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## **HEALTH AND SAFETY EXECUTIVE**

### **CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)**

#### **An update on progress in implementing the recommendations of the Löfstedt report**

#### **Summary**

**This paper provides a summary of action to date, current positions and planned future work on a number of recommendations in the Löfstedt report which are relevant to the construction industry**

#### **Background**

1. In March 2011 as part of its Budget Growth package the Government commissioned an independent review of health and safety legislation. Professor Ragnar Löfstedt, Director of the Kings Centre for Risk Management was appointed as its independent Chair. The review aimed to identify opportunities to simplify health and safety regulations, thereby reducing unnecessary burdens on business whilst maintaining protection for workers and the public.
2. The review followed the investigation in 2010 by Lord Young of Graffham into the rise of the 'compensation culture' and the publication of his findings in October 2010 in the report 'Common Sense, Common safety'. The report, among other matters, recommended a general consolidation of health and safety regulations which formed part of the remit of Professor Löfstedt's review.
3. In April 2011 the Government launched the Red Tape Challenge (RTC). This continuing initiative provides a mechanism for the public to comment on existing legislation, and to argue for or against its retention. RTC takes a

4. The Löfstedt review took account both of Lord Young's findings and the comments made through RTC. Professor Löfstedt's report 'Reclaiming health and safety for all'<sup>1</sup>: an independent review of health and safety legislation' was published on 28 November 2011. Whilst it concluded that health and safety legislation is broadly fit for purpose it identified areas where lack of clarity, duplication or the structure of legislation did not contribute effectively to improved health and safety standards. It further concluded that civil litigation (and fear of it) drives over-compliance with health and safety regulations and that negative media portrayal of health and safety has driven the perception – often mistaken – that health safety requirements are burdensome and prevent day-to-day activities.
5. The Löfstedt report and the Government response to it<sup>2</sup> were published simultaneously. The Government recognised the report as an important step in the Government's ongoing efforts to put common sense back into health and safety and committed to move swiftly across Government to ensure his recommendations are implemented as quickly as possible. The 2012 Budget confirmed the Government's commitment to implementing the recommendations.

### **Current position**

6. The report identified six key areas where action was needed as a priority (**appendix 1**). Of these six areas, the first two are particularly relevant to the construction industry:

### **Self-employed exemption**

7. HSE intends to consult in the second half of 2012 on proposals to exempt self-employed persons whose actions do not put others at risk from health and

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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>

safety legislation. Professor Löfstedt considered that this exemption should not apply to the construction work, so if implemented the recommendation will have no practical impact in construction. The current understanding is that implementing the exemption would require amendment of Health and Safety at Work, etc Act 1974. The intention is for the amendment to be in place by April 2013,

### **Review of Approved Codes of Practice (ACoPs)**

8. HSE is responsible for around 200 sets of regulations which are supported by 52 ACoPs. Of these, some 20 are associated with other specific regulatory processes (including the ACoP supporting Construction (Design and Management) Regulations (CDM) 2007 and a number associated with, for example, mines and explosives legislation). An initial review of the remaining 32 is now underway, to ensure that they remain fit for purpose. HSE intends to consult on proposals for reviewing and where appropriate revising ACoPs in the second half of 2012, with a view to any amended ACoPs being published by the end of 2013.
9. The CDM ACoP is being considered as part of the proposals to a revised CDM Regulatory package, and is aligned with the timetable for that work. Any changes to this ACoP would not be made before April 2014.

### **Other specific recommendations relevant to the construction industry**

10. In addition to the six priority areas, Löfstedt made a number of other specific recommendations, many of which are of direct or indirect relevance to the construction industry:

### **Revocations**

11. A number of sets of regulations were identified in the review which appear to be redundant. HSE consulted on the first set of seven statutory instruments between 23 January and 12 March, with a view to revocation from 1 October 2012. Consultation to remove a further 14 legislative measures began on 3 April and will run until 4 July 2012<sup>3</sup>. These measures include the Notification of Conventional Tower Cranes Regulations 2010 and the Construction (Head

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<sup>3</sup> <http://www.hse.gov.uk/consult/condocs/cd239.htm>

Protection) Regulations 1989 ('CHPR'). Any revocations arising from this exercise would be expected to take effect in April 2013.

12. If CHPR is revoked, existing guidance which specifically references these Regulations will be updated and as necessary reissued to refer instead to duties under the Personal Protective equipment Regulations 1992. The disapplication under these Regulations where CHPR applies would be removed, leaving an equivalent level of legal protection to that provided by CHPR.

### **Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)**

13. Revisions to RIDDOR to extend the reportable absence period from three days to seven came into effect on 6 April 2012. This revision arose from recommendations made by Lord Young. However, Löfstedt echoed Lord Young's recommendation that a more fundamental review of the Regulations should be carried out, as it was observed that the detailed requirements of RIDDOR cause significant confusion for dutyholders, and that much effort and resource is expended in complying.
14. HSE therefore plans to consult on amending RIDDOR in the second half of 2012, with a view to any amendments coming into force in October 2013

### **Review of the Work at Height Regulations 2005**

15. Löfstedt noted that whilst these Regulations offer a risk-based approach, there is considerable confusion about how certain elements should be interpreted, and how they should be applied in practice. He therefore recommended that the Regulations and associated guidance should be reviewed by April 2013.
16. HSE is currently developing its evidence base to determine the extent of any problems and intends to consult informally with industry stakeholders before autumn 2012 on how the regulatory package as a whole may need to be revised. The focus of this exercise will be primarily on the fitness for purpose of the guidance and other supporting documents rather than a fundamental review of the Regulations themselves.

## **Next Steps**

17. The timetable for delivery of the Löfstedt recommendations is set out in the Government response to the report and the Budget announcement. DWP will publish regular progress reports on their website tracking delivery of the recommendations. HSE will continue to keep CONIAC informed on progress on delivery of recommendations which may impact on the construction industry.

## **Contact :**

Anthony Lees  
CONIAC Secretary  
anthony.lees@hse.gsi.gov.uk

**Areas for priority action identified by Löfstedt report**

1. consideration of exempting from health and safety law those self-employed whose work activities pose no risk of harm to others
2. reviewing all of HSE's Approved Codes of Practice (ACoPs)
3. undertaking a programme of sector-specific consolidations of legislation
4. changing the law to allow HSE to direct all local authority inspection and enforcement activity
5. the review of strict liability requirements and the clarification of the intent behind pre-disclosure lists used in civil proceedings
6. working with the European Commission to influence the planned review of EU health and safety legislation to ensure that future legislation is risk-based and evidence-based