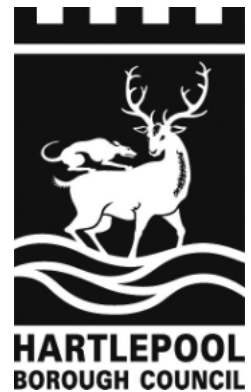


PERFORMANCE PORTFOLIO (HEALTH AND SAFETY CONSULTATIVE GROUP) DECISION SCHEDULE



Wednesday 18 January 2012

at 10.30 am

**(or immediately following Performance Portfolio starting at 10.00 am
whichever is the later)**

**in Committee Room C
Civic Centre, Hartlepool**

Councillor H Thompson, Cabinet Member responsible for Performance will consider the following items.

1. KEY DECISIONS

No items

2. OTHER ITEMS REQUIRING DECISION

No items

3. ITEMS FOR INFORMATION

- 3.1 Proposed Changes to the National Health and Safety Regime – An Update – *Chief Customer and Workforce Services Officer*

PERFORMANCE PORTFOLIO
(HEALTH AND SAFETY CONSULTATIVE GROUP)
Report to Portfolio Holder
18th January 2012



Report of: Chief Customer & Workforce Services Officer

Subject: PROPOSED CHANGES TO THE NATIONAL HEALTH
AND SAFETY REGIME – AN UPDATE

SUMMARY

1. PURPOSE OF REPORT

To advise the Portfolio Holder's of proposals to change the national health and safety regime.

2. SUMMARY OF CONTENTS

The report provides an update on the national situation regarding health and safety.

3. RELEVANCE TO PORTFOLIO HOLDER

Corporate issues.

4. TYPE OF DECISION

Non-key decision.

5. DECISION MAKING ROUTE

Portfolio Holder only.

6. DECISION(S) REQUIRED

For information.

Report of: Chief Customer & Workforce Services Officer

Subject:: PROPOSED CHANGES TO THE NATIONAL HEALTH
AND SAFETY REGIME

1.0 PURPOSE OF REPORT

- 1.1 To advise the Portfolio Holder's of proposals to change the national health and safety regime.

2.0 BACKGROUND

- 2.1 At the Performance Portfolio (Health and Safety Consultative Group) on 22nd February 2011 the then Performance Portfolio Holder requested an update on the health and safety situation following the publication of the Lord Young of Graffham's report - Common Sense Common Safety. The report was commissioned by the Prime Minister and welcomed by the government on its publication. At the time the only change which had been put in place was proposed changes to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) and the creation of an Occupational Safety and Health Consultants Register. This register is voluntary but all suitably qualified health and safety professionals are encouraged to register.
- 2.2 Following the meeting in February a further report was prepared for the then Performance Portfolio Holder for the Performance Portfolio (Health and Safety Consultative Group) held on 3rd August 2011 and a copy of the report and associated decision record for this meeting is attached as Appendices 1 and 2.
- 2.3 Two of the key elements of the government proposals was a review of health and safety regulation by a team lead by Professor Lofstedt and the introduction of "fee for intervention" where the Health and Safety Executive (HSE) would charge a fee for any investigation or inspection work which identified a "material" breach of statutory requirements. Both of these projects have now formally been reported to the appropriate bodies so it is an appropriate time to provide an update on the situation.

3.0 CONSIDERATION OF ISSUES

- 3.1 The government is of the opinion that there is a significant burden on businesses as a result of red tape and the current perception is that health and safety has become one of these significant burdens because of an increasingly risk averse culture. A number of reports have been prepared with a view to removing this perceived burden. The most comprehensive review is that undertaken by Professor Lofstedt which has now been published and the findings accepted by the Government who are proposing

a number of wide ranging changes to the health and safety regime. The government's response is contained in Appendix 3 but the following taken from the response document provides a summary of the key recommendations;

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.

- 3.2 Whilst a number of the government's aims are laudable in order to avoid a risk averse culture where children cannot play football, conkers etc however there are concerns that the removal of legislation may significantly weaken health and safety law. Consequently it is essential that the Council continues to encourage a sensible risk management approach whereby activities are undertaken but only where appropriate safeguards are robust.
- 3.3 One of the most significant proposed changes which was not considered by the Lofstedt review but has been consulted on by the HSE is the introduction of the "fee for intervention". This proposal which original proposed the HSE

charging a minimum fee of £133 per hour for inspections and investigations where a “material breach” is found.

- 3.4 There has substantial interest and quite a lot of concern regarding this proposal throughout industry ranging from concerns about the break down in relations between the HSE and industry, the potential for active prevention of accident reporting (reducing the opportunity to learn from previous problems) as companies try to avoid HSE visits or that the HSE will become target driven to replace funding cut from central government.
- 3.5 The Council formally responded as part of the North East Regional Employers Organisation Lead Health and Safety Practitioners Network identifying some areas of concern for the Councils of the North East Region. A report has been prepared by the HSE following the consultation exercise and has been submitted to the HSE’s Board. The Board met on 7th December 2011 but at the time of writing the minutes of this meeting had not been published.
- 3.6 The Chief Finance Officer is aware of the potential for substantial costs should a serious incident occur and is considering how this may be factored into the Council’s budget.

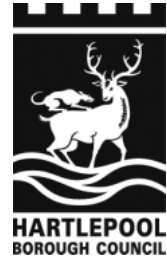
4.0 RECOMMENDATION

- 4.1 That the Portfolio Holder notes the content of the report.

5.0 CONTACT OFFICER

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**PERFORMANCE PORTFOLIO
(HEALTH AND SAFETY CONSULTATIVE GROUP)**
Report to Portfolio Holder
3 August 2011



Report of: Chief Customer and Workforce Services Officer

Subject: PROPOSED CHANGES TO THE NATIONAL HEALTH
AND SAFETY REGIME

SUMMARY

1. PURPOSE OF REPORT

To advise the Portfolio Holder's of proposals to change the national health and safety regime.

2. SUMMARY OF CONTENTS

The report provides an update on the national situation regarding health and safety.

3. RELEVANCE TO PORTFOLIO HOLDER

Corporate issues.

4. TYPE OF DECISION

Non-key decision.

5. DECISION MAKING ROUTE

Portfolio Holder only.

6. DECISION(S) REQUIRED

For information.

Report of: Chief Customer and Workforce Services Officer

Subject:: PROPOSED CHANGES TO THE NATIONAL HEALTH
AND SAFETY REGIME

1.0 PURPOSE OF REPORT

- 1.1 To advise the Portfolio Holder's of proposals to change the national health and safety regime.

2.0 BACKGROUND

- 2.1 At the last Performance Portfolio (Health and Safety Consultative Group) on 22nd February 2011 you requested an update on the health and safety situation following the publication of the Lord Young of Graffham's report Common Sense Common Safety. The report was commissioned by the Prime Minister and welcomed by the government on its publication. At the time the only change which had been put in place was proposed changes to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) and the creation of an Occupational Safety and Health Consultants Register. This register is voluntary but all suitably qualified health and safety professionals are encouraged to register.
- 2.2 Since your meeting in February the Government through the Department of Work and Pensions has published a new document Good Health and Safety Good for Everyone (a copy of which is attached as **Appendix 1**) and this document proposes much more significant and wide ranging changes.

3.0 CONSIDERATION OF ISSUES

- 3.1 The government is of the opinion that there is a significant burden on businesses as a result of red tape and the current perception is that health and safety has become one of these significant burdens because of an increasingly risk averse culture. It is apparent some businesses and managers are making unpopular decisions and using health and safety as an excuse. It is also apparent that some health and safety advice has been of poor quality. Unfortunately this has resulted in substantial negative press and concern that the health and safety regime has become a burden. This is summed up in a key extract from the publication; "A key part of our deregulatory agenda is changing the health and safety culture that causes so much frustration in Britain today. Protecting people in the workplace and in society as a whole remains a key priority. No business benefits from having a bad safety record. But the burden of health and safety red tape has become too great, with too many inspections of relatively low risk and good performing workplaces, frequently poor health and safety advice to businesses from badly qualified consultants, and a complex structure for regulation. The time has come for all of this to change."

- 3.2 The main proposals are the creation of an Occupational Safety and Health Consultants Register, a revised health and safety framework (whereby emphasis will be placed on those businesses providing highest risk such as the major hazard industries) and the introduction of a cost recovery system (for those businesses who do not comply with the law). For none major hazard industries the HSE will significantly change its approach to the businesses it regulates by:
- 3.2.1 Increasing joint initiatives with industry to promote safe and healthy workplaces.
- 3.2.2 Targeting inspections more effectively on areas of greatest risk and substantially reducing the overall number of proactive inspections (by about a third equating to about 11000 fewer inspections per annum) for businesses in lower risk areas who meet their legal obligations; and
- 3.2.3 Introducing the recovery of HSE costs from businesses that put their employees and the public at risk by flouting health and safety law. Responsible businesses will benefit from a lighter touch regulatory regime and will not face cost recovery.
- 3.3 These proposals will have an impact on the Council in that the targeted inspections will be on areas of perceived higher risk and one of those areas is waste. As the Council has significant involvement in both the collection and procurement of waste services the Council and its contracting organisations have been subject to HSE investigations and site visits in relation to this issue.
- 3.4 One of the areas classed as lower risk and therefore the HSE will not routinely visit is local authority administered education provision which reduces the chances of HSE intervention. It is therefore essential that schools continue to take their responsibilities seriously as there is currently a move away from prescriptive guidance for example the Health and Safety of Pupils on Educational Visits (HASPEV1998) guidance and replace it with goal setting guidance such as the recent publication Health and Safety – Department for Education Advice on Legal duties and Powers for Local authorities, Headteachers, Staff and Governing Bodies. A copy of this guidance is attached as **Appendix 2**.
- 3.5 Although there is a push to avoid unnecessary health and safety interventions (such as banning conkers, three legged races etc) some recent cases on this issue have demonstrated that local authorities will continue to be held to account where failures occur in School. Warrington Borough Council having recently been fined £5000 and £4717 costs for a science experiment going wrong and injuring 11 pupils at a school. There have also been incidences where school trips were so badly planned that the teacher who arranged the trip (in the case of Glenridding Beck) receiving a custodial sentence after pleading guilty to manslaughter due to the death of a ten year old boy. Whilst in the Glenridding case Lancashire county Council were cleared by the court the cases involve significant officer time in the aftermath

of the investigation never mind the trauma of the people, families and officers involved.

- 3.6 The proposal for cost recovery which will involve what has been termed by industry as “fee for fault principle” whereby if a breach is found following an HSE inspection or investigation even though a criminal prosecution is not instigated then the company being investigated will pay for the inspecting officer’s time. As yet no detail has been provided as to how this may work in practice but could be introduced as early as next April.
- 3.7 Finally there is a review to be undertaken of current health and safety legislation known as the Lofstedt review in which Professor Lofstedt (supported by an independent panel) will be investigating health and safety law and the burdens this places on business. This review is also aimed at addressing some of the concerns that the UK is somehow “gold plating” EU directives when making the law for this country.

4.0 RECOMMENDATION

- 4.1 That the Portfolio Holder notes the content of the report.

Good Health and Safety, Good for Everyone

The next steps in the Government's plans for reform of the health and safety system in Britain

21 March 2011

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Introduction/Background

If the Government is to achieve its goal of making Britain a more growth-focused, entrepreneurial nation, a key priority must be to ease the burden of bureaucracy on business. The more barriers we place in the way of entrepreneurs and investors, the less successful we will be economically. The culture of red tape will have to change.

A key part of our deregulatory agenda is changing the health and safety culture that causes so much frustration in Britain today. Protecting people in the workplace and in society as a whole remains a key priority. No business benefits from having a bad safety record. But the burden of health and safety red tape has become too great, with too many inspections of relatively low risk and good performing workplaces, frequently poor health and safety advice to businesses from badly qualified consultants, and a complex structure for regulation. The time has come for all of this to change.

These proposals set out a new start for health and safety regulation for Britain's businesses. In future we will shift the whole focus of our health and safety regime to a lighter touch approach, concentrating efforts on higher risk industries and on tackling serious breaches of the rules. We will leave those organisations which pose a lesser risk and which do the right thing for their employees free of unwarranted scrutiny.

There will be three key aspects to the changes we are introducing:

- We will clamp down on the rogue health and safety advisers who cost industry so much money by giving them advice which bears little relation to the actual requirements of legislation. To make it easier for businesses to secure competent and ethical consultancy, we are launching an official **register of Occupational Safety and Health Consultants** for those health and safety practitioners who are properly accredited to one of the professional bodies in the industry. This will make it easier to access reliable, reputable advice.
- We will shift the focus of health and safety activity away from businesses that do the right thing, and concentrate on higher risk areas and on dealing with serious breaches of health and safety regulation. This will mean a very substantial drop in the number of health and safety inspections carried out in the UK. We will also shift the cost burden of health and safety away from the taxpayer, and instead make those organisations that gain competitive advantage by flouting the rules pay for the costs of putting things right. **The new Health and Safety Framework** contains more detail of our proposals in this area.
- We will also seek to simplify health and safety regulation and legislation, and in doing to ease the burden on business. To do this we are launching new **"Health and Safety Made Simple"** guidance to provide lower risk small and medium-sized businesses with the information they need to achieve a basic level of health and safety management in their workplace. We are also setting up an immediate **review of health and safety regulation**. The Chair of the

review, Professor Ragnar Löfstedt, will be backed by an independent advisory panel. The review will be asked to make recommendations for simplifying the current rules by autumn 2011.

Occupational Safety and Health Consultants Register

All reputable employers recognise the benefits of providing healthy and safe working conditions for their staff. Sensible health and safety at work helps to maintain a productive workforce and contributes to economic prosperity and growth.

But health and safety legislation is complex and employers – particularly those in small and medium businesses – are often unclear about what they need to do to meet their legal obligations. While some larger employers have in-house health and safety advisers, and there is a lot of helpful advice and guidance freely available from the Health and Safety Executive (HSE), many employers turn to health and safety consultants for professional help.

Unfortunately, the standards of consultation currently available are variable. There are no minimum standards for health and safety consultants and no way for employers to ensure that the advice they are being given is accurate and proportionate to the needs of their business.

The Government will clamp down on the rogue health and safety advisers who cost industry so much money by giving them advice which bears little relation to the actual requirements of legislation. To achieve this we are launching a voluntary Occupational Safety and Health Consultants Register (OSHCR) for those health and safety practitioners who are properly accredited to one of the professional bodies in the industry.

All eligible health and safety consultants¹ are encouraged to join the register, which began taking registrations on 31 January 2011, and demonstrate their commitment to providing good quality, sensible and proportionate advice to business.

The register, which opens today, provides business with easy access to advice on health and safety matters from consultants qualified to a professional standard recognised by the participating bodies in the registration scheme². Employers will be

¹ Applicants must be a member of a UK health and safety professional body and have a degree level qualification, a minimum of two years experience and engagement with a continued professional development scheme. This is usually at Chartered, Fellow or Registered Member status.

² The professional bodies and other stakeholders involved are: British Occupational Hygiene Society (BOHS); British Safety Council; British Safety Industry Federation (BSIF); Chartered Institute of Environmental Health (CIEH); Health and Safety Executive Northern Ireland (HSENI); Institute of Ergonomics and Human Factors (IEHF); International Institute of Risk and Safety Management (IIRSM); Institution of Occupational Safety and Health (IOSH); National Examination Board in Occupational Safety and Health (NEBOSH); Royal Environmental Health Institute of Scotland (REHIS); and Royal Society for the Prevention of Accidents (ROSPA).

able to find a consultant according to keyword(s), county, industry or topic, free of charge.

Consultants will pay a fee of £60 to join the register and for annual renewal. An initial discounted fee of £30 is offered to those eligible consultants who join the scheme by the end of April 2011.

Registered consultants who fail to maintain the high standards of the register will be subject to the disciplinary procedures of their professional bodies and - if a decision to withdraw the membership status is made - the consultants will no longer be eligible to appear on the register.

A not-for-profit company limited by guarantee (CLG), consisting of the participating professional bodies, has been set up to govern the register. The HSE will be providing administrative support for the register in the short term but is expected to hand over full responsibility to the CLG by 2012/13.

The register can be accessed at <http://www.oshcr.org/>

The new Health and Safety Framework

As the Prime Minister said in his preface to the recent report “Common Sense, Common Safety”: “Good health and safety is vitally important. But all too often good, straightforward legislation designed to protect people from major hazards has been extended inappropriately to cover every walk of life, no matter how low the risk”.

The HSE and local authorities, as joint co-regulators for health and safety legislation, have a vital role to play in ensuring that the regulatory system:

- is focused on better health and safety outcomes and not purely technical breaches of the law;
- makes it as straightforward as possible for business, and in particular, small businesses, to deliver a health and safe working environment;
- is enforced in a manner which is proportionate to risk;
- avoids placing unnecessary burdens on businesses which manage health and safety effectively; and
- maintains a strong deterrent against those who fail to meet their health and safety obligations and put their employees at material risk thereby also deriving an unfair competitive advantage.

The Health and Safety Executive

The HSE will continue to play a central role in delivering the modernisation of regulation. It will contribute both to the Government’s forthcoming review of health and safety regulation and, as set out below, to a new pattern of enforcement and assistance to industry in meeting its legal obligations.

Major hazard industries

Much of HSE’s manpower and technical resource is devoted to the major hazard industries. Hazardous industries such as those in the chemical and offshore oil sectors are essential to our everyday life but have the potential to cause large numbers of deaths or injuries from a single event as well as potentially catastrophic long term impacts on society, the environment or the economy.

The Government believes the regulation of these industries to be soundly based and in accordance with best international practice and does not plan to reduce the current level of oversight. However, there will be a continuing programme of modernisation of regulatory approaches and co-operation between regulators to provide a consistent and proportionate approach for business. This includes the Government’s plans to

legislate for a new Office for Nuclear Regulation (ONR) to meet the requirements flowing from new civil nuclear build as well as existing plants and decommissioning.

Industry already bears much of the costs for regulation in these areas, in recognition of the inherent risks of these sectors and the comparatively high level of regulation required as a pre-condition for operation. It is the Government's intention to maintain and extend the principle that those who create risks should pay for their regulation.

Non-major hazard industries

HSE regulates a further 900,000 non-major hazard workplaces. Some, although they are not classified as major hazard, nevertheless have a comparatively high rate of injury (including fatal injury) and/or occupational disease. These include construction, agriculture, some manufacturing, waste and recycling, and quarrying. Others have a relatively low rate of injury and ill health, such as university campuses and council office premises.

HSE will significantly change its approach to the totality of businesses it regulates by:

- increasing joint initiatives with industry to promote safe and healthy workplaces.
- targeting inspections more effectively on areas of greatest risk and substantially reducing the overall number of proactive inspections for businesses in lower risk areas who meet their legal obligations; and
- introducing the recovery of HSE costs from businesses that put their employees and the public at risk by flouting health and safety law. Responsible businesses will benefit from a lighter touch regulatory regime and will not face cost recovery.

Joint working with industry

Most industries recognise the business and social benefits of good health and safety. HSE will build on and expand its joint working initiatives with industry to promote better health and safety and pass on good practice. For example, HSE as the regulator, has worked in partnership with the London Organising Committee for the Olympic Games and the Olympic Delivery Authority to facilitate a safe and successful London 2012 Games. The challenge of regulating one of the biggest infrastructure projects in Europe became an opportunity to drive up standards of health and safety. There have been no fatal accidents and few major injuries during construction.

HSE will also take forward initiatives to help businesses and in particular low risk small businesses, meet their health and safety obligations. In particular HSE will continue with the development of computer based risk assessment for low risk businesses which can be completed quickly and without the need for external

consultancy. Such risk assessments are already available for offices and are being consulted on in relation to classrooms, shops and charity shops.

Targeting and reducing inspections

The Government has identified three categorizations of non-major hazard industries:

1. those sectors which present comparatively high risk and where, in our judgement, proactive inspection remains necessary as part of the overall regulatory approach;
2. those sectors where there remains comparatively high risk but proactive inspection is not considered a useful component of future interventions; and
3. those areas where proactive inspection is not justified in terms of outcomes.

The categorizations set out above will inevitably change in their composition over time e.g. as an industrial sector improves its health and safety record, or as new industries with new health and safety challenges emerge. However, based on current analysis, the categorizations would result in the following groupings:

- (i) Comparatively high risk areas where proactive intervention to be retained. The major areas for inclusion are currently considered to be construction, waste and recycling, and areas of manufacturing which are high risk e.g. molten and base metal manufacture;
- (ii) Areas of concern but where proactive inspection is unlikely to be effective and is not proposed e.g. agriculture, quarries, and health and social care; and
- (iii) Lower risk areas where proactive inspection will no longer take place. These areas include low risk manufacturing (e.g. textiles, clothing, footwear, light engineering, electrical engineering), the transport sector (e.g. air, road haulage and docks), local authority administered education provision, electricity generation and the postal and courier services.

HSE will reduce its proactive inspections by one third (around 11,000 inspections per year) through better targeting based on hard evidence of effectiveness based on these categorizations. As now, HSE will work closely with industry bodies to manage and control specific health and safety risks, looking to industry to take the lead so that HSE can concentrate its own interventions on those areas where it has a unique contribution to make. In both areas (i) and (ii), HSE will continue to undertake inspections for enforcement purposes or to follow up complaints when such an intervention appears to be necessary. The basis on which HSE follows up complaints from workers and the public about health and safety and investigates incidents will be unchanged.

No industrial areas will be exempted from maintaining good standards of health and safety. Employers who do not take the protection of their employees, or those affected by their work activities, seriously will still face intervention by HSE.

Cost recovery for breaches of the law

The Government believes that it is reasonable that businesses that are found to be in serious breach of health and safety law – rather than the taxpayer - should bear the related costs incurred by the regulator in helping them put things right. A cost recovery principle will provide a deterrent to those who would otherwise fail to meet their obligations and a level playing field for those who do.

It is proposed that HSE will recover all of the costs of an inspection/investigation at which a serious, material breach in standards is diagnosed and a requirement to rectify is formally made, together with the cost of any follow-up work. Businesses that are in compliance with the law will not be liable for any kind of charge as a result of an HSE inspection and there will be no recovery in relation to purely technical breaches. An appeal system will be operated by HSE in relation to any disputes over cost recovery.

The Government also intends to allow HSE to cost-recover from business in relation to services it provides which are a necessary part of the process of land development. In consequence HSE will recover its full costs for acting as a statutory consultee for land use planning applications and hazardous substance consents. It is also proposed for HSE to charge where it provides initial advice to large development projects at the request of developers.

Local authorities

Local authorities are responsible for health and safety regulation in around 50% of total business premises, generally lower risk areas like offices, shops and leisure activities. There are currently some 196,000 local authority inspection visits per year. The comparatively large number of local authority visits reflects in part the assistance that they are able to provide to businesses across a range of services and requirements.

The Government believes that it is right to apply similar principles to local authority health and safety activities. It will look to see a reduction of at least a third (65,000 per annum) of inspections and greater targeting where proactive inspection continues.

The Government will also encourage HSE and local authorities to increase their information provision for small businesses in a form which is both accessible and relevant to their needs.

Making health and safety simpler

The current health and safety system in Great Britain came into being with the Health and Safety at Work etc Act 1974. The 1974 Act brought together a number of previous Acts into a single goal-setting piece of legislation, based on the sound principle that those who create health and safety risks in the workplace have the responsibility to manage those risks 'as far as is reasonably practicable'.

Over the following decades, however, a plethora of legislation has grown up, compounded by the introduction of European Union legislation from 1992 onwards. There are now 17 Acts owned and enforced by HSE, and over 200 regulations owned and enforced by HSE/Local Authorities.

All reputable employers want to do their best to meet their health and safety obligations and protect their workers and those members of the public affected by their work activities. But the sheer volume of health and safety regulation can lead to confusion and uncertainty for businesses - particularly small businesses without their own health and safety advisers - about their responsibilities under the law.

The Government wants to make it easier for employers to do the right thing. The HSE has already created online risk assessment tools for offices, shops, charity shops, and classrooms.

Today we are launching "Health and Safety Made Simple" – a single, easy to use, piece of guidance aimed at small and medium sized employers in low risk businesses. This takes them quickly through their basic health and safety duties describing in plain English "what to do" and "how to do it" including:

- appointing a competent health and safety adviser;
- writing a health and safety policy;
- completing risk assessments;
- consulting with employees;
- providing adequate levels of training and welfare facilities; and
- obtaining Employers' Liability Compulsory Insurance.

Where necessary, the guidance provides signposts to more detailed help and industry-specific advice.

"Health and Safety Made Simple" can be found on the HSE website at <http://www.hse.gov.uk/simple-health-safety>

Review of health and safety regulation

We will also explore what opportunities there may be to simplify health and safety legislation and, in doing so, further ease the burden on business. To achieve this, the Government will set up an immediate independent review of health and safety regulation. As well as considering legislation with domestic origins, the review will re-examine those regulations originating from European Union Directives to ensure that, where the Directive has not simply been copied out into UK law, there is a sound justification for this and UK businesses are not being unnecessarily burdened compared to other member states. We will also ask the review to recommend changes that will clarify the legal position of employers in cases where employees act in a grossly irresponsible manner.

Professor Ragnar Löfstedt, Director of the King's Centre for Risk Management at King's College London, has been appointed to chair the review. Professor Löfstedt will develop the detailed Terms of Reference for the review. He will be supported by an independent advisory panel made up of leading politicians with appropriate experience, business people and employee representatives to work with and provide constructive challenge to the review. Professor Löfstedt has been asked to make recommendations by autumn 2011 and the Government will then decide what actions to take in the light of those recommendations.

Conclusion

The Government believes that these steps – clamping down on the cowboy consultants, cutting down the number of inspections, charging those who break the rules, and launching a major simplification of those rules – will play an important role in freeing business from unnecessary constraints. It's time to change the health and safety culture in Britain, and restore common sense to the approach we take to protecting our employees.

HEALTH & SAFETY
DEPARTMENT FOR EDUCATION ADVICE ON LEGAL DUTIES AND POWERS FOR
LOCAL AUTHORITIES, HEAD TEACHERS, STAFF
AND GOVERNING BODIES

About this advice

The Government is determined to reduce burdens on schools. We want to simplify health and safety requirements and explain them better. The Government is making it easier for schools to take pupils on trips, removing paperwork and taking steps to reduce teachers' fears of legal action. Teachers should be confident that they know best how to look after pupils and keep them safe.

This document summarises the existing health and safety law relevant to schools and explains how it affects local authorities, governing bodies, head teachers and other school staff. It covers activities that take place on or off school premises, including school trips.

This advice document replaces a number of guidance documents on health, safety and security in schools, including *Health and Safety: Responsibilities and Powers* (2001) and *Health and Safety of Pupils on Educational Visits* (HASPEV 1998). You should also read a new document from the Health and Safety Executive (HSE) *School trips and outdoor learning activities: Tackling the health and safety myths*.

Expiry/review date

The document will be reviewed in Summer 2012.

The advice in this document is based on the law as it stands. The Government are reviewing health and safety laws to simplify them further.

Who is this advice for?

- School employers
- Head teachers and other school staff

Key Points

General

- Children should be able to experience a wide range of activities. Health and safety measures should help them to do this safely, not stop them,
- It is important that children learn to understand and manage the risks that are a normal part of life,
- Commonsense should be used in assessing and managing the risks of any activity. Health and safety procedures should always be

proportionate to the risks of an activity,

- Staff should be given the training they need so they can keep themselves and children safe and manage risks effectively.

The Law

The main legislation covering this area is the Health and Safety at Work etc Act 1974 and regulations made under that Act¹;

- The employer (the local authority, governing body or proprietor) is responsible for health and safety, though tasks may be delegated to staff;
- Employees also have a duty to look after their own and others' health and safety;
- It is very rare for school staff to be prosecuted under criminal law with regard to accidents involving children.

Employers, school staff and others also have a duty under the common law to take care of pupils in the same way that a prudent parent would do so.

- Most claims for negligence are brought against the employer (who has public liability insurance) and not individual members of staff.

What does assessing and managing risks mean?

Health and safety law often refers to risk assessment and risk management. These are the terms used to describe the process of thinking about the risks of any activity and taking steps to counter them. A written assessment is not required for every activity. Teachers should assume they only need to carry out a written risk assessment in exceptional circumstances. Where a risk assessment is carried out the employer must record the significant findings of the assessment².

Some activities, especially those happening away from school such as mountaineering, canoeing and sailing, involve higher levels of risk. In these cases an assessment of significant risks should be carried out. Head teachers should ensure that the person assessing the risks understands the risks and is familiar with the activity that is planned. However, a risk assessment is certainly not needed every time a school takes pupils to a local venue such as a swimming pool, parks or museums.

School employers should always take a commonsense and proportionate approach, remembering that in schools the purpose of risk assessment and management is to help children to undertake activities safely, not to prevent

¹ In particular, the Management of Health and Safety at Work Regulations 1999

² Note that this does not apply if the employer employs less than five employees.

activities from taking place. They cannot remove risk altogether and they should not require needless or unhelpful paperwork.

Tackling myths about legal action

We know that some schools and teachers worry about being prosecuted if an accident occurs. The *HSE policy statement School trips and outdoor learning activities: Tackling the health and safety myths* explains that HSE's main interest is in real risks arising from serious breaches of the law, such as a trip leader taking pupils canoeing but not ensuring they were all wearing buoyancy equipment. The HSE case study on the tragic events at Glenridding Beck, where a ten year old boy drowned in 2002, highlights some of the issues (www.hse.gov.uk/aala/index.htm).

The Statement makes clear that HSE wants to encourage all schools and local authorities to remove wasteful bureaucracy – so that they focus only on real risks and not on paperwork. It also explains what HSE takes into account when deciding whether to prosecute following an accident. This might include the severity of the injury, how far good practice was followed, the seriousness of the breach of the law and whether it is in the public interest to prosecute. More details can be found at <http://www.hse.gov.uk/enforce/enforcepolicy.htm>. Criminal cases relating to accidents in schools are very rare.

Sometimes civil proceedings in negligence can be taken against an employer or an individual member of staff. However, legal action for negligence against schools is only likely to be successful if:

- the school has not taken care of a child in a way that a prudent parent would have done;
- as a result, the child has been injured; and
- the injury was a foreseeable consequence.

Duties as an employer

Under the Health and Safety at Work etc Act 1974, the employer in a school must take reasonable steps to ensure that staff and pupils are not exposed to risks to their health and safety. This applies to activities on or off school premises.

Regulations made under the Health and Safety at Work etc Act 1974 set out in more detail what actions employers are required to take. For example, the Management of Health and Safety at Work Regulations 1999 require employers to:

- assess the risks to staff and others affected by school activities in order to identify the health and safety measures that are necessary and, in certain circumstances, keep a record of the significant findings of that assessment;
- introduce measures to manage those risks (risk management);
- tell their employees about the risks and measures to be taken to

- manage the risks;
- ensure that adequate training is given to employees on health and safety matters.

Schools must set out health and safety arrangements in a written health and safety policy. The HSE's website contains useful information and a simple two page template that any employer can use to create a health and safety policy– see <http://www.hse.gov.uk/simple-health-safety/write.htm>.

Although employers retain responsibility for the health and safety of pupils, they can delegate tasks to head teachers or other school staff. What a school employer will need to consider in its policy will vary depending on the size of the school and the risks associated with the school's activities. For example, the policy for a small infant school may be very brief, whereas that for a large secondary school with a range of laboratories and workshops may be more detailed. Annex A contains information on what *may* need to be included in health and safety policies for schools. This list should not be treated as a requirement.

Duties as an employee

The law requires employees to:

- take reasonable care of their own health and safety and that of others who may be affected by what they do at work;
- co-operate with their employers on health and safety matters;
- do their work in accordance with training and instructions;
- inform the employer of any work situation representing a serious and immediate danger, so that remedial action can be taken.

In addition, teachers and other staff in schools have a common law duty to act as any prudent parent would do when in charge of pupils.

Employees should follow any health and safety procedures put in place by their employer. However if they feel that the procedure is inappropriate (e.g. it is too bureaucratic) they should discuss this with their employer and request that it is reviewed. Usually the head teacher will work with the employer to ensure that the procedures at the school are proportionate, effective and appropriate.

Training

Employers must ensure that staff are given the health and safety training they need for their job. This certainly doesn't mean that all employees have to attend a training course. It may simply mean providing them with basic instructions or information about health and safety in the school. Staff who do work which involves a greater element of risk, such as using woodworking machines, will need more training. There is more information available at <http://www.hse.gov.uk/simple-health-safety/provide.htm>

Trips abroad

Schools in England, Wales and Scotland will need to comply with their duties under health and safety law when planning trips abroad.

Any injury to or death of a member of staff or a child outside Great Britain may be subject to the law of the land in which the injury/death occurred.

A school could still be liable under civil law for injuries to children that happen abroad as a result of negligence on the part of the school or its staff.

Reporting injuries and accidents

Serious work-related injuries to a member of staff or a child must, by law, be recorded and reported. The employer is responsible for this, but staff may be asked to prepare the report. What, how, where and when to report is explained on the HSE website at <http://www.hse.gov.uk/riddor/index.htm>.

Employers must report:

- deaths
- major injuries
- over-3-day injuries – where an employee is away from work or unable to perform their normal work duties for more than 3 consecutive days
- where there is an accident connected to the work activity which causes injury to pupils, members of the public or other people not at work and they are taken from the scene of an accident to hospital
- specified dangerous occurrences – where something happens that does not result in an injury, but could have done;

The requirements are found in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR).

Adventure activities using licensed providers

When planning an activity that will involve caving, climbing, trekking, skiing or watersports schools must currently check that the provider holds a licence as required by the Adventure Activities Licensing Regulations 2004. These regulations apply to adventure activities that take place in England, Scotland and Wales but these arrangements may be subject to change in the future.

School staff driving the school minibus

School staff can drive the school minibus without any special licence, as long as their employer agrees and as long as the following conditions are met.

- The staff member obtained their car driving licence before January 1997; OR
- The staff member obtained their car driving licence later, but has held it for at least two years, AND
 - is not being paid to drive the minibus (because exemption

- depends on no consideration being received by the driver); AND
- the minibus weighs no more than 3.5 tonnes and is used not for hire or reward

Parental consent to off-site activities

Written consent from parents is not required for pupils to take part in the majority of off-site activities organised by a school (with the exception of nursery age children) as most of these activities take place during school hours and are a normal part of a child's education at school. However, parents should be told where their child will be at all times and of any extra safety measures required.

Written consent is usually only requested for activities that need a higher level of risk management or those that take place outside school hours. The Department has prepared a "one-off" consent form which schools can ask parents to sign when a child enrolls at the school. This will cover a child's participation in any of these types of activities throughout their time at the school. These include adventure activities, off-site sporting fixtures outside the school day, residential visits and all off-site activities for nursery schools which take place at any time (including during school holidays or at the weekend). The form is available at

<http://www.education.gov.uk/schools/adminandfinance/healthandsafety>.

Parents must be told in advance of each activity and must be given the opportunity to withdraw their child from any particular school trip or activity covered by the form.

Local Authority Powers

Where the local authority is the employer (community, voluntary controlled, community special schools and maintained nursery schools), it may give a direction concerning the health and safety of persons (including pupils) on the school's premises or taking part in any school activities elsewhere. Under section 29(5) of the Education Act 2002, governing bodies of such schools must comply with any such direction from the local authority.

Role of the Educational Visits Coordinator (EVC)

There is no requirement to have an EVC. The EVC typically liaises with the local authority's outdoor education adviser and helps colleagues in schools to manage risks.

More specific advice can be found from the Outdoor Education Advisers Panel (OEAP) which is made up of expert practitioners from local authorities and is one of several organisations that offers training. The OEAP's website (<http://www.oeap.info>) also provides schools with details of local authority outdoor education advisers.

POWER TO BAR ABUSIVE PARENTS

Sometimes aggressive or abusive behaviour from a parent can present a risk

to staff and children. School premises are private property and parents will generally have permission from the school to be on school premises. However, in cases of abuse or threats to staff, pupils or other parents, schools may ban parents from entering the school.

It is also an offence under section 547 of the Education Act 1997 for any person (including a parent) to cause a nuisance or disturbance on school premises. The police may be called to assist the school in removing a parent but local authorities and governing bodies may also authorise a person to remove a person if they have reasonable cause to believe that the person is causing a nuisance or a disturbance.

Schools should have a written policy setting out the behaviour expected of parents on the premises and the procedures that will happen when the school wishes to restrict a parent's access to school premises. A parent who has been banned from entering school premises is trespassing if he or she does so without permission.

FURTHER INFORMATION

Legislative links

www.legislation.gov.uk/ukxi/1999/3242/contents/made

www.legislation.gov.uk/ukxi/2004/1309/contents/made

www.hse.gov.uk/riddor/index.htm

www.dft.gov.uk and www.dft.gov.uk/dvla/ for information on transport legislation affecting schools

External links

- www.hse.gov.uk Health and Safety Executive
- www.oeap.info Outdoor Education Advisers' Panel
- www.cleapss.org.uk provides advice on science safety
- www.ase.org.uk Association for Science Education
- www.afpe.org.uk Association for PE
- lotcqualitybadge.org.uk Council for Learning Outside the Classroom

Key Elements of a Health and Safety Policy

The HSE's website contains a simple two page template that any employer can use to create a health and safety policy – see <http://www.hse.gov.uk/simple-health-safety/write.htm>. The issues that school employers decide to include in the health and safety policy will depend on the size of the school and the nature of the risks associated with the school's activities. The template on the HSE website includes the following which should be included in any health and safety policy:

- A general statement of policy
- Who is responsible to do what (delegation of tasks)
- Arrangements to establish, monitor and review measures needed to meet satisfactory health and safety standards

In addition schools may wish to include any of the following in their health and safety policy and associated risk assessment:

- Training of staff in health and safety, including risk assessment
- Consultation arrangements with employees
- Recording and reporting accidents to staff, pupils and visitors – including those reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)
- Policy and procedures for off-site visits, including residential visits and any school-led adventure activities
- Dealing with health and safety emergencies – procedures and contacts
- First aid and supporting medical needs
- Occupational health services and managing work-related stress
- Workplace safety for teachers, pupils and visitors
- School security
- Violence to staff (may cross-refer to behaviour policy)
- Manual handling
- Slips and trips
- On-site vehicle movements
- Management of asbestos
- Control of hazardous substances
- Selecting and managing contractors
- Maintenance (and, where necessary examination and testing) of plant and equipment such as electrical equipment, local exhaust ventilation, pressure systems, gas appliances, lifting equipment and glazing safety)
- Fire safety, including testing of alarms and evacuation procedures

PERFORMANCE PORTFOLIO (Health & Safety Consultative Group) DECISION RECORD 3rd August 2011

The meeting commenced at 3.45 pm in the Civic Centre, Hartlepool

Present:

Councillor Jonathan Brash (Performance Portfolio Holder)
Councillors

Trades Union Representatives
Edw in Jeffries and Derek Wardle

Officers: Joanne Machers, Chief Customer and Workforce Services
Officer
Stuart Langston, Health, Safety and Wellbeing Manager
Jo Stubbs, Democratic Services Officer

1. Members of Performance Portfolio (Health and Safety Consultative Group)

The Portfolio Holder noted that in the case of the Performance Portfolio (Health and Safety Consultative Group) it was the usual practice to invite two non-executive councillors to take part in the discussions and give their input, something the portfolio holder supported and wished to see continue. However, since the current incumbent had taken over the role of Portfolio Holder the two invitees had consistently failed to attend. Therefore the Portfolio Holder intended to rescind any future invitations to the current invitees and would identify two alternative non-executive councillors to take part.

2. Proposed changes to the National Health and Safety Regime *(Chief Customer and Workforce Services Officer)*

Type of decision

Non-key

Purpose of report

To advise the Portfolio Holder of proposals to change the national health and safety regime.

Issue(s) for consideration by Portfolio Holder

At the last meeting of the Performance Portfolio (Health and Safety Consultative Group) in February 2011 the Portfolio Holder requested an update on the health and safety situation following the publication of the 'Common Sense Common Safety' report. At that time there had been minimal changes to current practices but since then the Department of Work and Pensions had published a document proposing more significant and wide ranging changes. This document 'Good health and safety good for everyone' was appended to the report. At the heart of this document was a purported attempt to decrease the burden of health and safety red tape on organisations. The main proposals were as follows:

- The creation of a voluntary Occupational Safety and Health Consultants register;
- A revised health and safety framework with emphasis being placed on those businesses at highest risk such as the major hazard industries;
- The introduction of a cost recovery system for those businesses which do not comply with the law;
- An increase in joint initiatives with industry to promote safe and healthy workplaces;
- More effective targeting of inspections leading to a reduction in the overall number of proactive inspections for businesses in lower risk areas.

The Health, Safety and Wellbeing Manager discussed the cost recovery proposals in more detail. Proposed figures included in the consultation document were as follows:

- £133 hourly charge for a visit to the premises by a Health and Safety Executive (HSE) Inspector
- £750 for each letter advising of a contravention
- £1500 for an enforcement notice

He clarified that should there be multiple contraventions each may be given separate enforcement notice which may significantly increase these costs. For more complex breaches a visit from a specialist inspector may be required at a higher hourly rate. Priority areas for HSE intervention are construction and waste both of which the Council had substantial involvement in. Schools were lower risk but the cost recovery proposals would still apply to them and it was therefore imperative that they understand the risks and take their responsibilities seriously. A copy of the latest guidance 'Health and Safety – Department for Education Advice on Legal duties and Powers for Local authorities, Headteachers, Staff and Governing Bodies' was appended to the report. The Health Safety and Wellbeing Manager noted that while the document itself was relatively short there were cross references to no fewer than eighteen websites, not all of which were easy to understand.

The Trade Union Representative commented upon the cost recovery proposals which he felt were less about safety and averting serious problems

and more about making up the 35% budget deficit the HSE had been given. The Portfolio Holder described it as disgraceful that a government organisation was taking this action, whereby they make up their budget deficit by heaping the financial burdens onto others. He highlighted that even where the Council was acting entirely appropriately it could still incur significant additional costs. He felt it might be prudent to consider preparing a budget risk reserve to offset any potential future costs. The Council had an excellent health and safety record and yet could still be open to massive costs which he did not want coming out of the health and safety budget. He asked that this be presented in some form to Cabinet as part of future budget discussions.

In terms of health and safety at schools the Portfolio Holder asked that consideration be given to ways in which the process could be simplified such as reductions in form filling. He asked that the Heads of all schools in the town be written to for their opinions and details of their recent experiences and that the results be brought back to a future meeting. In terms of the guidance document - 'Health and Safety – Department for Education Advice on Legal duties and Powers for Local authorities, Headteachers, Staff and Governing Bodies' – he asked if officers could prepare a further document giving straightforward details of what was included within the document and associated website links for distribution amongst community schools. The Health Safety and Wellbeing Manager confirmed that this was already being done.

The Portfolio Holder further commented that the proposed Occupational Safety and Health Consultants register should be mandatory. In terms of the proposals that industry come up with their own health and safety standards he confirmed that should this apply to the Council that standards would continue to be extremely stringent with cost cutting playing no part in the drawing up of such standards.

The Health Wellbeing and Safety Manager referred the Portfolio Holder to the Lofstedt review which would investigate health and safety law and the burdens placed on business. The Council had queried the removal of the phrase 'reasonably practicable in any future legislation. The Trade Union Representatives tabled documents in relation to this review. They felt that health and safety was often seen as a burden to businesses because of negative press and that this viewpoint should be resisted. The Portfolio Holder agreed that health and safety's primary function was to prevent workplace injuries and should be taken seriously. He hoped that the Trade Union representatives would be fully involved in any future health and safety changes which were required.

Decision

- I. That the report be noted
- II. That a document be prepared summarising the new guidance documents for schools and distributed to Hartlepool's community schools

- III. That all head teachers be consulted on their schools experiences with health and safety matters highlighting any suggestions they might have for improvements.
- IV. That consideration be given to preparation of budget risk reserves for any future HSE cost recovery the Council might be subjected to in the future.

3. Any other business agreed by the Portfolio Holder

The Trade Union Representatives highlighted an article in the Hartlepool Mail regarding the Council plans to improve Church Square. These included a proposed access road which appeared to cut through the Workers Memorial. They were concerned at the impact this would have not only on the memorial itself but also on the annual service which might in future require road closures. The Portfolio Holder requested that the Chief Customer and Workforce Services Officer raise these concerns with the appropriate officer and seek assurances that there would be no impact upon the Workers Memorial. Should these assurances not be forthcoming he would like there to be further discussion on the matter.

The meeting concluded at 4.20 pm.

P J DEVLIN

CHIEF SOLICITOR

PUBLICATION DATE: 9th August 2011

The Government response to the Löfstedt Report

November 2011

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Foreword

Good health and safety is vital to good business. Sensible and proportionate health and safety regulation can support economic growth by maintaining a healthy and productive workforce. However, to be effective, and to provide genuine protection for workers and the public, regulation needs to be easy to understand, administer and enforce. The Government is committed to simplifying health and safety legislation to ease the burden on business and encourage growth.

In March 2011, I asked Professor Ragnar Löfstedt, Director of the King's Centre for Risk Management at King's College London, to conduct an independent review of health and safety regulations to identify opportunities to simplify the rules. I am very grateful to him for taking such a thorough, evidence-based approach and making a number of significant recommendations to improve the legislation and the way it is enforced. We will now move swiftly across Government to ensure his recommendations are implemented as quickly as possible and provide the simple, straightforward framework businesses and employees need.

Professor Löfstedt's report is an important step in the Government's ongoing efforts to put common sense back into health and safety. But changing the health and safety culture for good will take a sustained effort from all of us – central and local government, enforcement agencies, the judiciary, insurers, consultants, employers and employees. This response sets out the path ahead and how Government will work with you to make a real difference.



Rt. Hon Chris Grayling MP
Minister for Employment

Background to the report

The coalition government came into office determined to tackle the pervasive compensation culture that has deeply damaged the standing of “health and safety” in the eyes of the public. The Prime Minister summed up the feelings of many when he said that “...all too often, good health and safety legislation designed to protect people from major hazards has been extended inappropriately to cover every walk of life, no matter how low risk”.

From the outset, we recognised that legislation was only one part of the problem. We have therefore announced a series of measures that also cover how the law is enforced and the wider structures that support and incentivise the compensation culture.

Common Sense Common Safety

As a first step, in June 2010 the Prime Minister asked Lord Young of Graffham to “investigate and report back on the rise of the compensation culture over the last decade coupled with the current low standing that health and safety legislation now enjoys and to suggest solutions”¹. Lord Young’s findings, and his recommendations for change, were published in October 2010 in his report *Common Sense, Common Safety*.

The recommendations covered a wide range of issues including legislation, enforcement, the role of insurers and compensation claims procedures. The review recommended a general consolidation of health and safety regulations, which formed part of the remit of Professor Löfstedt’s review.

The Government accepted Lord Young’s report and recommendations in full. At the Prime Minister’s request, in February 2011 the Minister for Employment took overall lead on implementation, ensuring robust plans for delivery are in place, and overseeing progress. Since March DWP has published regular updates detailing the progress that has been made in delivering Lord Young’s recommendations, and one year on from publication 16 of 35 of those recommendations have been implemented (see table 1, below), with most outstanding recommendations requiring primary legislation due in the next session.

¹ Common Sense Common Safety. Annex A: Terms of reference.

Table 1: Common Sense Common Safety recommendations – implementation

Recommendations	Action
Low hazard workplaces 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>
Accident Reporting 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>
Police and Fire Services 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>
Compensation culture 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>
Education 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)	<p>A joint Food Standards Agency (FSA)/HSE/Local Government Regulation statement on implementing combined inspection programmes from April 2011 was issued in February 2011.</p> <p>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.</p>

Good Health and Safety, Good for Everyone

Further significant reforms were announced by the Minister for Employment on 21 March 2011, with the publication of *Good Health and Safety, Good for Everyone*².

The announcement took forward some of Lord Young's recommendations, notably launching the Occupational Safety and Health Consultants Register (OSCHR), providing access to good quality, sensible and proportionate health and safety advice for employers who need external help. It also set out major changes to the enforcement regime, refocusing inspection activity on higher risk areas and away from lower risk businesses who manage their responsibilities effectively.

The Minister also announced an independent review of health and safety regulation, to identify opportunities to simplify health and safety rules. Acting on feedback from businesses and the public, the review would go further than the original recommendation for consolidation to look at whether some regulations could be revoked entirely. And it would consider the implementation of European Union Directives in the UK to ensure UK businesses were not disadvantaged in comparison to other Member States.

The Löfstedt Review

Professor Ragnar Löfstedt, Director of the King's Centre for Risk Management at King's College London, was appointed to chair the review. An advisory panel was appointed to work with the Professor and provide constructive challenge to the review:

- Andrew Bridgen MP - North West Leicestershire (Con)
- Andrew Miller MP - Ellesmere Port & Neston (Lab)
- John Armitt - Chair, Olympic Delivery Authority
- Sarah Veale - Trades Union Congress
- Dr Adam Marshall - British Chambers of Commerce

The Professor was also assisted by a small review team of Department for Work and Pensions (DWP) and Health and Safety Executive (HSE) staff.

The terms of reference for the review were finalised by the Professor and the advisory panel, and agreed by the Minister. They were 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. In particular, the scope for combining, simplifying or reducing the – approximately 200 – statutory instruments owned

² Good health and safety, good for everyone: www.dwp.gov.uk/docs/good-health-and-safety.pdf

The Government response to the Löfstedt Report

by HSE and primarily enforced by HSE and Local Authorities, and the associated Approved Codes of Practice (ACoP) which provide advice, with special legal status, on compliance with health and safety law.”

In doing so, the review sought to take into account:

- the extent to which these regulations have led to positive health and safety outcomes and the extent to which they have created significant economic costs for businesses of all sizes;
- whether the requirements of EU Directives are being unnecessarily enhanced (‘gold-plated’) when transposed into UK regulation; and
- any evidence or examples of where health and safety regulations have led to unreasonable outcomes, or inappropriate litigation and compensation³.

The review included a call for evidence, which received over 250 responses, and extensive consultation with interested stakeholders including employer and employee groups, local authorities, the emergency services, academics, and health and safety professionals.

Professor Löfstedt’s report *Reclaiming health and safety for all: an independent review of health and safety legislation* was published on 28 November. The Government would like to thank Professor Löfstedt, his advisory panel, and his review team, for their work in undertaking the review and producing the report.

³ The Löfstedt Review - terms of reference, May 2011. <http://www.dwp.gov.uk/docs/lofstedt-tor.pdf>

The Red Tape Challenge

The Red Tape Challenge initiative was launched by the Prime Minister in April 2011 in order to look for opportunities to reduce the stock of over 21,000 regulations which are currently on the statute book.

The Red Tape Challenge website enables the the public and businesses to comment on which regulations – organised around themes - should be retained, simplified, merged or scrapped. Health and safety was identified as a cross-cutting theme which affects all businesses.

The Red Tape Challenge process complements Professor Löfstedt review. Comments relating to health and safety regulations made on the Red Tape Challenge website up to 28 July were considered by Professor Löfstedt alongside responses to his call for evidence. Comments made after 28 July are being considered by HSE as part of the Government's ongoing commitment to regulatory reform.

Response

The Government supports the recommendations of the review and is committed to taking swift action to implement them. Professor Löfstedt identified six key recommendations where we will take action as a priority:

Recommendation

Exempting from health and safety law those self employed whose work activities pose no potential risk of harm to others.

The Government will ask HSE to take urgent action to draw up proposals for changing the law to remove health and safety burdens from the self employed in low-risk occupations, whose activities represent no risk to other people. This will bring Britain in line with other European countries, who have taken a more proportionate approach when applying health and safety law to the self-employed and will free around one million people from red tape without impacting on health and safety outcomes.

In practice, we do not expect enforcement agencies to carry out many visits to self-employed people involved in low risk activities following the introduction of new inspection regime announced in March 2011. However, it is clear that the fear of inspection and possible prosecution for minor transgressions of the law is a cause of unnecessary concern for the self-employed and - where the individual is carrying low risk activity such as office-type work - delivers no real benefit to the wider population. Where the activities of self-employed people could pose a risk to themselves or others, for example in the building trades, the law will continue to apply.

Recommendation

HSE should review all its Approved Codes of Practice (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 Government will ask the HSE to review its 53 Approved Codes of Practice (ACoPs), to the timetable recommended by Professor Löfstedt.

Approved Codes of Practice (ACoPs) are intended to assist dutyholders understand and meet their health and safety obligations. However, as the Professor has identified, in trying to be comprehensive ACoPs have often been written in a complex and legalistic manner which confuses rather than helps dutyholders. This is particularly of concern as ACoPs have legal status and employers who fail to follow the provisions of an ACoP and who cannot prove that they have satisfactorily complied with the law in some other way will be found at fault if prosecuted. It is vital that ACoPs are reviewed to ensure they are the best way of fulfilling the purpose originally intended, making it easier for employers to understand and meet their legal obligations.

The Government response to the Löfstedt Report

Reviewing all 53 ACoPs properly, and in consultation with stakeholders, represents a major programme of work. The proposed timetable for the review will provide certainty to employers on when they can expect changes to be made to the ACoPs that affect them. HSE will be asked to start the review with those ACoPs that impact on the largest number of businesses.

HSE will also be asked to review the other guidance flagged in the Professor's report to ensure that the requirements placed on employers are clear. In the case of the Reporting of Injuries Diseases and Dangerous Occurrences Regulations (RIDDOR) 1995 guidance, they will need to take account of changes already underway to deliver Lord Young's recommendation to extend the reporting period for reportable accidents from three to seven days.

Recommendation

HSE to undertake a programme of sector specific consolidations to be completed by April 2015.

Professor Löfstedt has identified a number of areas where there is the potential to consolidate health and safety regulations – many of which are quite old and may not reflect the best way of delivering the desired outcomes now given changes in industry and society. The Government agrees that this will make regulatory framework simpler and easier to understand, while maintaining the same standards of protection for those in the workplace or affected by work activities. The aim is not to remove vital protections but to ensure that regulations reflect contemporary approaches to risk management and control, focus on real risks, and make it easier for employers to understand and therefore meet their obligations. Through implementing the recommendations of the report, and ongoing HSE plans, we will reduce the number of health and safety regulations by more than 50 per cent without reducing the protection offered to employees and the public.

In the decades following the enactment of the Health and Safety at Work Act 1974, a plethora of legislation has grown up, compounded by the introduction of European Union (EU) legislation from 1992 onwards. Despite efforts to reduce the amount of red tape, there are now 17 Acts and over 200 regulations owned by HSE and enforced by HSE/Local Authorities on the statute book. Professor Löfstedt notes that even those who are not involved in high-risk activities have to comply with a minimum of 13 different sets of general regulations. Add to that sector and topic specific regulations and it is little wonder that businesses can find health and safety law burdensome and confusing.

There are a number of regulations that apply to specific sectors only which would benefit from consolidation. The body of regulation related to these areas has built up over the years, resulting in an often fragmented and complex set of requirements. The Professor specifically mentions explosives, mining, genetically modified organisms, petroleum, and biocides but acknowledges that there may be further areas which could be considered.

The Professor also recommends changes to a number of specific regulations where there is no evidence that they improve health and safety outcomes, or where there is duplication with other legislation. These include the Celluloid and Cinematograph Film Act (Repeals and Modifications) Regulations 1974, the Celluloid and

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Cinematograph Film Act 1922 (Exemptions) Regulations 1980, the Health and Safety (First Aid) Regulations 1981, the Construction (Head protection) Regulations 1989, the Working at Height Regulations 2005, the Notification of Tower Cranes Regulations 2010, and the Notification of Conventional Tower Cranes (Amendment) Regulations 2010.

There is a requirement in the Health and Safety at Work Act 1974 for HSE to consult on changes to its regulations. The Government will ask HSE to draw up a detailed timetable for work on consolidating or amending the regulations identified by the Professor, in consultation with stakeholders. In relation to mining regulations, work will take account of any relevant findings from the investigation into the causes of the recent fatal incidents at the Gleision mine in Wales, and at the Kellingley colliery in North Yorkshire.

Work will not stop there. The HSE will be asked to keep health and safety regulation under continuous review, to look for further opportunities for consolidation, simplification or revocation.

Where legislation has originated in the EU, there may be limited scope for making changes, particularly in the short term. When reviewing such regulation HSE will, however, be asked to ensure that no unnecessary over-implementation has occurred during transposition, and that the UK law is as simple and straightforward as possible whilst still meeting EU requirements. In the longer term, the planned review of EU health and safety legislation in 2013 will provide an important opportunity for us to press for a more proportionate approach to regulation in this area.

Recommendation

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 businesses.

The Government fully supports the overall objectives of the recommendation, which provides a clear case for change and reducing the burdens on business. At the same time, in our effort to address deficiencies in the system we must not create an even more centralised approach that is further removed from local businesses and communities. There remains an important role for local inspectors to use their knowledge and experience to engage with businesses across a range of regulatory issues.

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.

The Primary Authority scheme, introduced in 2009, goes some way towards developing a framework for addressing the problem of inconsistency across local

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authority boundaries. It allows multi-site businesses to elect to deal with a single local authority to co-ordinate regulatory activities for that company across GB with a view to a more strategic approach to inspection and a consistent approach to standards. However, in *Common Sense Common Safety*, Lord Young noted that some large multi-site food retailers felt the scheme could be improved, for example by strengthening the Inspection Plan element of Primary Authority. The Government has recently consulted on plans to address these issues and further announcements will be made soon.

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. It will also help to address the 'twin peak' issue and provide the platform for a single regulatory approach to health and safety across Britain. We welcome the HSE working closely with the Local Better Regulation Office, who operate the Primary Authority Scheme, to ensure that Primary Authority can help deliver reductions in burdens, and increased consistency of approach, in line with HSE policy.

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.

Recommendation

The original intention of the pre-action standard disclosure (Woolf) lists 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 agrees with this recommendation. The Civil Procedure Rule Committee, which is responsible for the pre action protocol for personal injury claims, is asked to consider how the original intention of the pre-action standard disclosure lists can be clarified and restated. The Government will also review all regulatory provisions that impose strict liability and look for ways to address what could be a significant driver of over-compliance with health and safety law.

As Lord Young reported in *Common Sense Common Safety*, there is a perception in that Britain is now far more litigious than it was 10 or 20 years ago. This is fuelled by a number of factors, not least by the way the way no win no fee conditional fee arrangements now operate; and the growth of claims management companies. Respondents to Lord Young made clear that the fear of litigation is a significant driver of over-zealous implementation of health and safety requirements, and Professor Löfstedt noted that many employers do not make a distinction between health and safety regulation, which is criminal law, and civil law, which covers personal injury claims.

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Lord Justice Jackson in his 2010 report⁴, made recommendations for reforming the civil litigation funding and costs system in England and Wales in order to promote access to justice at a proportionate cost. The Ministry of Justice is now implementing Lord Jackson's recommendations on the reform of no win no fee agreements. The Legal Aid, Sentencing and Punishment of Offenders Bill which is currently before Parliament contains provisions on the reform of no win, no fee arrangements, the revision of civil procedure rules to encourage early and fair settlement of negligence claims and the banning of referral fees. Under the Government's changes, meritorious claims will be resolved at more proportionate cost, while unnecessary or avoidable claims will be deterred from progressing to court. It will help businesses and other defendants who have to spend too much time and money dealing with avoidable litigation, actual or threatened. It is intended that the reforms will be implemented in 2012.

However, Professor Löfstedt voices concern that these reforms, and wider work to simplify the health and safety system, will be ineffective if businesses continue to over-comply with health and safety regulation due to fear of civil litigation.

Lord Woolf's *Access to Justice* report of July 1996 aimed to produce a common set of court procedures in order to ensure consistency in how civil claims were dealt with in the court and encourage speedier resolution. The pre-action standard disclosure lists, now commonly known as the "Woolf lists", were intended as a specimen list of documents that might be material in resolving personal injury claims. It was never the intention that the lists – which include 11 documents for disclosure relating to general workplace health and safety requirements, and 64 documents for disclosure where specific health and safety regulations apply – should be treated as an absolute requirement. However, as the Professor has found, often employers are encouraged to settle compensation claims if all the paperwork is not in place, regardless of their overall compliance record.

It is worth noting that the Practice Direction on Pre-Action Protocols makes it clear that a technical approach should not be taken and that minor non-compliance should not be viewed too strictly. However, the Civil Justice Council is now conducting a full review of Pre-Action Protocols and will take account of the recommendations in the Löfstedt Report in taking forward this work.

The Health and Safety at Work etc Act 1974 is underpinned by the principle of 'reasonable practicability', which weighs a risk against the trouble, time and money needed to control it. This allows employers and other dutyholders to exercise judgement on the actions that they should take to meet their responsibilities. The ACoPs support these judgements by providing guidance on the types of action that would be considered reasonable.

In some health and safety regulations, including those arising from EU law, the duty imposed on the employer is a strict one and no defence of having done all that is reasonably practicable is available. This does not give rise to problems in enforcing criminal liability under the regulations because HSE's enforcement policy allows discretion as to whether to prosecute in individual cases. However, in the civil sphere it does have the potential to impact unfairly. Civil liability follows as a result of the

⁴ Review of Civil Litigation Costs; Final Report. <http://www.judiciary.gov.uk/NR/rdonlyres/8EB9F3F3-9C4A-4139-8A93-56F09672EB6A/0/jacksonfinalreport140110.pdf>

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breach of duties in health and safety regulations and strict liability duties impose a higher standard than the employer's common law duty of care.

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. The Government will look at ways to redress the balance, in particular preventing civil liability from attaching to a breach of such provisions.

Working with the EU

Recommendation

The Government works more closely with the Commission and others, particularly during the planned review in 2013, to ensure that both new and existing EU health and safety legislation is risk-based and evidence-based.

As much as half of all legislation affecting UK businesses originates in Brussels. While the UK Government has done much to tackle the cost of regulations within the UK we need to do more to reduce the burden of EU regulations. That is why we introduced our Guiding Principles for EU Legislation, aimed at maximising the UK's influence on EU policy-making through early engagement, and ending gold-plating of EU legislation in the UK. We are also working with an ever-increasing group of likeminded member states to hold the European institutions to account on their commitments to better EU regulation.

It is, of course, right there should be common standards of health and safety across Europe, both to provide consistent protection for those at work and those affected by work activities, and a level playing field for businesses which are increasingly operating across international boundaries. At the same time, the need to reconcile the needs of a diverse range of member states can result in the introduction of blanket laws that are disproportionately risk-averse.

The Government welcomes the Professor's call for a new approach, based on hard evidence. Britain has an exemplary health and safety record, with latest figures showing that we have lowest rate of fatal injury of all the Eurostat countries⁵. We therefore have an important role to play in the development of European health and safety legislation. The Government will continue its efforts to work closely with other EU member states and the EU Commission to deliver a more proportionate, risk-based approach to health and safety, for example through the proposed 2013 review, that better meets the needs of employers, employees and the public across Europe.

⁵<http://www.hse.gov.uk/statistics/european/european-comparisons.pdf>

Other EU recommendations

Recommendations

All proposed directives and regulations (and amendments to them) that have a perceived cost to society of more than 100 million Euros should go through an automatic regulatory impact assessment; and

The UK Government works with the Commission to introduce greater clarity and raise awareness around social partner agreements, and to ensure that Impact Assessments are produced for agreements before they are adopted as a Directive

Currently the European Commission does carry out impact assessments on proposals with the most far-reaching effects. All legislative proposals with clearly identifiable economic impacts and all legislative proposals in the Commission Forward Work Programme must have impact assessments. In practice this is likely to include all high-cost proposals, although having an absolute cost baseline for impact assessments, as Professor Löfstedt suggests, would be helpful.

In 2010 impact assessments were also carried out on proposals with costs of less than €100m⁶, indicating that an actual baseline could be set lower than this figure, though due to the limited quantification of costs in Commission impact assessments an appropriate level for this may be difficult to formulate.

The Government agrees that impact assessments should be produced for all proposals imposing costs on business (although these should of course be proportionate), and two areas where impact assessments are not routinely carried out are comitology items and Social Partner Agreements (as Professor Lofstedt points out). These items should also be subject to automatic regulatory impact assessments.

⁶ Impact assessments on proposals in 2010 comprised 6 costing <€100m; 7 costing >€100m and 16 which were either uncoded or only partially coded. Costs are gross and relate to **either** recurrent or one-off costs

Recommendations

Those who are responsible for developing the IAs should be different from those who have drafted the directives or regulations; and

A stronger peer review is introduced through a stronger, more independent EU Impact Assessment Board, or that a separate independent powerful regulatory oversight body is established, modelled on the US Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB). This body should sit within the Secretariat General and would need to be properly resourced.

There are advantages and disadvantages to having impact assessments carried out by those who drafted the regulation. The expert policy leads are the only ones with the in-depth knowledge of the issues to be able to properly assess the full range of implications. Carrying out the impact assessment should also act as a useful discipline in policy-making, helping to embed the sort of culture change where policy makers properly consider the evidence and the impacts of the regulatory change they propose.

However, the Government agrees that it is of course essential that there is some independent check on the quality of and possible bias in impact assessments. In the UK the Regulatory Policy Committee fulfils this role. In the Commission the Impact Assessment Board goes some way to providing this function but its members are drawn from within the Commission. The Commission's system would undoubtedly benefit from a stronger and more independent Board and this is something we have lobbied for in the past. We continue to support moves in this direction.

Recommendation

A European Parliamentary Committee is established to look at risk based policy making that could assist EU regulators and policymakers to regulate on the basis of risk and scientific evidence.

The Government agrees that there is a need for support for evidence-based policymaking in the European Parliament (EP). It has welcomed the announcement made in the summer that the EP, after sustained lobbying from the UK, will create its own impact assessment unit. The unit will be responsible for the Parliament's own impact assessments on substantive amendments among other things. We understand that existing parliamentary committees will all be able to call upon this new unit for support in evidence-based policymaking. The Government is committed to working with Members of the European Parliament (MEPs) to make sure this new unit fulfils this important role.

Next Steps

The Government is committed to delivering the recommendations to the timetable suggested in the report, or earlier where possible. DWP will develop an implementation plan with HSE and other Government departments and agree milestones for action. We intend to publish regular progress updates on the DWP website, as we already do for the programme of work to deliver the *Common Sense*, *Common Safety* recommendations.

As a result of the implementation of the recommendations and other Government action already under way, we expect the experience of businesses to change significantly over the coming months and years:

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.

Conclusion

Professor Lofstedt's report is a significant step in our continuing effort to keep our workplaces safe, free businesses from red tape, and reclaim the reputation of health and safety that has been so damaged by the excesses of the compensation culture. We are committed to taking his recommendations forward vigorously.

But our efforts will not stop with the actions outlined in the Professor's report. We will continue, through the Red Tape Challenge and other mechanisms, to look for opportunities to further simplify the health and safety system and improve the experience of employers and employees across the UK.