

NATIONAL DEVELOPMENTS IN HEALTH AND SAFETY REGULATION

1. INTRODUCTION

- 1.1 In November 2010 a report was presented to the General Purposes and Licensing Committee on the Government review of health and safety. This provided Members with information on Lord Young’s report “Common Sense, Common Safety” published on 15 October 2010. The scope of that report was to review the operation of health and safety laws and the growth of the compensation culture. Since that time, much work has been undertaken on a national basis to meet the recommendations.
- 1.2 A further review was commissioned by the Government last year. Its remit was to consider the opportunities for reducing the burden of health and safety legislation on UK businesses whilst maintaining the progress made in improving health and safety outcomes. Additionally, it considered the scope for combining, simplifying or reducing legislation and the associated Approved Codes of Practice (ACoP).
- 1.3 This review was published in November 2011 and this report examines the main recommendations resulting from the review. A timetable for the implementation of the recommendations has been published by the Government. Some of the recommendations are still under consideration by the Government and as a consequence, the full impact upon Local Authorities is unknown at this stage. However, this report seeks to offer information on the possible implications to the health and safety enforcement service.

2 BACKGROUND

- 2.1 In "Common Sense, Common Safety", Lord Young put forward a series of recommendations including improving the public perception of health and safety, ensuring it is taken seriously by employers and the general public and reducing the burden of bureaucracy on businesses. The Government accepted all of Lord Young’s recommendations which are seen as an important first step in the Government’s plans for reforming Britain’s health and safety system. Progress on implementation of the recommendations can be seen at **Appendix 1**.
- 2.2 The Employment Minister Chris Grayling then commissioned Professor Ragnar Löfstedt in March 2011 to carry out an independent review. His report 'Reclaiming Health and Safety for All', published in November 2011, makes recommendations aimed at reducing the burden of unnecessary regulation on businesses while maintaining Britain's health and safety performance. The Government has accepted his recommendations.

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3 SUMMARY

- 3.1 The review chaired by Professor Löfstedt, and supported by an independent panel, examined over 200 sets of health and safety regulations and 53 approved codes of practice (ACoPs) to see where changes could be made. The Government response to the Löfstedt report was published at the same time and recognised that the UK’s health and safety regulatory framework was considered by many, including Government, to be working well; and that we should be proud of our record in terms of preventing injury and ill-health in the workplace. Its findings supported the existing

legislation and current enforcement in the UK, but made recommendations to clarify guidance and consolidate some legislation.

- 3.2 The report noted that both Local Authorities and the Health and Safety Executive (HSE) undertake important work in protecting health and safety within workplaces. However, it identified instances where some higher risk activities are not enforced by either body, and recommends that legislation be changed. Proposed changes would give the HSE the authority to direct all Local Authority health and safety inspection and enforcement activity, in order to ensure that it is consistent and targeted towards the most risky workplaces. Thus local authority officers' powers remain unchanged; however measures will be put in place to ensure that our work is directed by the HSE and towards work activities which pose the greatest risk.

4 REVIEW BY PROFESSOR LOFSTEDT - RECLAIMING HEALTH AND SAFETY FOR ALL

- 4.1 The review used evidence gathered from stakeholders, such as the British Safety Council, who contributed to the review. The report takes account of key pieces of research conducted over the last twenty years concerning the regulation of health and safety and the effectiveness of our current arrangements.
- 4.2 There are in all 26 recommendations contained in the report. Some are intended to clarify and simplify existing regulatory requirements, whilst others aim to improve the way the regulations are applied and enforced. A summary of the five key recommendations are as follows:
- 4.2.1 Exempting from health and safety law those self-employed persons whose work activities pose no potential risk of harm to others. That is to say people who work at home should be exempt but, self-employed work in the construction sector should not be. This will require a change in the law and result in enforcement activity ceasing for these persons. In practical terms this is unlikely to affect the work of the service as it is directed at higher risk work activities involving employees.
- 4.2.2 That HSE should review all 53 Approved Codes of Practices (ACOPS). The initial phase of the review should be completed by June 2012 so businesses have certainty about what is planned and when changes can be anticipated. The intention underlying the review is to ensure that ACOPS do what was originally intended and help employers understand and meet their legal requirements.
- 4.2.3 That HSE undertakes a programme of sector and risk specific consolidations of regulations, including explosives, mining, biocides and petroleum, to be completed by April 2015. There are a series of regulations which are commended for revocation and a number of others recommended for amendment, clarification or review.
- 4.2.4 That legislation is changed to give HSE the authority to direct all local authority health and safety inspection and enforcement activity, in order to ensure that it is consistent and targeted towards the most risky workplaces. The report notes, "We believe that strengthening HSE's policy role for all aspects of health and safety enforcement will deliver better targeted inspections and deliver greater consistency for business."
- 4.2.5 A recommendation that deals with the perception of a compensation culture. This seeks an improvement in the process for personal injury claims. It recommends that the original intention of the pre-action protocol standard disclosure list is clarified and restated and that regulatory provisions that impose strict liability should be reviewed by June 2013 and either qualified with 'reasonably practicable' where strict liability is not absolutely necessary or amended to prevent civil liability from attaching to a breach of those provisions. The Government in its response noted its concern that

'reasonably practicable' does, in terms of civil claims, have the potential to impact unfairly. The Government recognises the unfairness which results where an employer is found liable to pay damages to an injured employee despite having taken all reasonable steps to protect their employees from harm.

- 4.3 There are other recommendations aimed at improving the standing of health and safety with businesses and the public. These include the clarification of requirements of the regulations by the HSE including consolidation of health and safety regulations to provide savings to businesses; clear information on the HSE website of the specific duties for businesses to comply with legislation; and providing businesses with a clear understanding of what is 'reasonably practicable'. This is a main element of legislation which limits its application.
- 4.4 The Health and Safety Executive should be the Primary Authority for multi-site national organisations. Currently a Local Authority (usually where the company head office is based) performs this function. This is intended to help deliver reductions in burdens, and increase consistency of approach.
- 4.5 Further recommendations refer to legislation stemming from the European Union. It recommends the Government works more closely with the European Commission and others, particularly during the planned review of EU health and safety legislation in 2013, to ensure both new and existing health and safety legislation is risk-based and evidence-based.

5 GOVERNMENT AND HSE RESPONSE TO THE REVIEW

5.1 The Government response to the Löfstedt review was published at the same time. The review noted the concerns of the coalition government at the time it came into office. It was "determined to tackle the pervasive compensation culture that has deeply damaged the standing of 'health and safety' in the eyes of the public". The Government supports the recommendations of the review and is committed to taking swift action in implementing them. It provided a timetable for implementing the recommendations which can be seen at **Appendix 2**.

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5.2 The Health and Safety Executive's response has been positive and welcomed the publication of the Löfstedt review. Judith Hackitt, the Chair of HSE, said: "Professor Löfstedt's insightful report will go a long way to refocusing health and safety in Great Britain on those things that matter - supporting those who want to do the right thing and reducing rates of work-related death, injury and ill-health. We must have a system of health and safety which enables employers to make sensible and proportionate decisions about managing genuine workplace risks. Simplifying and streamlining the stock of regulations, focusing enforcement on higher risk businesses, clarifying requirements, and rebalancing the civil litigation system - these are all practical, positive steps. Poor regulation - that which adds unnecessary bureaucracy with no real benefits - drives out confidence in good regulation. We welcome these reforms because they are good for workers and employers but also for the significant contribution they will make to restoring the rightful reputation of real health and safety."

6 INDEPENDENT REGULATORY CHALLENGE PANEL

- 6.1 An independent panel to consider challenges to health and safety regulatory advice was established at the beginning of the year. Ministers asked for the panel to be established following a recommendation in the Löfstedt report, which proposed that the Government introduce a challenge mechanism that allows for cases of incorrect, over-application of health and safety legislation to be addressed.
- 6.2 The Health and Safety Executive (HSE) is supporting the new panel, which will look into issues raised by business where they believe a HSE or local authority health and safety inspector has given advice that is incorrect or disproportionate. The panel will not look at issues where other independent appeals processes exist, such as for enforcement notices or prosecutions.
- 6.3 Contact details for the panel can be found on the HSE website. Information about the regulatory challenge panel has been added to the existing information on the reverse of inspection forms given to dutyholders. Where there is disagreement about an inspector's enforcement or advice, the dutyholder is directed to the service manager in the first instance. If they are still not satisfied with the findings of the Independent Regulatory Panel, they can follow the existing complaints procedures including writing to the Chief Executive, Local Councillor, MP and if necessary the Local Government Ombudsman.
- 6.4 The panel was formed in January 2012 and will initially consider challenges to HSE and Local Authority regulation. This is to be extended to consider challenges to advice from non regulators e.g. insurance advisors later in the year. The outcome will be made available on the HSE website. The panel's role is advisory but it is understood that Local Authorities will respect the independence of the panel and its advice and where appropriate take it onboard.

7 ACCIDENT REPORTING

- 7.1 A duty exists for employers to report certain accidents to the enforcing authority. This allows for investigation where appropriate and an understanding of the national picture of accidents. From 6 April 2012, subject to Parliamentary approval, the over three day injury reporting requirement will change. From then the trigger point will increase from over three days' to over seven days' incapacitation. Incapacitation means that the worker is absent or is unable to do work that they would reasonably be expected to do as part of their normal work.
- 7.2 Employers must still keep a record of all over three day injuries – if the employer has to keep an accident book, then this record will be enough. The deadline by which the over seven day injury must be reported will increase to 15 days from the day of the accident.
- 7.3 This change is unlikely to have any material effect on the work of the service as not all accidents are currently investigated.

8 CASE FOR SINGLE BODY DIRECTING ALL ENFORCEMENT

- 8.1 The review emphasises the need to ensure that enforcement is consistent and targeted on risk. It concludes that a single body directing health and safety enforcement across all workplaces is the solution. The only way to achieve this would be to pass responsibility to HSE.
- 8.2 The Government response recognises a more centralised approach could lead to being further removed from local business and communities. It states that there

remains an important role for local inspectors to use their knowledge and experience to engage with businesses across a range of regulatory issues.

- 8.3 The Government response states “We will work with local government to improve the quality of training and dispel myths and the fear of litigation, which is why many councils can be over-cautious with their inspections. This will happen at pace and to a published timetable so that business can see real and immediate improvements. There is a need for local government to take a more consistent and proportionate approach to enforcement. HSE will work with local government and business to develop a shared national code that is binding and enforceable. Local inspectors will still be able to use their local knowledge and experience to engage with local firms across a range of regulatory issues. We will also ensure that there are common standards for businesses across Britain and that they can rely on consistent application of health and safety law wherever they are located.”
- 8.4 However the review concluded that legislation should be changed to give HSE the authority to direct all local authority health and safety inspection and enforcement activity, in order to ensure that it is consistent and targeted towards the most risky businesses. The mechanism for the HSE to direct the regulatory activity of Local Authorities is not yet known.
- 8.5 Currently inspection activity is directed through the publication of Advice/Guidance to Local Authorities on Targeting Interventions LAC/2 (rev3). This covers the subject of inspection but not investigation or enforcement. It is envisaged this arrangement will change. The HSE is able to monitor Local Authority enforcement activity through a data return made to the HSE every six months.

9 EVENTS

- 9.1 It was recommended that citizens should have a route to complain about unfair decisions where Council officers have banned events on health and safety grounds. The Local Government Ombudsman should have a fast track process to ensure that decisions can be overturned within two weeks. Also if appropriate, the Ombudsman may award damages where it is not possible to reinstate an event.
- 9.2 Formal improvements in the Ombudsman’s role with respect to this matter is scheduled for 2012. In advance of that, the Local Government Ombudsman has looked at an administrative mechanism for fast-tracking complaints about excessive use of health and safety enforcement powers. A pilot is being reviewed.

10 FINANCIAL, ENVIRONMENTAL, CRIME & DISORDER AND EQUALITY & DIVERSITY IMPLICATIONS

- 10.1 There are no financial, environmental, crime and disorder and equality and diversity implications.

11 RECOMMENDATIONS

- 11.1 That this summary of issues arising from Professor Löfstedt’s report “Reclaiming Health and Safety for All” be noted and that future updates be brought to the Committee as appropriate.

Further information:

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Background papers

Common Sense Common safety-
progress report

APPENDIX 1

The Government response to the Lofstedt Report

Table 1: Common Sense Common Safety recommendations – implementation

Recommendations	Action
<p>Low hazard workplaces</p> <ol style="list-style-type: none"> 1. Simplify risk assessment procedures 2. Develop periodic checklists 3. Develop voluntary organisation checklists 4. Risk assessment exemptions for low hazard homeworking 5. Risk assessment exemptions for low hazard self – employed working 6. Professionalise health and safety consultants 7. Health & safety consultants' register 8. Health & safety guidance for lower risk SMEs 	<p>HSE has published online tools to assist low hazard workplaces comply with health and safety legislation. 'Health and Safety Made Simple' was published in March to make it easier for small businesses to understand their responsibilities.</p> <p>In August 2011 guidance was published on the application of health and safety legislation to homeworkers.</p> <p>The Occupational Safety and Health Consultants Register was launched in March 2011, providing a source of qualified health and safety advice for businesses that require external support.</p>
<p>Accident Reporting</p> <ol style="list-style-type: none"> 11. Extending the period before an injury or accident needs to be reported to seven days. 	<p>Changes to the regulations covering accident reporting are due to come into effect in April 2012.</p>
<p>Police and Fire Services</p> <ol style="list-style-type: none"> 14. Police officers/fire fighters guidance 	<p>Guidance for police and for fire fighters has been issued making it clear that individuals who put themselves at risk as a result of a heroic act will not face prosecution under health and safety law.</p>
<p>Compensation culture</p> <ol style="list-style-type: none"> 19. Clarify liability consequences of well-intentioned voluntary acts 	<p>Guidance was published in October 2010 clarifying the position on snow clearance. Further guidance will be issued if necessary in response to other situations.</p>
<p>Education</p> <ol style="list-style-type: none"> 21. Simplify processes for taking schoolchildren on trips 22. Introduce single consent form for every pupil 	<p>Revised health and safety guidance for schools and the generic consent form were launched in early July 2011, along with the HSE High Level Statement on the application of health and safety law to school trips.</p>

Food Safety

- 30. Combine food safety/health and safety inspections in local authorities
- 32. Promote usage of Food Hygiene Rating Scheme
- 33. Encourage voluntary display of food hygiene ratings (but review after 12 months)

A joint Food Standards Agency (FSA)/HSE/Local Government Regulation statement on implementing combined inspection programmes from April 2011 was issued in February 2011.

The FSA is working closely with local authorities to promote the rating scheme. To date, information on approximately 126,000 businesses has been published on the FSA site.

APPENDIX 2

The Government Response to the Lofstedt Report

Timetable suggested for delivering recommendations in the report

By the summer of 2012

- Health and safety guidance for small businesses will be much simpler.
- Businesses will get simple and consistent guidance from HSE, professional bodies and insurers on whether and when they need to bring in expert health and safety advice.
- Low risk businesses that manage their responsibilities properly will no longer be visited by inspectors.
- Legislation will be brought forward to abolish the Adventure Activities Licensing Authority.

By 2013

- Self-employed people whose work poses no threat to others will be exempt from health and safety law.
- Approved Codes of Practice will give businesses clear practical examples of how to comply with the law.
- Unnecessary regulations will be revoked.

By 2014

- A simpler accident reporting regime will be in place.
- If we are successful in influencing the planned review, EU health and safety legislation will in future be risk- and evidence based.
- The nuclear industry will have its own dedicated independent regulator.
- HSE's enhanced powers will help drive consistent enforcement for all businesses.
- Regulations will be consolidated by industry sector, making it clear which provisions businesses need to comply with.
- The total number of regulations businesses have to comply with will be reduced by 50 per cent.