

Health and Safety Executive

Consultation on proposals to remove fourteen legislative measures



A response by the Association of Personal Injury Lawyers

4 July 2012

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has over 4,200 members in the UK and abroad who represent hundreds of thousands of injured people a year.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- to promote full and just compensation for all types of personal injury;
- to promote and develop expertise in the practice of personal injury law;
- to promote wider redress for personal injury in the legal system;
- to campaign for improvements in personal injury law;
- to promote safety and alert the public to hazards wherever they arise; and
- to provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

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Introduction

APIL has previously provided input into the review of health and safety conducted by the Department for Work and Pensions (DWP) and we give further comment here in relation to proposals to remove fourteen legislative measures following the recommendations within Professor Lofstedt's report, *Reclaiming health and safety for all: An independent review of health and safety legislation*.

Executive Summary

APIL welcomes the opportunity to respond to the Health and Safety Executive's (HSE) consultation regarding proposals to remove fourteen legislative measures. Professor Ragnar Löfstedt's report, *Reclaiming health and safety for all: An independent review of health and safety legislation* concluded that the health and safety system was fit for purpose and "in general, there is no case for radically altering current health and safety legislation"¹. It is, therefore, important that any consolidation exercise does not dilute the protection that is offered to employees through current health and safety legislation.

Although at first glance some Regulations may appear to be archaic or to have been overtaken by more recent Regulations, more scrutiny is needed over the proposals within this consultation paper. Health and safety Regulations have existed to provide employees with a safe working environment; by preventing needless injury and fatalities through intervention. Furthermore statistics, as published by the HSE, prove that this intervention is working.

The CRU has recently published its up-to-date statistics for 2010/2011² which includes the number of employers liability cases registered to the CRU. The CRU statistics show very clearly that the number of employer liability cases reported them has declined in the last ten years. In 2010/2011 the number of cases registered sits at 81,470, which is a decrease year-on-year from 87,198 registered in 2007/2008.

¹ *Reclaiming health and safety for all: An independent review of health and safety legislation*, Professor Ragnar Löfstedt, November 2011, Page 1 paragraph 3.

² Department for Work and Pensions Compensation Recovery Unit Performance Statistics 2010/2011, <http://www.dwp.gov.uk/other-specialists/compensation-recovery-unit/performance-and-statistics/performance-statistics/>

There is clear evidence that HSE regulatory activity works and prevents accidents. Furthermore, when you look at the HSE's statistics of occupational ill health, safety and enforcement for injuries in England, as published on their website³, it is clear to see that the number of fatal injuries; major injuries; and over-3-day injuries has fallen since 2005/2006. Injuries suffered at work in England have decreased over the last five years, major injuries dramatically so. Health and safety regulation has clearly helped to achieve this success.

Latest CRU figures for number of claims made between 1 April and 31 March in each respective year

Year	Employer liability
2000 / 2001	219 183
2001 / 2002	170 554
2002 / 2003	183 342
2003 / 2004	291,210
2004 / 2005	253,502
2005 /2006	118,692
2006/2007	98,478
2007/2008	87,198
2008/2009	86,957
2009/2010	78,744
2010/2011	81,470

During 2009/10, the HSE reported that:

- 1.3 million people who worked during the year were suffering from an illness (long standing as well as new cases) they believed was caused or made worse by their current or past work. 555 000 of these were new cases.
- 121, 430 other injuries to employees were reported under RIDDOR, a rate of 473 per 100, 000 employees.
- 233, 000 reportable injuries occurred, according to the Labour Force Survey, a rate of 840 per 100, 000 workers.

³ Health and Safety Executive, Injuries to Employees by country, government office region, county and local authority, as reported to enforcing authorities 2005/6 to 2009/10
<http://www.hse.gov.uk/statistics/regions/reginj.xls>

Put into perspective, this meant that 28.5 million working days were lost overall (1.2 days per worker). 23.4 million due to work-related ill health and 5.1 million due to workplace injury⁴. The numbers reported here are lower than those reported in the 2008/09 report, and in previous years. This proves that regulation in the workplace prevents needless injury.

The HSE has also reported a consistent downward trend in the number of fatal injuries to workers:

Year	Number of fatal injuries
2003 / 2004	236
2004 / 2005	223
2005 /2006	217
2006/2007	247
2007/2008	233
2008/2009	179
2009/2010	152
2010/2011	147 (as reported at June 2011)

Valuable lessons can be learned from previous ineffective and lacklustre regulation prior to introduction of the general and comprehensive regulation that we see today. Watering down the rules which help ensure workers' safety will only expose them to risk of further harm. The best way to cut costs is to cut the negligence which causes needless injury in the first place.

Consultation Response

APIL has general comments about the proposals to remove these legislative measures and so, rather than answer the specific questions as laid out in the consultation document, we provide our observations below.

⁴ The Health and Safety Executive Statistics 2009/10, <http://www.hse.gov.uk/statistics/overall/hssh0910.pdf>

Professor Lofstedt made several recommendations aimed at streamlining health and safety regulation and cutting down on, what is perceived to be, needless bureaucracy in order to simplify current health and safety legislation and remove duplication. However, the Lofstedt review concluded that the “problems” with health and safety lie more with the interpretation and application of regulations rather than their content, meaning that in some instances regulations aimed at covering “real” risks are being used to cover trivial ones. This is further evidenced by the HSE’s recent launch of the Myth Busters Challenge Panel.

It is following these recommendations that the HSE now consults on proposals to remove what they brand as redundant Regulations that are no longer required, or have been overtaken by more up-to-date Regulations.

Professor Lofstedt’s recommendation specifically states that “*the HSE undertakes a programme of sector specific consolidations*”⁵. He continues,

*“..the sheer mass of regulation is a key concern for many businesses. Although there is considerably less regulation than 35 years ago, businesses still feel that they have to work through too many Regulations or use health and safety consultants. HSE has already started work to consolidate explosives Regulations both updating the requirements and making them simpler to understand. Similar benefits could be gained from consolidating other sector specific regulations.”*⁶

At no point here does Professor Lofstedt recommend the removal of the requirement on businesses or the replacement of Regulations with guidance and this should be reiterated to businesses to avoid any confusion. Furthermore, earlier in his Executive Summary, Professor Lofstedt only recommends the removal of a duty where little is offered in terms of improving health and safety outcomes.

⁵ *Reclaiming health and safety for all: An independent review of health and safety legislation*, Professor Ragnar Löfstedt, November 2011, Executive Summary Page 4 paragraph 1 3.

⁶ *Reclaiming health and safety for all: An independent review of health and safety legislation*, Professor Ragnar Löfstedt, November 2011, Executive Summary, Page 4 paragraph 1 3.

“From a risk and evidenced-based perspective I have looked at the scope and application of the Regulations and identified some duties that should either be removed, revised or clarified in order to reduce regulatory requirements which offer little in terms of improving health and safety outcomes. (Emphasis added)”⁷

He concludes,

“The general sweep of requirements set out in health and safety regulation are broadly fit for purpose but there are a few (emphasis added) that offer little benefit to health and safety and which the government should remove, revise or clarify (emphasis added)...whose work activities pose no potential risk of harm to others.

The much bigger problem is that regulatory requirements are misunderstood and applied inappropriately.”⁸

In his recommendations, Professor Lofstedt specifically recommends the revocation of only **five** Regulations. Those being:

- The Notification of Tower Cranes Regulations 2010;
- The Notification of Conventional Tower Cranes (Amendment) Regulations 2010;
- The Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations 1980;
- The Celluloid Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974; and
- The Construction (Head Protection) Regulations 1989.

⁷ *Reclaiming health and safety for all: An independent review of health and safety legislation*, Professor Ragnar Löfstedt, November 2011, Executive Summary, Page 2 paragraph 3.

⁸ *Reclaiming health and safety for all: An independent review of health and safety legislation*, Professor Ragnar Löfstedt, November 2011, Executive Summary Page 7 paragraph 22.

Professor Lofstedt does not recommend the revocation of the other Regulations as proposed in this consultation.

In accordance with EU law, legislation cannot be removed; doing so would reduce the protection previously offered by earlier legislation to workers⁹. Therefore, it is unlawful to remove legislation and replace it purely with guidance. Professor Lofstedt's report recognises that the scope for changing health and safety regulation is severely limited by the requirement to implement EU law. It is true that many of our health and safety regulations implement EU Directives but that is only part of the story when looking at the framework of Regulations within health and safety.

Professor Lofstedt recommended the revocation of the Construction (Head Protection) Regulations (CHPR) because it duplicates responsibilities that are set out in more recent legislation; the Personal Protective Equipment at Work Regulations 1992 (PPE). However, before any revocation of the CHPR can take place the PPE must be amended to ensure that legislation is clear on the provision and use of head protection in workplaces. This is currently not provided for in the PPE, which leaves a dangerous matter to ambiguous interpretation, and so these Regulations need to be amended in order to ensure that they are.

PPE affords a greater level of protection than that which existed in the CHPR but only if they are amended as advised. Once amended there will be no dilution of the regulatory requirements that are currently imposed on businesses or of the protection offered to employees and it is important that businesses are reminded of that. If the CHPR Regulations are to be revoked then the detail provided within the guidance accompanying those Regulations must not be lost. If this essential guidance is to be lost then the CHPR Regulations must not be repealed.

Construction sites are very dangerous places of work, and many fatal and major

⁹ Framework Directive Article 1(3), "This Directive shall be without prejudice to existing or future national and Community provisions which are more favourable to protection of the safety and health of workers at work".

accidents in the workplace continue to be in and around construction sites. It is fundamental that the provision and use of head protection in these areas continues to be provided for within Regulations.

The Docks Regulations 1988 and Approved Code of Practice with Regulations and Guidance (COP25) are not referenced within Professor Lofstedt's report. In its consultation paper the HSE recognises that some parts of these Regulations have been revoked or superseded by more recent legislation that contains general health and safety requirements¹⁰. Table 3 at Annex 5 details where more recent replacements for the Docks Regulations exist and the HSE's proposed approach to ensure that guidance remains for businesses within the Docks and shipbuilding and repair industries. At first glance these Regulations appear to be fairly complex and industry specific and specialised and it could be understood why the HSE feels that some simplification of the Regulations is needed. However; docks and shipbuilding and ship repairing continue to remain extremely dangerous places to work. Therefore it is essential that the level of protection offered to employees is not reduced in any way.

Although Regulations appear to be duplicated within the Health and Safety at Work Regulations 1999 and elsewhere, there are still some sections of the Docks and Shipbuilding Regulations that are not and they must remain in place.

For example, the HSE recognises there will be gaps in guidance with removal of these Regulations and recommends the provision of additional guidance¹¹. Regulation 9 of the Docks Regulations refers to rescue, lifesaving and firefighting equipment, and means of escape. The proposed approach from the HSE is for additional guidance to be provided by May 2012. Firstly, consultation on the revocation of these Regulations does not finish until July 2012. Secondly, it is essential that a Regulatory requirement remains due to the dangerous nature of

¹⁰ *Proposals to remove fourteen legislative measures*, Health and Safety Executive, April 2011 Annex 5.

¹¹ *Proposals to remove fourteen legislative measures*, Health and Safety Executive, April 2011 Annex 5, page Annex 5-2 paragraph 5.9.

these places of work as should the duty to provide a safe working environment for employees.

The Construction (Design and Management) Regulations 2007 (CDM 2007) contain provisions for workplaces near water but specifically do not apply to docks or shipbuilding and repair. We therefore suggest that the specific Regulations within CDM 2007 are amended and expanded to specifically include docks and shipbuilding and repair in order to continue to offer the protection that docks employees, as well as shipbuilding and ship repair workers, currently enjoy. We understand that the HSE plans to re-draft the CDM for reissue in 2014 and therefore there is opportunity to amend the Regulations as we have suggested above.

Part 4 of the CDM 2007 only applies to construction sites¹² and does not specifically include docks or shipbuilding and ship repair. However, Regulations within the CDM 2007, if applicable to docks and shipbuilding and repair could offer those employees the necessary protection in these hazardous places of work.

For example, to replace Regulation 9 of the Docks Regulations which refers to rescue, lifesaving and firefighting equipment, and means of escape we would recommend the improvement of specific Regulations within the CDM 2007 such as the following:

- Regulation 35 Prevention of drowning;
- Regulation 36 Traffic Routes;
- Regulation 37 Vehicles;
- Regulation 38 Prevention of risk from fire;
- Regulation 39 Emergency procedures;
- Regulation 40 Emergency routes and exits;
- Regulation 41 Fire detection and fire-fighting;

¹² Construction (Design and Manufacturing) Regulations 2007 SI 2007 No 320.

An alternative approach would be to include sector specific Regulations within other existing Regulations.

These workplaces are just too dangerous for Regulations to be simply removed and replaced with guidance. If a workplace offers a greater level of danger to employees then a greater level of duty must apply to the employer to ensure workers are safe at work.

- Ends -

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