

<b>HEALTH AND SAFETY EXECUTIVE</b>			
<b>CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)</b>			
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## **Update on the Löfstedt Review and Red Tape Challenge**

### **Summary**

**This paper outlines the major reviews of health and safety legislation in Great Britain, provides an update on how the key recommendations which impinge on the construction industry are being addressed and seeks comments from Members.**

### **Issue**

1. Implementation of the Löfstedt review's recommendations.

### **Timing**

2. For consideration by CONIAC on 14 March 2012.

### **Background**

3. The Government's 'Better Regulation' strategy is to:
  - a. Remove or simply existing regulations that unnecessarily impede growth;
  - b. Reduce the overall volume of new regulation by introducing regulation only as a last resort; and
  - c. Improve the quality of any remaining new regulation.
4. In June 2010 the Prime Minister asked Lord Young of Graffham to report on the compensation culture which was felt to prevail in the UK, along with the perceived low standing of 'health and safety', and to suggest solutions. Lord Young's report of October 2010, 'Common Sense, Common Safety' ranged across a number of areas. These included the nature and volume of health and safety legislation and its enforcement, the role of insurers and compensation claims procedures. It also recommended a general consolidation of health and safety legislation. Whilst the recommendations were wide-ranging, the focus of the review was on low-hazard workplaces, and given the nature of the health and safety risks in the construction industry, the report indicated that it should continue to be regulated as such.
5. In February 2011, the Minister for Employment took on responsibility for implementation of the recommendations of Lord Young's report. His statement in March 2011, 'Good Health and Safety, Good for Everyone' announced an independent review of health and safety regulations. He appointed Professor Ragnar Löfstedt as an independent academic in the field of risk management, to take this review forward.

## The Löfstedt Review

6. This review was supported by an advisory panel consisting of two MPs and representatives of employees and employers. Its terms of reference and advisory panel membership are attached at **Appendix 1**. The review was evidence-based, and underpinned by the principle that regulation should be based on risk rather than hazard. In this regard it built on the earlier work of Lord Young. Its focus was on the entire stock of some 200 sets of regulations 'owned' by HSE along with some 50 Approved Codes of Practice (ACoPs).
7. A call for written evidence was issued in May 2011, which additionally posed a number of specific questions. These are reproduced at **Appendix 2**. Evidence was also collected from stakeholder interviews, site visits and from the comments received on health and safety legislation through the Red Tape Challenge.
8. The review considered the opportunities for reducing the burden of health and safety legislation on UK businesses whilst maintaining progress made in improving outcomes. In particular, it considered the scope for combining, simplifying or removing regulations.
9. Professor Löfstedt published his report<sup>1</sup> on 28 November simultaneously with the Government response.<sup>2</sup> The Government accepted the review and in its response it committed to swift action in six key areas:
  - a. developing proposals for a general exemption for the self-employed in low-risk industries from health and safety requirements;
  - b. a general review of all ACoPs;
  - c. a series of specific revocations and consideration of the scope for more general sector-specific consolidations of legislation;
  - d. working with local authorities as regulators to improve quality and consistency of health and safety enforcement in the local authority enforced sector;
  - e. consideration of how civil liability attaches to regulatory provisions imposing strict liability;
  - f. better working with the European Commission to ensure that European-led health and safety legislation is risk-based.

## Red Tape Challenge

10. The Red Tape Challenge ('RTC')<sup>3</sup> is an initiative launched by the Cabinet Office in April 2011 to look for opportunities to reduce the stock of over 21,000 regulations which are currently on the statute book. The RTC website enables the public and businesses to comment on which regulations, organised around themes, should be retained, simplified, merged or scrapped..
11. The RTC operates through a series of 'spotlight' periods of typically three weeks during which the website will feature legislation relevant to a particular

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<sup>1</sup> <http://www.dwp.gov.uk/docs/lofstedt-report.pdf>

<sup>2</sup> <http://www.dwp.gov.uk/docs/lofstedt-report-response.pdf>

<sup>3</sup> <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>

business sector. The spotlight period for health and safety ran during July 2011. In addition to this, six themes which affect all businesses have been open for comments throughout the lifetime of the website – one of which is health and safety at work.

12. The RTC process complemented the Löfstedt review and comments relating to health and safety regulations made on the RTC website were considered by Professor Löfstedt alongside responses to his call for evidence.
13. Following each spotlight period, the contributions and comments are used by government as part of producing a set of proposals on regulatory reform. These proposals are reviewed by Ministers and officials with a view to putting proposals to the Reducing Regulation Committee.

### **Current position**

#### **Specific revocations**

14. The Löfstedt review recommends the revocation of three Statutory Instruments (SIs) directly relevant to construction. These are:
  - a. The Construction (Head Protection) Regulations 1989 ('CHPR');
  - b. The Notification of Conventional Tower Cranes Regulations 2010; and
  - c. The Notification of Conventional Tower Cranes (Amendment) Regulations 2010.
15. These were specifically earmarked for revocation by Professor Löfstedt and form part of a package of 14 sets of regulations on which a planned public consultation will be launched in April 2012. These are in addition to 7 other proposed revocations (non construction-related) set out in consultative document CD 238, comments on which are accepted until 12 March 2012.
16. CHPR requires the provision, use and upkeep of head protection on construction sites. The rationale for their revocation is that they largely duplicate the provisions of the later Personal Protective Equipment at Work (PPE) Regulations 1992. Separate regulations are now seen as unnecessary given that the PPE Regulations deliver an equivalent level of legal protection for construction workers.
17. The rationale for revocation of the Notification of Conventional Tower Cranes Regulations, which require notification to HSE of certain tower cranes used on construction sites, is that Professor Löfstedt indicated they did not have direct health and safety benefits. He supports this claim by noting that the impact assessment was not able to quantify any benefits, but the costs to industry were significant. Specifically, he noted that the register was not the most appropriate way to provide public reassurance. Furthermore HSE has found that the costs to industry and itself were higher than estimated in the impact assessment and, in providing reassurance to the public, the benefits remain unquantifiable and are likely to be minimal.

#### **Wider work**

18. Many of the Löfstedt review recommendations will impinge on the construction industry. Work to deliver the wider recommendations at paragraph 9 is at an early stage and members will want to note the following:

- a. There is no current intention to seek to apply a general exemption for the self-employed working in high-hazard activities such as on construction sites. Both Lord Young and Professor Löfstedt indicated that they see construction as a high-risk industry which should be regulated as such. A Consultation Document on the proposed arrangements for exempting the self-employed is planned for the summer.
- b. The general review of ACoPs will re-evaluate HSE's 51 ACoPs and undertake any actions required to ensure that they are the best way of providing authoritative practical guidance on achieving compliance with the law and make it easier for dutyholders to understand and meet their legal obligations. The review is likely to involve four phases: internal review; consultation on proposed changes; revision of ACoPs and consultation on revised ACoPs. The ACoP which is part of the Construction (Design and Management) Regulations 2007 will be managed separately from this process.
- c. Research is to be commissioned to help decide if the core set of health and safety regulations could be consolidated in such a way that would provide clarity and savings for businesses.
- d. The Löfstedt recommendation to review The Work at Height (WAH) Regulations 2005 and associated guidance is being led by HSE's Cross Cutting Interventions Directorate (CCID) as they apply to all sectors. Although it should be noted there is no WAH ACoP, the core generic HSE publications (eg brief guide to the WAHR 2005) plus all sector-specific WAH guidance (eg in construction and agriculture) are subject to review and revision over the coming months. This presents an opportunity to remove out-of-date publications and further clarify, simplify and/or combine publications wherever appropriate.
- e. An Independent Regulatory Challenge Panel enabling a business to challenge specific health and safety regulatory advice they believe to be unreasonable or disproportionate was set up in January. The panel will not deal with formal enforcement action, eg notices or prosecutions that have existing routes of redress through tribunals or the courts. The panel has an independent chair Tricia Henton, a former Director of Environment and Business at the Environment Agency and amongst others will include former HSE and Local Authority regulatory experts. A second panel which will be set up later this year will be available for those who wish to challenge claims made about health and safety requirements by non regulators. This panel will be chaired by Judith Hackitt, HSE Chair.

### **Next steps**

19. Members will note that much of the work to implement the Löfstedt Review recommendations is work in progress and is being carried out to tight deadlines. CONIAC Secretariat will keep members informed of progress and it is proposed that it should form a regular item at future meetings.

20. Further work on the Construction (Design and Management) Regulations 2007 package will be managed separately from the work arising from the Löfstedt Review (but in close liaison with those co-ordinating the work). This further work forms a separate item on the agenda for CONIAC's meeting on 14 March.

**Action**

21. Members are asked to note the content of this paper and raise any points they wish to in discussion.

**Contact**

Anthony Lees - CONIAC Secretariat, Construction Policy

### **Löfstedt Review terms of reference and advisory panel membership**

The review will consider the opportunities for reducing the burden of health and safety legislation on UK businesses whilst maintaining the progress made in improving health and safety outcomes. In particular, the review will consider the scope for combining, simplifying or reducing the – approximately 200 – statutory instruments owned by HSE and primarily enforced by HSE and Local Authorities, and the associated Approved Codes of Practice (ACoP) which provide advice, with special legal status, on compliance with health and safety law.

In doing so, it will seek to take into account:

- the extent to which these regulations have led to positive health and safety outcomes and the extent to which they have created significant economic costs for businesses of all sizes;
- whether the requirements of EU Directives are being unnecessarily enhanced ('gold-plated') when transposed into UK regulation; and
- any evidence or examples of where health and safety regulations have led to unreasonable outcomes, or inappropriate litigation and compensation.

The review will gather evidence from a range of key stakeholders, including:

- Government bodies;
- employers' organisations;
- employee organisations;
- professional health and safety bodies; and
- academics.

It will also see if lessons can be learned from comparison with health and safety regimes in other countries and consider whether health and safety law suitably places responsibility on those that create risk.

### Advisory Panel membership

Chair:	Professor Ragnar Löfstedt
Advisory Panel:	
Legislature representative (Con)	Andrew Bridgen MP
Legislature representative (Lab)	Andrew Miller MP
Legislature representative (Lib Dem)	[not filled]
Employer representative	John Armit (Olympic Delivery Authority)
Employee representative	Sarah Veale (Trades Union Congress)
Small business representative	Dr Adam Marshall (British Chambers of Commerce)

### Löfstedt Review: List of specific questions

Please describe any examples (cases about which you have direct knowledge) or include any evidence you have to support your answers.

**Question 1:** Are there any particular health and safety regulations (or ACoPs) that have significantly improved health and safety and should not be changed?

**Question 2:** Are there any particular health and safety regulations (or ACoPs) which need to be simplified?

**Question 3:** Are there any particular health and safety regulations (or ACoPs) which it would be helpful to merge together and why?

**Question 4:** Are there any particular health and safety regulations (or ACoPs) that could be abolished without any negative effect on the health and safety of individuals?

**Question 5:** Are there any particular health and safety regulations that have created significant additional burdens on business but that have had limited impact on health or safety?

**Question 6:** To what extent does the concept of 'reasonably practicable' help manage the burden of health and safety regulation?

**Question 7:** Are there any examples where health and safety regulations have led to unreasonable outcomes, or to inappropriate litigation and compensation?

**Question 8:** Are there any lessons that can be learned from the way other EU countries have approached the regulation of health and safety, in terms of (a) their overall approach and (b) regulating for particular risks or hazards?

**Question 9:** Can you provide evidence that the requirements of EU Directives have or have not been unnecessarily enhanced ('gold-plated') when incorporated into UK health and safety regulation?

**Question 10:** Does health and safety law suitably place responsibility in an appropriate way on those that create risk? If not what changes would be required?