



Approach with caution – health and safety reforms

Corporate Crime analysis: What steps has the government taken during the last five years to improve health and safety? Ann Metherall, partner at Burgess Salmon, looks at some of the successes, and failures, of Britain's recently reformed health and safety laws.

Original news

*Progress made in health and safety reform, LNB News
24/03/2015 127*

Good progress has been made in implementing health and safety reforms and changing the public perception of health and safety, according to a report published by the Department for Work and Pensions. The report also confirms all the accepted recommendations from previous reviews have been acted on.

What are the key conclusions of the report?

The report lists the steps that the government has taken during the last five years to reinstate 'common sense and trust in the health and safety system in Britain'.

The changes originate from:

- a report by Lord Young, who concluded the 'compensation culture' was at the heart of the problems with health and safety
- the government's response in the report 'Good Health and Safety, Good for Everyone'
- a report Professor Löfstedt, an expert in risk management, who concluded that the framework for health and safety law was broadly right, but that it needed simplification.

The key changes that flowed from each report are:

- creation in 2011 the Occupational Safety and Health Consultants Register
- restructuring priorities for the Health and Safety Executive (HSE) and local authorities
- for businesses operating nationally and subject to local authority jurisdiction, the primary authority scheme has been strengthened – businesses can thus form a

relationship with one local authority to avoid the risk of receiving conflicting safety advice in different parts of the country

- resources directed towards providing support to small and medium enterprises though targeted training and advice visits and by improving the accessibility of advice on the HSE's web site
- fees for Intervention (FFI) were introduced in 2014 to allow the HSE to recover the cost of its regulatory work when there has been a material breach of health and safety law.

Lord Young's review led to changes to reduce the personal injury compensation culture by allowing a court to dismiss a claim in its entirety if it has been brought fraudulently or has been exaggerated. It also led to a ban on claims management companies offering inducements and it provides a defence if the alleged negligence was by someone acting in a socially responsible way.

Professor Löfstedt's report has specifically led to:

- exempting the self-employed engaged in low risk activities from health and safety law
- revoking unnecessary or redundant regulations to simplify the regulatory framework--the government claim that 84% of legislation had been removed or improved
- review of all Approved Codes of Practice (ACOP)
- prosecutions to be commenced within three years
- regulations that impose strict liability be removed so that personal injury claims will only be successful if negligence can be proved.

What are the key conclusions of the report?

Earlier reports, including from a House of Lords select committee, have invited the government to consider whether it would be helpful in the context of the duty holder's responsibility to ensure safety, to provide a definition of 'reasonably practicable'. This is a key requirement of health and safety legislation. However, duty holders are not always clear how far they must go to control risk to satisfy the test.

The government's response has been to provide more guidance on what business should do in typical situations. The question in some areas, however, remains.

How have the reforms been felt in practice?

The introduction of the health and safety register has made it easier for businesses to find competent advice but there are concerns that it is possible to claim expertise in a particular sector with no independent scrutiny of competence in that sector.

FFI recovered over £10m in the first four months of the scheme. It is very unpopular with duty holders and not just because of the additional cost. Unless it challenges the bill, the duty holder is effectively admitting it was in breach of its obligations.

Much of the reduction in legislation is due to the removal of redundant or duplicated legislation and in certain sectors, such as mines, consolidation of multiple regulations into a single piece of legislation. Although employers may find it easier to identify what legislation applies, the scope of the legislation is essentially unchanged.

The HSE has nearly completed its review of ACOPs. The review and the opportunity to bring them up to date has been largely welcomed although there are some sector specific concerns.

It is too early to assess whether other changes have had a positive impact.

Have the reforms changed how health and safety law is practiced?

The principles of health and safety law have not changed as a result of these reports. However, other changes including the proposed changes to the sentencing guidelines for health and safety offences are likely to have an impact. If current proposals are adopted, then a business could be facing a significantly higher fine for a breach.

As the Health and Safety at Work etc Act 1974 places a reverse burden of proof on the defendant (coupled with the very high threshold placed on the interpretation of reasonably practicable) many businesses currently decide not to defend health and safety prosecutions. However, with the threat of significantly increased fines, it is possible that more businesses will choose to defend a prosecution or argue that any breach was not causative of a death in attempt to reduce a fine.

Have the reforms changed how health and safety compliance is viewed?

If the steps to improve understanding of what is required are effective the reforms may well help some smaller businesses. However, they are unlikely to change the view on compliance in businesses that already have a high degree of awareness and compliance but, if adopted, the changes to the sentencing guidelines will either reinforce the message that compliance is a high priority or make it a priority for others.

What further changes could be made to improve health and safety compliance and enforcement in the UK?

Overall, legislation has probably gone as far as it can in improving safety performance. The key effort should be targeted at helping businesses adopt effective safety management strategies.

Interviewed by Ioan Marc Jones.

This article was first published on Lexis@PSL Corporate Crime on 1 April 2015.

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