

Government response to the Löfstedt report

The Department for Work and Pensions (DWP) recently issued the **Government response to the Löfstedt report (Reclaiming Health and safety for all: An independent review of health and safety legislation)** which investigated the scope for simplifying health and safety regulation for UK businesses.



Löfstedt, Director of the King's Centre for Risk Management at King's College London, concluded that:

“ In general, there is no case for radically altering current health and safety legislation. The regulations place responsibilities primarily on those who create the risks, recognising that they are best placed to decide how to control them and allowing them to do so in a proportionate manner. There is a view across the board that the existing regulatory requirements are broadly right, and that regulation has a role to play in preventing injury and ill health in the workplace. Indeed, there is evidence to suggest that proportionate risk management can make good business sense.

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Key findings

However, Professor Löfstedt has identified key areas where the DWP will take action as a priority:

- Exempting from health and safety law those self-employed whose work activities pose no potential risk of harm to others.
 - The HSE should review all its Approved codes of practice. 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 HSE undertakes a programme of sector-specific consolidations to be completed by April 2015.
 - Legislation is changed to give HSE the authority to direct all local authority health and safety inspection and enforcement activity, in order to ensure that it is consistent and targeted towards the most risky workplaces.
- The original intention of the pre-action protocol standard disclosure list should be 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 overarching recommendation is that 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.

Next steps

The Government is committed to delivering the recommendations to the timetable suggested in the report, or earlier where possible. The timetable for change is as follows:

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.

What do the recommendations mean in practice?

The review was never intended to lead to large scale change in health and safety legislation (and indeed could not do this because of the need to comply with EU law) but merely to simplify existing laws.

The proposed changes pose no material change for the vast majority of companies in the UK. The onus is still on employers to protect their employees at work through practical risk assessments around key risks and hazardous activities.

One of the more positive outcomes for businesses will be the clarification of the pre-action protocols, commonly known as the 'Woolf lists' in civil claims proceedings. It was never the intention that these 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 a requirement. However, it was reported that some insurance claims handlers are using the protocols as definitive lists and insurance companies will not contest a claim if all the paperwork is not in place, on the basis that it cannot be defended. This could be one reason why employers feel the need to complete risk assessments for every activity, leading to an emphasis on paperwork at the expense of resources that should be spent controlling risks and improving health and safety.

Clarification of these protocols will be welcomed if they reduce the amount of time employers spend on unnecessary risk assessments in order to satisfy the perceived requirements of insurers.

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