. There is a significant business risk to us and our ability to effectively protect passengers and others by the loss of this intelligence.

Non-fatal injuries at level crossings, for example, are reported under the RIDDOR. Three of our investigation criteria are informed by this intelligence. Level crossings are the highest factor for catastrophic risk on the railways. Removing the requirement to report these incidents will weaken our ability to determine whether precursors to fatalities are being properly managed.

Although some of this information is available to us from other sources, such as the Rail Safety and Standards Board's (RSSB) Safety Management Information System (SMIS) there would be a gap in relation to metros, trams, light rail and heritage railways. We believe that the high political and public interest in incidents involving the public on the railways is such that a continuing statutory requirement is justified.

Occupational diseases

Given the low reporting levels and the fact that information is frequently received too late to act as a reliable trigger for an investigation, we agree with the removal of this reporting requirement. Like HSE, we would in future rely on other sources such as the Labour Force Survey (LFS) where we need this information.

Dangerous Occurrences (Regulation 3(1)(e) and Schedule 2)

We believe that, like other higher-risk industries, the reporting of **all** rail-specific dangerous occurrences should remain reportable under RIDDOR with the exception of DO71 (incidents of serious congestion). Dangerous occurrences can represent precursor events to a potentially catastrophic failure. We propose no further changes to the rail-specific dangerous occurrences.

We have also considered the other dangerous occurrences applying to any workplace and agree with HSE's approach in relation to them, except for DO4 (overhead electrical cable). Some incidents that are reportable under RIDDOR DO4 are also reportable by electricity distributors under the Electrical Safety, Quality and Community Regulations 2002 (ESQCR). HSE proposes to remove from RIDDOR any duplication with ESQCR. However, "network" is excluded from the meaning of "distributor" and "consumer" if it means network as in Part I of the Railways Act 1993 (i.e. ESQCR does not apply to rail networks). We therefore ask for the reporting of overhead electrical cable incidents to remain in RIDDOR in relation to the railways.

Gas incidents

We have no comments on this.

The Self-employed

HSE has not included railways as a high risk sector in its consultation document (CD242) on the removal of the self-employed from the Health and Safety at Work, etc. Act 1974). We consider that railways should be included as a high risk sector in the Secretary of State's prescribed list and I have responded to HSE separately to this effect. (Letter dated 15 October 2012).

If railways and other guided transport systems are included in the prescribed list, the status quo would remain for RIDDOR reporting requirements. The self-employed would still be required to report or record their own accidents or dangerous occurrences at their own premises which do not endanger others. We therefore ask for retention of these requirements in relation to the railways.

Exemptions to Reporting Requirements

We feel strongly that incidents reportable under the ESQCR should remain reportable under RIDDOR in relation to the railways. Please see text above relating to the overhead electrical cable dangerous occurrence.

We agree to the removal of the reporting requirement for the transport of dangerous goods by rail. These types of incidents are few and when they happen other sources of information will alert us to them.

If you would like to discuss the contents of this letter please contact Stefano Valentino (email stefano.valentino@orr.gsi.gov.uk , telephone 020 7282 2003).

We are content for these comments to be made public as part of the consultation exercise.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ian Prosser', written in a cursive style.

Ian Prosser