

**COUNCIL RECOMMENDATION
of 18 February 2003
concerning the improvement of the protection of the health and safety at work of
self-employed workers
(2003/134/EC)**

**REPORT BY THE UNITED KINGDOM AFTER A FOUR-YEAR PERIOD FOLLOWING THE
ADOPTION OF THE RECOMMENDATION.**

Introduction

1. The Health and Safety Executive (HSE) has produced this report on behalf of the Health and Safety Commission (HSC). HSC and HSE are the national authorities responsible for ensuring that risks to people's health and safety from work activities in Great Britain are properly controlled. HSE works alongside Local Authorities in enforcing health and safety law.

2. In its recommendation of 18 February 2003 concerning the improvement of the health and safety at work of self-employed workers, the Council recommended that Member States should, after four years, examine the effectiveness of existing national measures or measures taken subsequent to the adoption of the recommendation and inform the Commission of their findings. This document is the UK report to the European Commission, having been produced in consultation with the health and safety at work authority in Northern Ireland (HSENI), which has a separate occupational safety and health administration. Gibraltar, which is part of the UK for EU purposes, has also been consulted.

3. The social partners have been consulted on this report and it has been considered by the HSC, which includes representatives of employers and workers.

Self-employment in the UK

4. Approximately 3.75million people working in the UK are classed as self-employed (2003/04), from a total workforce of 25.4million¹, i.e. almost 15% of the workforce.

In UK health and safety law, "‘self-employed person’ means an individual who works for gain or reward otherwise than under a contract of employment, whether or not he employs others"²

Some 'self-employed' may be defined as such for fiscal or other purposes but if working under the control of others, are likely to be considered by the courts as 'employees' in terms of health and safety law, and covered as such under UK law.

Legal Impact

5. There are legal requirements concerning the health and safety of self-employed including:

¹ <http://www.hse.gov.uk/aboutus/reports/30years.pdf>

² Health and Safety at Work etc. Act 1974, section 53.

- The Health and Safety at Work etc. Act introduced in the UK in 1974. Sections S3(2) and S3(3) place duties on the self-employed to ensure their own health and safety and that of others (including other self-employed) they may affect by their work activities. (See Annex A(i)). Section S3(1) places similar duties on employers; this would include protecting any self-employed people that could be affected by employers' business activities.
- The Management of Health and Safety at Work Regulations, Regulation 3(2), requires the self-employed to undertake risk assessments so as to identify the measures they have to take to ensure their own and others' health and safety.
- Regulations introduced to deal with specific hazards also place duties on and provide protection for the self-employed. For example, the Control of Lead at Work Regulations specifies explicitly that they apply to the self-employed as if they were both employer and employee.
- Regulations in high-risk areas aim to ensure work carried out by the self-employed (or others) is of an adequate standard to minimise the chance of harm to the public. For example, specific qualifications are required for undertaking work on domestic gas appliances.
- UK legislation places requirements on self-employed, employers and employees working in the same undertaking to co-operate and ensure adequate health and safety for all concerned.³

These pre-existing provisions mean that the purpose of the 2003 Council Recommendation had already been achieved.

Publicising the Council Recommendation

6. Due to the existing legal provisions outlined above, there has been no specific publicity of the Council Recommendation, but there is ongoing promotion relating to occupational health and safety that includes the self-employed where relevant.

7. HSE and HSENI publish various pieces of guidance on the application of the legislation and what employers, employees and the self-employed are required to do to comply with the law. The HSE and HSENI websites give advice and signposts to appropriate documents (HSE website: www.hse.gov.uk. HSE Northern Ireland: www.hseni.gov.uk)

Specific Recommendations

Recommendation 1

Promotion of the health and safety of the self-employed in the context of prevention policies.

8. HSC has recognised the particular needs of the self-employed. As it stated in its 2001-2004 Strategic Plan:

³ Management of Health and Safety at Work Regulations 1999, Regulation 11 'Co-operation and co-ordination'

'The trend to fragmentation in industry and towards the growth in small and medium sized firms are structural changes identified in HSC's first Strategic Plan published in 1999. ... We must employ new approaches to reach these groups; the self-employed; and particularly vulnerable groups of workers, especially those with disabilities.'

9. In particular, attention has been paid to those relatively high-risk sectors where the self-employed play a prominent part. The UK social partners representing worker interests have expressed concern with the high levels of injury to the self-employed in these sectors, and HSE has sought to address this issue. The health and safety of self-employed workers has been a subject of discussion, for example, at the HSC-sponsored industrial advisory committees for agriculture and for construction at which the social partners discuss health and safety issues.

10. For example **agriculture** is a high-risk sector with an increasing proportion of self-employed and family farmers. In the 9 years up to and including 2004, the total labour force declined but the proportion of self-employed increased. Whilst the overall fatal incidence rates has been relatively 'flat-line' for the industry as a whole, the rate for employees roughly halved during the 15 year period to 2001 but the rate for the self-employed and family-farming sub-sector more than doubled. The latter rate has continued to increase since 2001.

11. Whereas HSE's traditional regulatory approach, based on inspection and enforcement, has been successful in respect of the larger, employing farming businesses, it has had little impact in the self-employed and small family farming sectors. As a result of taking into account these specific risks, HSE has developed a number of more innovative approaches to regulation (tailored preventive policies) in the self-employed sector in the past five years, examples of which are cited at paragraph 12.

Recommendation 2 and Recommendation 3

Choosing appropriate measures to promote health and safety for self-employed workers and taking measures so that self-employed workers can obtain information and advice.

12. The UK uses a variety of measures to help raise awareness and compliance by the self-employed. These include:

- legislation (as mentioned above under the heading of 'Legal Impact');
- Published guidance (for example 'The Work at Height Regulations 2005: A brief guide'⁴, which includes information for the self-employed; 'Essentials of health and safety'⁵ and Health and Safety in Construction⁶ are aimed at SMEs and the self-employed; HSE's Construction division has an Email bulletin aimed at SMEs and the self-employed that has over 12,000 registered users and thousands more through further cascading); and

⁴ <http://www.hse.gov.uk/pubns/indg401.pdf>

⁵ <http://www.hse.gov.uk/pubns/books/essentials.htm>

⁶ <http://www.hsebooks.com/Books/>

- campaigns aimed at the self-employed - such as Safety and Health Awareness Days (SHADs) in agriculture. HSE's ten-point agriculture strategy⁷ includes stimulating "action amongst self-employed/family farms by new techniques such as SHADs and farmers groups' inspections";
- campaigns which reach the self-employed as well as employers or employees - topic or sector based campaigns that are intended to raise awareness amongst self-employed as well as employees and employers (for example a dermatitis campaign aimed at hairdressers⁸; another example is the recent 'better backs' campaign⁹ which was publicised widely and publicly and which included a strong emphasis on self-help and staying active that was applicable across the working population and general public; in construction the 'Don't fall for it' campaign also had widespread publicity which would have reached the self-employed as well as employees and employers; The Working Well Together (WWT) campaign is the largest construction industry initiative to support SMEs and the self-employed. It was instigated and is actively supported by HSE. Activities include regional groups, training initiatives, awareness days, roadshows, website and newsletters. Last year, over 10,000 workers attended WWT events.)
- Working with stakeholders – HSE works with major stakeholders to influence the strategic direction of health and safety in the construction industry and stimulate a cascade effect to raise awareness and standards lower down the supply chain, including the self-employed. The cascade effect has been successful at reducing incident rates on larger construction sites.
- provision of information: the HSE website has information and guidance, which is searchable by industry, activity and health and safety risks; there is a telephone and web advice line¹⁰.
- In Agriculture HSE has developed an award winning CD-Rom and web based interactive 'self-assessment' tool¹¹ for use by self-employed farmers (as well as employers and employees). This allows them to produce and submit a tailor made risk assessment for their work.

Recommendation 4 and Recommendation 5

Access to health and safety training.

13. The UK provides information about how to assess what training is needed and where to seek training from, this includes specific reference to the self-employed, in the publication 'Health and

⁷ <http://www.hse.gov.uk/agriculture/programme.htm#strat>

⁸ <http://www.hse.gov.uk/hairdressing/index.htm>

⁹ <http://www.hse.gov.uk/betterbacks/>

¹⁰ Infoline - <http://www.hse.gov.uk/contact/index.htm> Telephone: 0845 345 0055 (GB only)

¹¹ <http://www.hse.gov.uk/agriculture/assessment/index.htm>

safety training: What you need to know¹². Other guidance on managing occupational health and safety is also available, much of which is relevant to the self-employed.¹³

14. Individual Sector Skills Councils (SSCs)¹⁴, which cover all industries, take an all-embracing approach that includes the self-employed in their publicity, targets and training.

Recommendation 6

Access to health surveillance.

15. The UK does not place any general requirement for health surveillance on the self-employed, and the UK social partners representing worker interests consider that there has been insufficient progress on improving health surveillance for the self-employed. Some of the Regulations dealing with specific hazards (such as those dealing with lead and asbestos) contain specific health surveillance requirements that apply to the self-employed. Furthermore, information on the subject is available to the self-employed; they can contact Workplace Health Connect¹⁵ (in England and Wales. Safe and Healthy Working¹⁶ in Scotland.), which is a government funded service providing confidential, practical and free advice to small businesses on workplace health and safety, management of sickness absence and return to work issues. Self-employed callers are advised whether their work might require health surveillance and would be given advice about the types of organisation that could provide relevant services.

Recommendation 7

Experience in other Member States.

16. The UK keeps in touch with the experiences of other countries through the European Agency on Health and Safety at Work, as well as the Senior Labour Inspectors' Committee.

Monitoring of implementation

17. HSE has day-to-day responsibility for enforcing legislation relating to the self-employed as well as other methods of intervention such as those mentioned in response to certain recommendations above. Local Authorities also have responsibilities for enforcing health and safety law, which they carry out alongside their other responsibilities.

18. HSE and LA inspectors are careful to distinguish between the genuinely self-employed and those workers who are classified as such, e.g. for tax purposes, but otherwise work under the control of another person who should rightly be regarded as their employer. The UK social partners representing worker interests are concerned that such 'bogus' self-employed status provides a means of employers attempting to remove themselves from responsibility for the health and safety of their workers, and believe that more needs to be done to prevent this.

¹² <http://www.hse.gov.uk/pubns/indg345.pdf>

¹³ <http://www.hse.gov.uk/pubns/manindex.htm>

¹⁴ <http://www.ssda.org.uk/>

¹⁵ <http://www.workplacehealthconnect.co.uk/> Telephone: 0845 609 6006 (England and Wales only)

¹⁶ <http://www.safeandhealthyworking.co.uk> Telephone: 0800 019 2211 (Scotland only)

19. HSE is able to monitor the effectiveness of its interactions with the self-employed through:

- contact between the regulators and the self-employed;
- reporting of incidents by the self-employed under Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR);
- collection and review of other accident statistics, surveys and enforcement statistics.

Assessment of effectiveness

20. Accident statistics trends and enforcement statistics also provide information used to help highlight important issues. In the high-risk sectors of agriculture and construction, the number of fatalities to self-employed has dropped between 1996/7 and 2005/06 from 35 to 23 and 24 to 17 respectively.¹⁷ During the same period the number of fatal injuries to self-employed across all industries fell from 80 to 52 and the fatal injury rate for all self-employed fell from 2.3 deaths per 100,000 to 1.4¹⁸. Between 1996/97 and 2005/06 the major injury rate to self-employed per 100,000 fell from 38.4 to 32.9. However, annual statistics show fluctuations and when the rate of incidence is considered in agriculture, which has had declining employment, the figures have actually been worsening but this is being addressed (see paragraph 11).

However, although non-fatal injuries and cases of work-related ill health involving the self-employed are reportable in Great Britain the level of under-reporting is so significant (in the case of agriculture possibly as high as 95%) that HSE does not seek to rely on the data.

21. Follow up evaluation work is taken at relevant points in time on the effectiveness of certain interventions aimed in part at the self employed, such as SHADs. Independent evaluations of agriculture SHADs confirm them as being an effective mechanism for delivering messages into the self-employed farming community and of effecting changes in behaviour.

Summing up

Positive aspects of experience of practical implementation.

- The UK explicitly acknowledges that the self-employed need to be included within the health and safety system, as demonstrated by their inclusion in health and safety law and regulations. It recognises that reaching and influencing the self-employed can be difficult and so is continually looking for ways of reaching them more effectively.
- The self-employed sector is likely to be an increasingly important element of modern, flexible, economies. It needs to be included in health and safety systems because of the potentially adverse impact of work activities on third parties and members of the public, as well as risks to their own health and safety that self-employed people should be aware of, depending on the type of work they do.

¹⁷ <http://www.hse.gov.uk/statistics/history/fatal-ld.htm>

¹⁸ <http://www.hse.gov.uk/statistics/history/histrates.xls>

- The cascade effect can be effective in raising awareness and standards lower down the supply chain, including the self-employed, as has been found in the construction industry (however there are limitations as noted below).

Negative aspects of experience of practical implementation.

- The self-employed can be hard to reach to provide information and advice (such as in the construction industry, where attempts are being made to try to improve this situation);
- The self-employed are not strongly represented for the purpose of expressing views or entering into dialogue or consultation about occupational health and safety.
- The self-employed do not routinely report cases of injury or ill health and care needs to be taken in interpreting injury and ill-health data.
- The huge diversity, characteristics and limited sources of information make it extremely challenging to analyse the construction industry SME and self-employed sectors and implement and determine the effect of engagement techniques. They have a low perception of risk due to the likely long intervals between incidents compared with the statistical risk. The majority do not use intermediaries and many are not involved with large organisations, but instead operate solely with other SME/self-employed, often in the domestic market. Traditional techniques, such as the cascade effect, therefore can have limited effect. Behaviour change is more likely when attitudinal segmentation* is used to develop intervention techniques. (*Better insight into what motivates and demotivates SMEs and the self-employed to comply with health and safety law, for example fear of enforcement or increased profitability.)

Outlook

22. HSE and HSENI continue to reach out to the self-employed and also to collect data to compare health and safety to workers who are not self-employed. This allows high risk self-employed groups to be targeted to get maximise impact from our interventions.

Annex A(i)

- Section 3(2) of the Health and Safety at Work etc. Act 1974, states 'It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.'
- Section 3(3) of the same act states 'In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being his employees) who may be affected by the way in which he conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety.'
- The Management of Health and Safety at Work Regulations 1999, Regulation 3(2), Risk Assessment states that:
 - 'Every self-employed person shall make a suitable and sufficient assessment of-
 - (a) the risks to his own health and safety to which he is exposed whilst he is at work; and
 - (b) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking,for the purposes of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions.