Reclaiming Health and Safety for All

A summary of the Löfstedt Review

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The Löfstedt Review

Reclaiming health and safety for all
In March 2011 the government appointed risk management specialist Professor Ragnar Löfstedt to chair an Independent Review of Health and Safety legislation to make proposals for simplifying the existing raft of health and safety legislation. The review was to consider the opportunities for reducing the burden of health and safety legislation on UK businesses while maintaining the progress made in improving health and safety outcomes. Both the review and the Government response were delivered on 28th November 2011, this guide provides a summary of the contents of both.

Key milestones
March 2011:
Löfstedt review commissioned by Health and Safety Minister Chris Grayling;
May 2011:
Terms of reference published; call for evidence disseminated for public consultation (250 responses received);
May-Nov 2011:
Löfstedt meets with 30 key stakeholders and undertakes workplace visits across a range of sectors;
November 2011:
Final report published;
November 2011:
Government response published.

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Useful Links
Download the full Review and the Government’s Response at:
http://www.dwp.gov.uk/docs/lofstedt-report.pdf

Response from the Arco Joint MDs

“It’s clear that businesses in the UK feel overburdened with health and safety legislation and see it as a real barrier to growth. Arco welcomes the Löfstedt Review of Health and Safety Legislation. The consolidation and simplification of the regulatory framework will enable small businesses and the self-employed in low risk sectors to be free of unnecessary regulation and anxiety. We also welcome the opportunity to raise the debate about the perception of risk and to encourage individuals to consider their actions and how they may affect others.

The review can be summed up in three words – reform, re-focus and re-finance. Reform of health and safety legislation is welcomed, along with a re-focus on those high risk industrial sectors and a move towards a risk and evidence based approach to legislation. With the increased burden of responsibility being placed on the HSE’s doorstep, where will the re-finance come from to enable them to do the job properly? The HSE’s budget is being cut by 35% by 2014/15 which will lead to the closure of some local offices, the loss of up to 100 inspectors and the closure of the HSE Helpline. In a recent online poll on the Health and Safety at Work website, 75% of respondents thought that the HSE’s reduced funding and the inevitable curb on safety awareness schemes and proactive inspections will alter the current trend of falling injury rates. We must not forget the fact that the latest statistics from the Health and Safety Executive show that in 2010/11 171 workers were killed with over 115,000 reported non-fatal injuries. This is the lowest rate of fatal injury of all the Eurostat countries1 and is the result of existing strong legislation, protecting workers in high risk industries.

Whilst we welcome the recommendation to make the HSE the single enforcer of health and safety legislation, it is essential that the role of the HSE does not solely move to focus on enforcement. With commercial pressures on businesses of all sizes to do more with less, there is an even greater need for a proactive approach to health and safety in the workplace – one which offers simple, practical guidance on safe working practices, conformity to legislation and proportional reporting. The report actually recommends that the HSE should review all its Approved Codes of Practice and guidance (ACoPs) when in fact the HSE regularly reviews these guidance documents to ensure the content is appropriate, unambiguous and current.

Arco is uniquely positioned to assist the HSE. With customers across all industrial sectors both SME and large corporations, including 380 local councils we are accredited to work with through our framework agreements, we have a deep understanding of the issues business owners face. We would welcome a collaborative approach, working with the HSE to provide relevant guidance and assist with the review of future Approved Codes of Practice and Legislation. Together we can ensure that businesses understand the relevant aspects of law and what it requires of them.

Arco is the UK’s leading supplier of personal protective equipment, workwear and workplace safety products offering a world-class range of over 170,000 products.

As Experts in Safety we are widely recognised as a provider of specialist advice through our branch network and this is further supported by our training and consultancy division ARC Safety Services. We reach our customers through an extensive product catalogue, interactive website and 40 strong local branch network priding ourselves on providing customers with great availability, performance and price.

Founded in 1884 Arco has a heritage spanning four generations. With traditional family values at the heart of the business we pride ourselves on our core values; respect, hard work, enterprise and excellence in reputation. In 2007 Arco was the first distributor in our industry to become a member of the Ethical Trading Initiative (ETI) and in 2010 we became a member of Sedex, an independent not-for-profit organisation that maintains the Supplier Ethical Data Exchange. Our supply chain management has recently been re-awarded a ‘Big Tick’ for our supply chain responsibility.

Arco is the UK’s leading supplier of safety and workwear products. Our mission is to assist our customers of all sizes to do more with less, through an extensive product catalogue, interactive website and 40 strong local branch network. Over the years Arco has changed ownership and name, but the Arco heritage lives on. Since 1884 Arco has been providing customers with products offering a world-class range of over 170,000 products.

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Summary and Analysis of Professor Löfstedt’s report

Scope of the report

- Professor Löfstedt’s remit was to ‘look into the scope for reducing the burden of health and safety regulation on business, whilst maintaining the progress that has been made in health and safety outcomes.’
- He has focused on the approximately 200 regulations and 50 Approved Codes of Practice (ACoPs) owned by the Health and Safety Executive (HSE), in the areas he believes are responsible for disproportionate costs to businesses – but which do little to improve health and safety outcomes.
- Objectives of the report
- Löfstedt was commissioned for this review as an independent sector expert. He was able and expected to make an objective assessment of the health and safety landscape and of the HSE, to enable the government to make informed policy decisions and improvements.
- His recommendations do not automatically form government policy and the government is free to accept, amend or reject his recommendations, or apply any timescale it chooses to their implementation.

Approach

- Löfstedt has very purposefully taken a research- and evidence-based approach. In addition to receiving responses to the call for evidence, he undertook a broad range of stakeholder interviews and workplace visits across several sectors in order to understand the full breadth of health and safety issues and concerns;
- He also committed to undertaking risk-based research rather than hazard-based research (i.e. placing responsibility on those who create the risk) and strongly encourages decision-making bodies in the UK and EU to adjust their thinking along these lines.

Overarching observations

- There will be no radical overhaul of the structures supporting health and safety regulations in the UK, nor the legislation that underpins the regulations;
- The understanding, interpretation and application of the regulations are inconsistent and/or inappropriate and this needs to be addressed;
- Related to this, there is a high degree of unnecessary bureaucracy, manifested in high levels of paperwork and duplication of activity.

Key actions

- The review makes the following recommendations and/or calls upon the government to take the following actions:
  - For self-employed people whose work activities pose no potential risk of harm to others to be exempted from health and safety law;
  - Revoke, clarify, review or amend several specific regulations which are widely seen as problematic;
  - For the HSE to review all its Approved Codes of Practice (ACoPs);
  - For the HSE to commission research on the consolidation of the core set of regulations that could provide savings to businesses;
  - For the HSE to make information on its website clearer with regard to the duties imposed on businesses;
  - For the HSE to continue to help businesses understand what duties are obliged of them with respect to regulations;
  - For the Government to change the relevant legislation to give HSE the authority to direct all local authority health and safety inspection and enforcement activity;
  - For the Government to work with others to help businesses and other stakeholders to foster a public debate to better understand risk;
  - For the Government to work more closely with the EU Commission and others to ensure that EU health and safety legislation is risk-based and evidence-based;
  - To redirect enforcement activity towards businesses where there is the greatest risk of injury or ill health;
  - To re-balance the civil justice system by clarifying the status of pre-action protocols and reviewing strict liability provisions.
  - To stimulate a debate about risk and how it should be regulated.

Themes

- Application of specific regulations and Approved Codes Of Practice

  Löfstedt identified a range of specific regulations and Approved Codes of Practice (ACoPs) that in his opinion, should be scrapped, amended or reviewed. The government has accepted these in full and the removal of unnecessary regulations and all proposed ACoP amendments will be completed by 2013. Key regulations highlighted by Löfstedt are:
    - Notification of Tower Cranes Regulations 2010 and Notification of Conventional Tower Cranes (Amendment) Regulations 2010 – Löfstedt proposes that these are revoked as the purpose of them was established to be public assurance rather than any direct health and safety benefits.
    - Health and Safety (First Aid) Regulations 1981 – It is proposed that the government should remove the requirement to for the HSE to approve the qualifications of nominated first-aid personnel.
    - Construction (Design and Management) Regulations 2007 – There were concerns expressed about the industry in spurious and/or overlapping competencies and qualifications that had arisen around these regulations, and wider concerns around how to define, measure and understand competency in the industry. Löfstedt has recommended that a full assessment of the relevance, usefulness and effectiveness of the CDM 2007 and its associated ACoP are carried out by April 2012.
    - Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 – This set of regulations should be reviewed by 2013 as it does not fully achieve its intended objectives due to under-reporting, lack of clarity on what to report and HSE lack of visibility of those who fail to report.
    - Electricity at Work Regulations 1989 – The requirement for testing should be clarified to avoid these regulations being applied too widely and disproportionally.
    - Work at Height Regulations 2005 – These should be reviewed by 2013, particularly with respect to the ‘gold-plating’ or over-interpretation of the original EU directive in the UK, which has arguably led to over-use of the regulations in very low-risk settings.

Streamlining and simplifying regulations and Approved Codes of Practice

- The review is clear that the current regulatory regime is piecemeal, incoherent and this incoherence is the direct cause of misunderstandings and misapplications of regulations.
- For example, Löfstedt calls for the consolidation of regulations that apply to all businesses, and the prevention of similar duplications in the creation of future regulations. Furthermore, a range of sector-specific consolidations are recommended.
- A particular example of this is the interpretation and understanding of ACoPs. HSE currently has no plans to review the wording of ACoPs but the report has highlighted that some material in ACoPs may be ambiguous, out of date or not appropriate to their audience. The report therefore recommends that a comprehensive review of ACoPs is undertaken by the HSE. The government has accepted the need for review but has extended Löfstedt’s proposed timeline to 2013.
- In order for the HSE to understand more about where consolidation of information and guidance should and could be made more generally, Löfstedt also recommends the HSE undertake further detailed research with stakeholders.
- He extends the streamlining proposal to the direction of health and safety enforcement, proposing that a single body (the HSE) should be responsible for all health and safety enforcement. The government appear to have fully accepted this proposal.
- Löfstedt’s recommendations to streamline the system are therefore clearly for the purpose of bringing ease and clarity to the regulatory landscape, rather than to cut costs or weaken protections for workers.
- This theme has been accepted by many industry professionals, although some employee representatives and unions have expressed concerns that streamlining will inevitably weaken worker protection.

“The review can be summed up in three words– reform, refocus and refinancing... with the increased burden of responsibility being placed on the HSE’s doorstep, where will the refinancing come from to enable them to do their job properly?”

“The consolidation and simplification of the regulatory framework will enable small businesses and the self-employed in low risk sectors to be free of unnecessary regulation and anxiety?”
Impact on SMEs, self-employed and UK businesses

SMEs were a particular focus of the report. Löfstedt drew on previous research, showing that they are disproportionately disadvantaged and at disproportionate risk from the UK’s health and safety regime. He therefore made a range of recommendations which although targeted at small businesses, will help all commercial organisations to a greater or lesser extent. The government has committed to simplifying the HSE’s interfaces with the UK business community by summer 2012.

- Small businesses find it difficult to comply with health and safety regulations. The government should continue to find better ways to make it easier for them to do so, with a focus on improving guidance and support for SMEs rather than reverting to a lighter touch regulation.
- The legal obligation to produce risk assessments for very small businesses is being reviewed at EU level and Löfstedt recommends that the government encourage this work, with a view to removing the legal obligation for very small firms.
- The obligation of self-employed people to comply with regulations was also looked at by Löfstedt, again with the objective of removing unnecessary legislation. He has proposed, and the government has accepted, that self-employed people in low-risk occupations will be exempted from HSE regulation (they are already exempted at EU level). This will remove the health and safety burden from approximately 1 million people, and will be accompanied by clear HSE guidance on definitions.
- More widely, Löfstedt called on the HSE to ensure that its guidance, information and support was as clear, accessible and concise as possible to ensure that employers and employees from all sectors and business sizes could clearly understand their obligations.

Enforcement of regulations

- Current enforcement arrangements, split between the HSE and Local Authorities, are widely seen to create inconsistency in assessment, enforcement and implementation, both between the HSE and Local Authorities and between Local Authorities. The division of responsibilities is also seen as illogical and unhelpful to enforcement authorities.
- The government has accepted Löfstedt’s recommendation to drive consistency across all enforcement and assessment by allowing the HSE the authority to direct all local authority health and safety inspection.
- Furthermore, Löfstedt also identified the need to speed up the prosecutions process, placing the onus on all parties committing to working jointly to achieving a three year prosecution timeline.

Relationship with the EU

- The report offers a detailed description of how decisions made in EU institutions affect health and safety regulation in the UK, and the ways in which this is both advantageous and disadvantageous to those in the UK.
- It makes several clear recommendations that the government should work closely with EU institutions to ensure it has more control over the shaping of future health and safety regulation.
- Löfstedt proposes that the UK might benefit if they demanded regulatory impact assessments on larger regulations and a peer review board modelled on the US example.
- He further proposes further measures to help drive clarity throughout the formulation of regulations, such as foundation of a European Parliamentary Committee and more direct UK relationships with EU decision-makers.
- In order to placate critical voices within his Party, The Rt Hon. Chris Grayling MP, Minister of State for Employment has already said that instead, Britain will be working with the EU to reduce the amount of regulation emanating from the EU, so the government are unlikely to take on this recommendation in full.

Individuals’ responsibility

- Löfstedt is clear that responsibility for regulation should be on those who create risk. While this has been and remains the case, the report is clear that duties are not always applied appropriately. The report recommends 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.
- Widening the theme of individual responsibility, Löfstedt also calls for the need for a public debate around risk and the responsibility for and management of risk. He proposes that key industry leaders, government and Parliamentary Select Committees take the lead on the debate around risk in the future.
- The government has drawn attention to this element of the report, noting that if individuals took more responsibility for their own conduct, employers would not be obligated to follow extensive health and safety regulation.

“We also welcome the opportunity to raise the debate about the perception of risk and to encourage individuals to consider their actions and how they may affect others”

Government response to the report

- The Government has welcomed the Löfstedt report as a well-thought out and well researched contribution to the debate on how to reduce red tape and bureaucracy.
- It has responded to each major recommendation made by Löfstedt and set out the corresponding action it will take.
- It is not obliged to take on any of Löfstedt’s recommendations; indeed it will not be carrying forward all of the recommendations to their full extent. In other areas, such as the simplification of the regulatory architecture, it has vowed to go beyond Löfstedt’s recommendations.
- The government’s response also sets out a timeline of activity as follows:

  **By Q3 2013**
  - 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 clearer, 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.

**“With commercial pressures on businesses of all sizes to do more with less, there is even greater need for a more proactive approach to health and safety in the workplace – one which offers simple practical guidance on safe working practises, conformity to legislation and proportional reporting”**