

Reclaiming health and safety for all:

An independent review of
health and safety legislation

Professor Ragnar E Löfstedt

November 2011



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Presented to Parliament by the Secretary of State
for Work and Pensions by Command of Her Majesty
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Foreword

Dear Minister,

In March 2011 you asked me 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.

During the past six months I have sought views from a wide range of organisations, and have studied the available scientific literature to consider whether, on the basis of risk and evidence, health and safety regulations are appropriate or have gone too far.

I have concluded that, in general, there is no case for radically altering current health and safety legislation. The regulations place responsibilities primarily on those who create the risks, recognising that they are best placed to decide how to control them and allowing them to do so in a proportionate manner. There is a view across the board that the existing regulatory requirements are broadly right, and that regulation has a role to play in preventing injury and ill health in the workplace. Indeed, there is evidence to suggest that proportionate risk management can make good business sense.

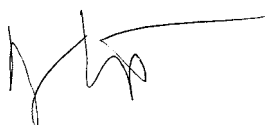
Nonetheless, there are a number of factors that drive businesses to go beyond what the regulations require and beyond what is proportionate and I have made recommendations to tackle those which relate to regulations. These will enable businesses to reclaim ownership of the management of health and safety and see it as a vital part of their operation rather than an unnecessary and bureaucratic paperwork exercise.

Acknowledgements

The evidence gathering process has been extensive and I am grateful to the wide range of groups who contributed, including academics, professional bodies, individual businesses and representative bodies, trade associations, trades unions, victim support groups, and a large number of informed individuals.

I am especially indebted to the members of the Advisory Panel: John Armit, Andrew Bridgen MP, Dr Adam Marshall, Andrew Miller MP and Sarah Veale CBE. Their helpful challenge and insights have been invaluable to me during the review process though the responsibility for the final content of the report and its recommendations is mine.

My thanks also to the review team who have provided my support: Niklas Percival, Bahadir Ustaoglu and Helen Smith as well as the advice and help offered by the DWP Health and Safety Sponsorship team.



Professor Ragnar E Löfstedt

Executive summary

Introduction

1. The focus of this review has been on the 200 or so regulations and the 53 Approved Codes of Practice (ACoPs) owned by the Health and Safety Executive (HSE). I have concentrated on areas where the evidence and contributions to my review have indicated that regulations are putting undue costs on business whilst doing little to improve health and safety outcomes.
2. In general, the problem lies less with the regulations themselves and more with the way they are interpreted and applied. In some cases this is caused by inconsistent enforcement by regulators and in others by the influences of third parties that promote the generation of unnecessary paperwork and a focus on health and safety activities that go above and beyond the regulatory requirements. Sometimes the legislation itself can contribute to the confusion, through its overall structure, a lack of clarity, or apparent duplication in some areas.

Reviewing regulations

3. Whilst health and safety regulation is overall broadly supported, that is not to say that every piece of regulation contributes to a safer and healthier workplace. From a risk and evidence-based perspective I have looked at the scope and application of the regulations and identified some duties that should either be removed, revised or clarified in order to reduce regulatory requirements which offer little in terms of improving health and safety outcomes.

4. A key question for many is whether the self-employed should be included in health and safety legislation. The UK currently goes beyond EU requirements in this regard and that of some other countries that apply legislation only to those engaged in activities that are particularly hazardous or carry a risk of injury or harm to others. It is clear that the regulations should apply in such circumstances, but I believe there is a case for exempting those self-employed whose work activities pose no potential harm to others.

I therefore recommend exempting from health and safety law those self-employed whose work activities pose no potential risk of harm to others.

5. The 'so far as is reasonably practicable' qualification in much of health and safety legislation was overwhelmingly supported by those who responded to the call for evidence on the grounds that it allows risks to be managed in a proportionate manner. However, there is general confusion over what it means in practice and many small businesses find it difficult to interpret.
6. Meanwhile, there are instances where regulations designed to address real risks are being extended to cover trivial ones, whilst the requirement to carry out a risk assessment has turned into a bureaucratic nightmare for some businesses. The legal requirement to carry out a risk assessment is an important part of a risk management process but instead businesses are producing or paying for lengthy documents covering every conceivable risk, sometimes at the expense of controlling the significant risks in their workplace.
7. So in some cases there is a need to clarify what the regulations require, either through reviewing the wording of regulation or through improved guidance. Approved Codes of Practice (ACoPs) can play an important role. They are seen as a vital part of the system and can provide practical examples of how to comply with the law, meaning they can be a particularly valuable resource for small and medium size enterprises (SMEs). But some are out-of-date and some too lengthy, technical and complex.

I therefore recommend that HSE should review all its ACoPs. The initial phase of the review should be completed by June 2012 so businesses have certainty about what is planned and when changes can be anticipated.

Health and safety regulation and the EU

8. The scope for changing health and safety regulation is severely limited by the requirement to implement EU law. Much of the health and safety regulation that applies to businesses implements EU Directives. According to one study, 41 of the 65 new health and safety regulations introduced between 1997 and 2009 originated in the EU, and EU Directives accounted for 94 per cent of the cost of UK health and safety regulation introduced between 1998 and 2009.
9. Many of the requirements that originate from the EU would probably exist anyway, and many are contributing to improved health and safety outcomes. There is evidence, however, that a minority impose unnecessary costs on business without obvious benefits.
10. There have been significant improvements over recent years in the way the EU develops legislative proposals, including through their Better Regulation Agenda, the Stoiber Group and the EU Impact Assessment Board, but there is scope to go further. In particular there is a case for strengthening the role of both Impact Assessments and the Impact Assessment Board to ensure that recommendations are based on sound science and are risk-based.

I therefore recommend that the Government works more closely with the Commission and others, particularly during the planned review of EU health and safety legislation in 2013, to ensure that both new and existing EU health and safety legislation is risk-based and evidence-based.

11. Meanwhile, greater transparency and evidence also needs to accompany the proposals which can emerge from social dialogue agreements as Directives.
12. These changes will take some time to bring about, and have a greater impact on the future flow of new regulation rather than the existing stock. I have therefore also considered changes that can be made in the shorter term to improve the way health and safety regulations are interpreted and applied in Great Britain.

Simplifying the regulatory framework

13. Perhaps more than any particular regulatory requirement, the sheer mass of regulation is a key concern for many businesses. Although there is considerably less regulation than 35 years ago, businesses still feel that they have to work through too many regulations or use health and safety consultants. HSE has already started work to consolidate explosives regulations both updating the requirements and making them simpler to understand. Similar benefits could be gained from consolidating other sector-specific regulations.

I therefore recommend that HSE undertakes a programme of sector-specific consolidations to be completed by April 2015.

14. This would reduce the number of regulations by about 35 per cent. Meanwhile HSE should commission research to consider the opportunities for a further consolidation of the core set of regulations that apply to the majority of businesses.

Addressing problems in the application of regulations

15. Although HSE is the national regulatory body responsible for promoting better health and safety at work in Great Britain, enforcement of the majority of workplaces is shared with local authorities in accordance with the Health and Safety (Enforcing Authority) Regulations 1998.
16. There are various examples of how the two bodies are working well together, co-ordinating resources and information to reduce the number of work-related fatalities, injuries and cases of ill health and to improve consistency in enforcement. Despite the significant improvements made, there continues to be concerns over inconsistency in the implementation of health and safety regulation across local authorities. Furthermore, by allowing each enforcing authority to only consider the workplaces within their area of control, the current regulatory arrangements generate an artificial barrier to the most efficient targeting of enforcement activity across the board. Premises that are considered relatively low risk amongst the workplaces overseen by HSE (and which are therefore not inspected) may nevertheless be riskier than many of those under local authority control, resulting in too many inspections by local authorities of relatively low-risk workplaces.
17. To ensure that enforcement is consistent and targeted on risk, there needs to be one single body directing health and safety enforcement policy across all workplaces currently regulated by HSE and local authorities. A transfer of responsibility to HSE may risk losing the synergies with other local authority enforcement responsibilities but it will ensure that activity is independent of local priorities and concerns and clarify the distinction between health and safety and other regulatory issues such as food safety and environmental protection. This will, in turn, provide greater assurance and consistency for businesses.

I therefore recommend that legislation is changed to give HSE the authority to direct all local authority health and safety inspection and enforcement activity, in order to ensure that it is consistent and targeted towards the most risky workplaces.

The wider perspective

18. Employers also face the prospect of civil action from employees or others. There is evidence to suggest that this, or at least the threat of being sued, can be a key driver for duty holders going beyond what the regulations require. The Government is already taking steps to address many of the concerns associated with the 'compensation culture' but I have identified two further issues associated with health and safety regulations that also require attention. These are pre-action protocols and regulations that impose a strict liability.
19. The original intention of the pre-action protocols, to support early settlements through better and earlier exchanges of information between parties, was laudable but there is evidence that the associated standard disclosure lists in particular are being applied inappropriately and claims are not being defended if all the paperwork is not in place. Employers are also being advised to keep large numbers of records in case they are taken to court. All of this leads to an emphasis on generating paperwork for every possible risk.
20. Meanwhile, there are cases where employees have been awarded compensation despite employers doing everything that is reasonably practicable and foreseeable. This is because certain regulations impose a strict liability on employers that makes them legally responsible for the damage and loss caused by their acts and omissions regardless of their culpability. This does not seem to be in line with the concept of 'reasonably practicable', nor is it clear that it is what was intended. As a result there is a need to reconsider the areas where health and safety regulation imposes strict liability.

I recommend therefore that the original intention of the pre-action protocol standard disclosure list is clarified and restated and that regulatory provisions which 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.
21. In addition there is also a need to stimulate a debate about risk in society to ensure that everyone has a much better understanding of risk and its management.

Conclusion

22. The general sweep of requirements set out in health and safety regulation are broadly fit for purpose but there are a few that offer little benefit to health and safety and which the Government should remove, revise or clarify, in particular the duties for self-employed people whose work activities pose no potential risk of harm to others.
23. The much bigger problem is that regulatory requirements are misunderstood and applied inappropriately. The changes I am recommending seek to address where this arises by:
 - a. streamlining the body of regulation through consolidation;
 - b. re-directing enforcement activity towards businesses where there is the greatest risk of injury or ill health;
 - c. re-balancing the civil justice system by clarifying the status of pre-action protocols and reviewing strict liability provisions.
24. This will help to ensure that all key elements of the regulatory and legal system are better targeted towards risk and support the proper management of health and safety instead of a focus on trying to cover every possible risk and accumulating paperwork.

Recommendations

My review has set out a number of risk-based and evidence-based recommendations that will reduce requirements on business where they do not lead to improved health and safety outcomes, or remove pressures on business to go beyond what the regulations require, enabling them in turn to reclaim ownership of the management of health and safety.

I would like all these recommendations to be delivered by April 2015 but I have included some earlier target dates for some of them.

Key recommendations

- Exempting from health and safety law those self-employed whose work activities pose no potential risk of harm to others.
- That HSE should review all its ACoPs. The initial phase of the review should be completed by June 2012 so businesses have certainty about what is planned and when changes can be anticipated.
- That HSE undertakes a programme of sector-specific consolidations to be completed by April 2015.
- That legislation is changed to give HSE the authority to direct all local authority health and safety inspection and enforcement activity, in order to ensure that it is consistent and targeted towards the most risky workplaces.
- That the original intention of the pre-action protocol standard disclosure list is clarified and restated and 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.

Further recommendations

In addition to these, I have set out a number of further recommendations to address the issues I have identified.

Specific regulations

Although health and safety legislation is broadly fit for purpose I have identified some duties that appear to have resulted in unnecessary costs to business whilst offering little benefit. These should be revoked, amended or clarified, subject to consultation.

I recommend that the following regulations should be revoked:

- The **Notification of Tower Cranes Regulations 2010** and the **Notification of Conventional Tower Cranes (Amendment) Regulations 2010** – because the Impact Assessment was not able to identify any quantifiable benefits to health and safety outcomes.
- The **Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations 1980** and the **Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974** that are no longer needed to control health and safety risks.
- The **Construction (Head Protection) Regulations 1989** that duplicate responsibilities set out in the later Personal Protective Equipment at Work Regulations 1992.

I recommend that the following regulations should be amended, clarified or reviewed:

- The **Health and Safety (First Aid) Regulations 1981** should be amended to remove the requirement for HSE to approve the training and qualifications of appointed first-aid personnel. This requirement seems to have little justification provided the training meets a certain standard.
- The **Construction (Design and Management) Regulations 2007** and the associated ACoP evaluation should be completed by April 2012 to ensure there is a clearer expression of duties, a reduction of bureaucracy and appropriate guidance for small projects.
- The **Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)** and its associated guidance should be amended by the end of 2013 to provide clarity for businesses on how to comply with the requirements.
- The requirement for portable appliance testing should be further clarified (including through changes to the wording of the **Electricity at Work Regulations 1989** if necessary) by April 2012 to stop over-compliance and ensure that these messages reach all appropriate stakeholder groups.
- The **Work at Height Regulations 2005** and the associated guidance should be reviewed by April 2013 to ensure that they do not lead to people going beyond what is either proportionate or beyond what the legislation was originally intended to cover.

Clarifying regulatory requirements

In addition to the sector-specific consolidation exercise I recommend that:

- HSE commissions research by January 2012 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;
- HSE should redesign the information on its website to distinguish between the regulations that impose specific duties on businesses and those that define 'administrative requirements' or revoke/amend earlier regulations;
- HSE should also continue to help businesses understand what is 'reasonably practicable' for specific activities where the evidence demonstrates that they need further advice to comply with the law in a proportionate way.

Application of regulatory requirements

In addition to giving HSE the authority to direct local authority health and safety inspection and enforcement activity I also recommend that:

- HSE should also be the Primary Authority for multi-site national organisations; and that
- all those involved should work together with the aim of commencing health and safety prosecutions within three years of an incident occurring.

Improving the understanding of risk

In order to stimulate a wider debate about risk in society and how it should be regulated, I recommend that:

- the House of Lords be invited to set up a Select Committee on risk or establish a sub-committee of the Science and Technology Committee to consider how to engage society in a discussion about risk; and
- in parallel, the Government asks the Chief Scientific Adviser to convene an expert group aimed at addressing the same challenge. The outcomes of such work need to be disseminated widely across Parliament, policy makers, academics and the public.

Recommendations for engaging with Europe

My overarching recommendation is that the Government works more closely with the Commission and others, particularly during the planned review in 2013, to ensure that both new and existing EU health and safety legislation is risk-based and evidence-based. As well as working with the EU on specific regulatory proposals or amendments I recommend that:

- all proposed Directives and regulations (and amendments to them) that have a perceived cost to society of more than 100 million Euros should go through an automatic regulatory impact assessment;
- those who are responsible for developing the Impact Assessments should be different from those who have drafted the Directives or regulations;
- a stronger peer review is introduced through a stronger, more independent EU Impact Assessment Board, or that a separate, independent, powerful regulatory oversight body is established, modelled on the US Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB). This body should sit within the Secretariat general and would need to be properly resourced.

I also recommend that:

- a European Parliamentary Committee is established to look at risk-based policy making that could assist EU regulators and policymakers to regulate on the basis of risk and scientific evidence;
- the UK Government works with the Commission to introduce greater clarity and raise awareness around social partner agreements, and to ensure that Impact Assessments are produced for agreements before they are adopted as a Directive.

Introduction

1

This chapter covers:

- **The current health and safety legislative framework and how it has evolved over time.**
- **The continuing need to control workplace risks, concerns over the existing health and safety regulatory system and the case for a review.**
- **The scope of the review and how it relates to other recent reviews of the health and safety system.**

The current health and safety legislative framework

The Health and Safety at Work etc Act 1974

1. There has been legislation to establish safe working conditions in Great Britain since the turn of the 19th century¹ but the core of today's health and safety regulatory framework is the Health and Safety at Work etc Act 1974 (HSWA). The Act, based on the recommendations of the 1972 Robens Report², introduced general duties on employers to protect the health and safety of employees and others who interact with the workplace.
2. At the time of his report there were “nine main groups of statutes supported by nearly 500 subordinate statutory instruments” and in Lord Robens' words “the first and perhaps most fundamental defect of the statutory system is simply that there is too much law... it was argued in some submissions to us that the sheer mass of this law, far from advancing the cause of safety and health, may well have reached a point where it becomes counterproductive”³.
3. Furthermore, the legislation was over-elaborate and preoccupied with the physical circumstances in which work was done as opposed to the workforce and the systems of work. The Act was therefore designed to replace large numbers of detailed and prescriptive industry-specific regulations which had developed over time to respond to specific incidents with a new, proportionate, risk-based approach that set out broad goals and principles, supported by codes of practice and guidance, and which was applicable to all workplaces and to everyone affected by work activities⁴.

Developments since 1974

4. However, since HSWA was introduced, the regulatory system has been pulled in a number of different directions. New regulations have been introduced in response to incidents such as the Piper Alpha disaster in 1988 as well as emerging risks and occupational health issues⁵. Meanwhile, the EU has played an increasingly significant role, demonstrated most notably by the introduction of the ‘six-pack’ of regulations⁶ that implemented the daughter Directives arising from the Framework Directive 89/391⁷.

1 In 1802 *An Act for the Preservation of the Health and Morals of Apprentices and others employed in cotton mills and other factories* was passed particularly to safeguard young people in textile mills. www.nationalarchives.gov.uk/humanrights/1760-1815/ See under Legislation.

2 Lord Robens, *Safety and Health at Work Report of the Committee 1970 – 72*, 1972 HMSO Cmnd 5034.

3 *Ibid* (Section 28).

4 Health and Safety Executive, *Thirty years on and looking forward*, HSE Books, 2004. www.hse.gov.uk/aboutus/reports/30years.pdf

5 *Ibid*.

6 The ‘six-pack’ is: the Management of Health and Safety at Work Regulations, Manual Handling Operations Regulations, Display Screen Equipment Regulations, Workplace (Health, Safety and Welfare) Regulations, the Provision and Use of Work Equipment Regulations and Personal Protective Equipment Regulations. www.hse.gov.uk/research/crr_pdf/1998/crr98177.pdf

7 On 12 June 1989, the first and probably the most important Directive providing for minimum requirements concerning health and safety at work under Article 118a was adopted: Framework Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989L0391:en:HTML>

Box 1 The Health and Safety at Work etc Act

The Health and Safety at Work etc Act 1974 established the principle that those who create risks from work activities are best placed to protect employees and the public from the consequences. Employers, the self-employed, employees, designers, manufacturers, importers, suppliers and those in charge of premises all have specific responsibilities.

The Act also led to the creation of the Health and Safety Commission and Health and Safety Executive (merged in 2008 to form a single Health and Safety Executive). It established HSE and local authorities as joint enforcers of health and safety law which is backed by criminal sanctions. It gives the Secretary of State the power to create more detailed requirements through regulations (enacted as Statutory Instruments) and for HSE to issue Approved Codes of Practice (with the consent of the Secretary of State).

HSE, as the national regulator responsible for securing the health, safety and welfare of workers and the public affected by work activity, also has duties to conduct research and provide information and advice.

5. In response to this, the then Health and Safety Commission (HSC) undertook a fundamental review of regulation in 1994. This endorsed the basic principles and approach of the regulatory regime but identified a significant number of regulations which could be simplified, removed or consolidated. The review suggested a programme “designed to lead to the removal of seven pieces of primary legislation and 100 sets of regulations” from the 367 sets of health and safety regulations and 28 pieces of primary legislation which were in force in Great Britain at the time⁸.
6. It is now nearly twenty years since this review was carried out. During this time the public’s perception of health and safety, as well as technology, the economy, society, and the workplace have all continued to change.

⁸ Health and Safety Commission, *Review of health and Safety Regulation, Main Report, 1994*, HSE Books, ISBN 0 7176 0794 1.

The case for a review of health and safety legislation

7. Few would argue with the concept that businesses should have a duty to protect people from the risks arising from their workplace activities.
8. Whilst some may contend that the modern workplace is much safer, the continued need for managing health and safety risks in the workplace is clearly demonstrated by latest statistics published by HSE. In 2010/11 171 workers were killed at work⁹. This does not take account of fatal injuries to non-employees, road-related deaths or those associated with work-related diseases due to past working conditions, including an estimated 8,000 cancer deaths in Britain each year that are attributable to past exposure to occupational carcinogens. There were 115,379¹⁰ reported non-fatal injuries to employees¹¹.
9. One of the major developments over the last three decades has been the increased focus on occupational health issues and it is clear from the evidence that this has become a significant problem. In 2010/11 there were 1.2 million people who had worked in the last 12 months, and a further 0.7 million former workers, suffering from an illness that they believed was caused or made worse by their current or past work. Furthermore, many of these occupational health problems arise in industries which have traditionally been less risky in terms of injuries and accidents, as shown in Figure 1.
10. There are also costs to employers, with 4.4 million working days lost due to workplace injuries and a massive 22.1 million lost due to work-related ill health during 2010/11¹². There also continue to be a number of high-profile incidents, such as the explosions at Buncefield Oil Storage Depot¹³ or ICL Plastics in Glasgow¹⁴. Furthermore, there were a total of 7,466 dangerous occurrences reported to all enforcing authorities in 2010/11. This equates, on average, to over 20 incidents per day¹⁵.
11. Nonetheless, many businesses and business organisations cite concerns about the burdens that health and safety regulation places upon them, with over a third of small businesses believing that health and safety regulations represent an obstacle to growing their business¹⁶.

9 www.hse.gov.uk/statistics/overall/hssh1011.pdf

10 Ibid.

11 As reported under RIDDOR – Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995. www.hse.gov.uk/riddor/ (RIDDOR is discussed in chapter 5).

12 www.hse.gov.uk/statistics/overall/hssh1011.pdf

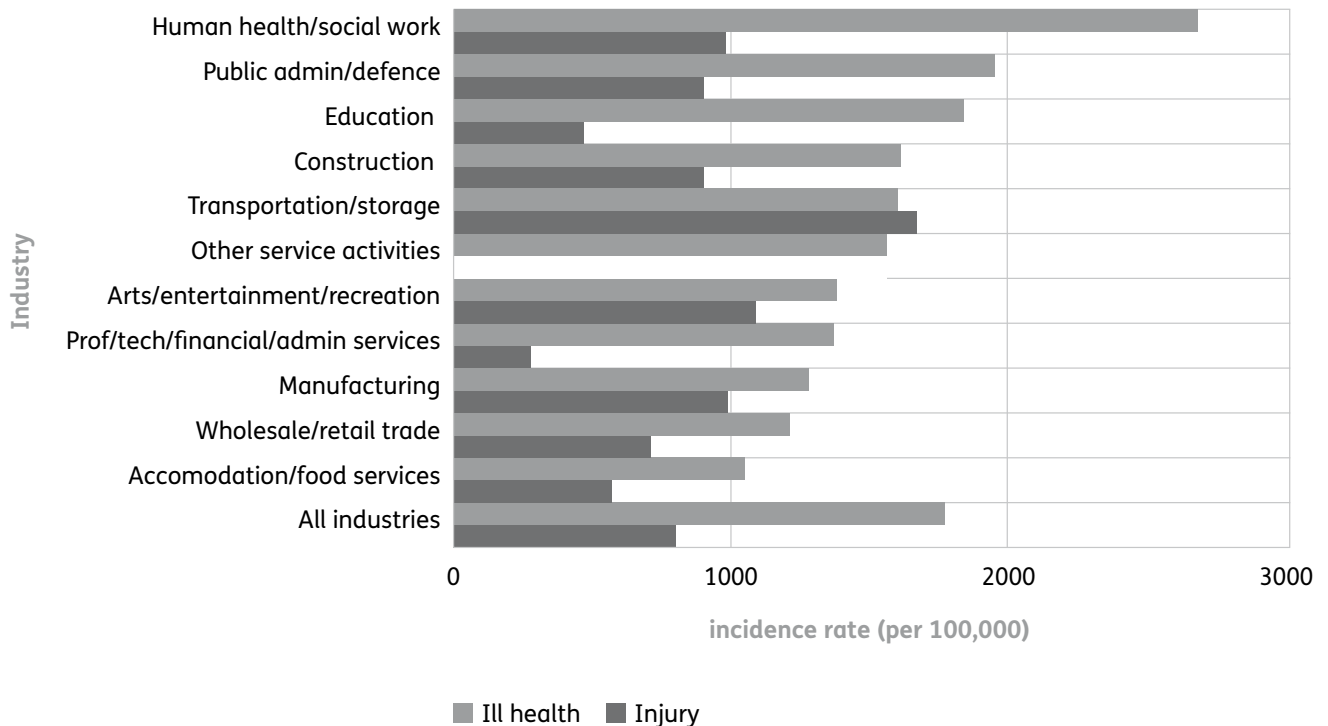
13 On 11th December 2005, a number of explosions occurred at Buncefield Oil Storage Depot, Hemel Hempstead, Hertfordshire. www.buncefieldinvestigation.gov.uk/index.htm

14 On 11 May 2004, an explosion demolished much of the Stockline Plastics building in Grovepark Street, west of Glasgow city centre. www.theinquiry.org/

15 www.hse.gov.uk/statistics/tables/riddo.xls (provisional data).

16 British Chambers of Commerce, *Health and Safety – a Risky Business?* 2011. www.britishchambers.org.uk/zones/policy/press-releases_1/bcc-half-of-businesses-tied-up-in-health-and-safety-yellow-tape.html

Figure 1 Estimated incidence rates of self-reported work-related illness and reportable non-fatal injury, by industry



Source: Labour Force Survey; HSE statistics www.hse.gov.uk/statistics/

Notes: Average for 2008/09-2010/11 for people working in the last 12 months; Restricted to injuries and ill health in current or most recent job; Non-fatal injuries for finance, and figures for Extraction/utilities are too small to provide reliable rates.

12. There are complaints of an overly-complex and bureaucratic system which drives SMEs to seek out the services of consultants¹⁷, who, in turn, can provide advice that is not required by law and provides little or no benefit to workplace health and safety, adding further burdens to business¹⁸.
13. 'Health and safety' has become increasingly ridiculed, particularly in the media. There is a constant stream of stories in the press blaming health and safety and associated excessive bureaucracy for preventing individuals from engaging in socially beneficial activity, overriding common sense and eroding personal responsibility. Almond's 2009 paper provides a helpful discussion of this issue and its implications¹⁹. Furthermore, the media can amplify health and safety incidents beyond what is warranted. Previous studies have shown this on issues ranging from nuclear power accidents to the positioning of waste incinerators^{20,21}.

17 Vanilla Research, *Perceptions of the Health and Safety Regime*, 2008. www.bis.gov.uk/files/file47058.pdf

18 Better Regulation Executive, *Improving Outcomes from Health and Safety*, 2008. www.bis.gov.uk/files/file47324.pdf

19 Almond P, *The Dangers of Hanging Baskets: 'Regulatory Myths' and Media Representations of Health and Safety Regulations*, *Journal of Law and Society*, 2009, 36, 352-75.

20 Kasperson RE et al, *The Social Amplification of Risk: A Conceptual Framework*, *Risk Analysis*, 1988, 8, 177-187.

21 Pidgeon N, Kasperson RE and Slovic P, *The Social Amplification of Risk*, Cambridge University Press, 2003, ISBN 978-0521817288.

A fresh perspective

14. So there is a strong case for taking a step back once again to consider whether the regulations are still suitable for the modern workplace and continue to deliver improvements in health and safety outcomes, or whether they have gone too far. We need to check that we are not slowly drifting back towards a system that Lord Robens set about replacing.

Recent reviews of health and safety

15. There have been a number of other reviews of the health and safety system in recent years, including by the Better Regulation Executive²², the House of Commons Work and Pensions Select Committee²³ and Lord Young of Graffham²⁴. Their reports covered a broad range of areas, some, but not all, of which related to the legislation. This review aims to build on them by providing a more detailed examination of health and safety legislation. Where appropriate, their findings and recommendations have been taken into account and are reflected in the report.

Scope of review

16. The review's main focus therefore was to consider the opportunities for simplifying, abolishing or consolidating the approximately 200 or so sets of regulations, and about 50 Approved Codes of Practice (ACoPs)²⁵.
17. The aim was to examine how the current stock of health and safety regulation, that offers necessary protection to employees and the public, could be streamlined and made more effective.
18. The Terms of Reference (Annex A) also highlight a number of specific issues to explore in this context, including whether the responsibility for risk is placed on appropriate people in the legislation, if and where legislation has led to unreasonable outcomes, litigation or compensation, and whether there are any instances where regulations have over-enhanced what was required by EU directives.

22 Better Regulation Executive, *Improving Outcomes from Health and Safety*, 2008. www.bis.gov.uk/files/file47324.pdf

23 House of Commons Work and Pensions Select Committee, *The role of the Health and Safety Commission and the Health and Safety Executive in regulating workplace health and safety: third report of the session*, 2008. www.publications.parliament.uk/pa/cm200708/cmselect/cmworpen/246/246i.pdf

24 Lord Young of Graffham, *Common Sense, Common Safety*, 2010. www.number10.gov.uk/wp-content/uploads/402906_CommonSense_acc.pdf

25 ACoPs are quasi-legal documents providing guidance on how employers can comply with their legal requirements, as set out in the regulations.

19. The review considers whether any lessons could be learned from other countries. There have been several studies comparing regulatory systems^{26, 27}. International comparisons of health and safety responsibilities of company directors and of techniques used to obtain compliance with health and safety law and accountability for administrative and criminal offences and sentences for criminal offences have also been prepared for HSE^{28, 29}. Since the UK's legislative framework differs in significant ways from other countries, a direct comparison of the regulatory framework was not possible, but nonetheless I looked at what more general lessons can be learned from the approach other countries have taken with respect to specific requirements or issues.

A note of caution

20. Whilst it is important to ensure regulations are still relevant for the modern workplace, changes should not be undertaken lightly and consideration must be given to the potential unintended consequences. For example, regulation may still be needed to control risks that may arise in a different context or which may re-emerge if the controls are removed. The challenge is to understand the extent to which the regulations themselves, rather than the wide range of other factors, contribute to both helping improve health and safety outcomes and driving the concerns expressed by business and others.
21. I am also mindful that the costs of having to keep up-to-date with and adjust to constant changes to the regulations are a source of considerable burden to business (as much as any of the regulations themselves)^{30, 31}.

26 Kelman S, *Regulating America, regulating Sweden: A comparative study of occupational safety and health policy*, Cambridge, MA: MIT Press, 1981, ISBN-13: 978-0-262-11076-1.

27 Golding D, *The Differential Susceptibility of Workers to Occupational Hazards*, New York, NY: Garland Publications, 1990.

28 Bergman D, Davis C and Rigby B, *International comparison of health and safety responsibilities of company directors*, HSE research report RR535, 2007. www.hse.gov.uk/research/rrpdf/rr535.pdf

29 Fooks G, Bergman D and Rigby B, *International comparison of (a) techniques used by state bodies to obtain compliance with health and safety law and accountability for administrative and criminal offences and (b) sentences for criminal offences*, Health and Safety Executive Research Report RR607, 2007. www.hse.gov.uk/research/rrhtm/rr607.htm

30 National Audit Office, *The Administrative Burdens Reduction Programme*, 2008, p43 – 37 per cent of businesses strongly agreed with the statement that “having to keep up to date with changes in existing regulation” was burdensome – as many as for any other activity resulting from regulation. www.nao.org.uk/publications/0708/administrative_burdens.aspx

31 Department for Business, Innovation and Skills, *Better Regulation, better benefits: getting the balance right*, 2009. www.bis.gov.uk/files/file53251.pdf

Report structure

22. The rest of the review is structured as follows:
- Chapter 2 outlines the approach taken by the review, in particular the process it has followed and the principles underpinning the considerations taken;
 - Chapter 3 outlines the evidence on whether health and safety creates an unnecessary burden on business;
 - Chapters 4 and 5 consider the opportunity for reviewing the scope of regulation and issues to which it is applied, without affecting the progress made in health and safety outcomes;
 - Chapter 6 considers the particular role of the EU in changing the landscape of UK health and safety regulation, and some issues which the UK should look to address and Chapter 7 explores the scope for simplifying the regulatory framework;
 - Chapter 8 considers the scope for improving how regulations are applied in practice, whilst Chapter 9 considers health and safety law in a wider perspective, particularly its role in civil litigation and the importance of engaging society in a debate about how risk is perceived and managed.

Principles and approach

2

This chapter covers:

- **The approach taken to ensure the review is evidence-based, and informed by a wide range of stakeholders and sources.**
- **The principle that regulation should be based on risk and the advantages of risk over hazard-based regulation.**

A Balanced Review

1. Input was sought from stakeholders from a wide range of backgrounds and through a number of different routes to ensure the review's findings were balanced and robust.

Call for evidence

2. A call for written evidence was issued on the 20th May 2011, seeking evidence on a number of specific questions as well as any other evidence that could usefully inform the review³². The questions from the call for evidence are attached at Annex B.
3. This was sent to a number of stakeholders with a known interest and expertise in health and safety, but also made publicly available on the Department for Work and Pensions' website to achieve the fullest possible response and ensure the review's findings were based on all the evidence available.
4. Over 250 responses were received, ranging from comments on specific issues to those that addressed all ten questions. Contributions were received from large and small employers, business organisations, trade associations, professional bodies, trades unions, academics, victim support groups, government departments, health and safety professionals, the legal and insurance industry, and a large number of informed individuals.

Meetings with key stakeholders

5. The call for evidence was supplemented by well over 30 meetings with individual stakeholders. I also attended several forums with business representatives and chaired a conference on health and safety reform³³. All these provided an opportunity for me to listen to concerns and ideas in more detail. Annex C gives a list of those who submitted written evidence and those whom I met during the course of the review.

³² www.dwp.gov.uk/consultations/2011/lofstedt-review-cfe.shtml and www.dwp.gov.uk/docs/lofstedt-call-for-evidence.pdf

³³ Inside Government, *Reforming Health and Safety: Removing Barriers, encouraging growth and implementing the recommendations*, June 2011. www.insidegovernment.co.uk/health/health-and-safety/

Visits

6. To see the impact of regulations first-hand, I also accompanied inspectors on a number of workplace visits, including to a low-risk business in a local authority enforced sector, an SME in the manufacturing sector, a forestry business, two construction sites and a Liquid Petroleum Gas terminal. This provided a crucial insight into how the regulations are applied by employers and the regulator, and the difficulties that employers can have with understanding and implementing the current regulations.

Advisory Panel

7. The review was supported by a small expert advisory panel. Members represented employees, small and large employers, and Parliament.
8. Their role was to provide oversight, challenge and support to ensure that the review process and findings were robust, comprehensive and balanced, in line with the terms of reference and in accordance with accepted standards. The panel met five times during the course of the review, and their contribution led to a much deeper understanding of the issues covered in this report. However, the responsibility for the final content of the report and its recommendations rests with me.

Red Tape Challenge

9. The review also benefited from having the opportunity to draw upon a large number of contributions to the Government's Red Tape Challenge (RTC) initiative, launched by the Prime Minister on 7th April 2011³⁴ and I welcomed the invitation to be the Red Tape Challenge Champion for the health and safety theme.

Box 2 The Red Tape Challenge

The Red Tape Challenge is a Government initiative set up to help the Government achieve its aim of reducing the overall level of regulation.

A website has been set up to promote discussion of ways in which the aims of existing regulation can be fulfilled in the least burdensome way possible, allowing individuals to tell the Government which regulations are working and which are not; what should be scrapped, what should be saved and what should be simplified.

The challenge puts a spotlight on different areas of regulation in turn, with a five week window during which individuals can submit comments. There are also six cross-cutting themes open for comment throughout the process (although each will also have a window in the spotlight). Health and safety is one of those themes.

³⁴ Health and safety was highlighted as the main topic on the site for two weeks from 30 June to the 14 July. By the end of July 2011 there had been over 1,000 responses. www.redtapechallenge.cabinetoffice.gov.uk/health-and-safety/

A risk-based review

10. The original ambition of Lord Robens was to have a proportionate, risk-based system of regulation. The Act, together with the concept of risk assessment introduced by the Management of Health and Safety at Work Regulations, has placed the control of risk at the core of the regulatory framework.
11. However, the approach to regulation has sometimes been made on the basis of intrinsic hazard (i.e. the potential to cause harm without any regard to its likelihood), and the adoption of the precautionary principle³⁵, rather than on the real possibility of harm.

Risk versus hazard

12. This review is founded on my belief that regulation should be risk-based rather than hazard-based and this has been my guiding principle.
13. The debate as to whether one should regulate on the basis of intrinsic hazard or assessment of risk, or possibly a combination of both, has been gaining momentum.
14. When taking a risk-based approach there are limits to what can be measured quantitatively and reliance on expert judgements rather than pure scientific evidence sometimes causes challenges. However, one of the main problems with basing regulation on hazard classification is that it is only one initial part of the risk analysis process, and without an assessment of actual risk it can inhibit activities which are not in fact risky and which may be beneficial to individuals and society³⁶.
15. In the process it can ignore the opportunity cost of diverting scarce resources away from addressing activities or items which pose a greater risk to workers and the public and may lead to unintended consequences, including risk-risk trade-offs³⁷. A classic example of the risk-risk trade-off followed the Hatfield Rail Crash, when speed restrictions were imposed to avoid the risk of further accidents, leading to more commuters travelling by car, where the risk of fatality is greater³⁸.

35 Health and Safety Executive, *Thirty years on and looking forward*, HSE Books, 2004.
www.hse.gov.uk/aboutus/reports/30years.pdf p6

36 Löfstedt R, *Risk versus Hazard – How to regulate in the 21st Century*, *European Journal of Risk Regulation*, 2011, 2 (2), 149-168.

37 Graham JD and Wiener JB, *Risk vs Risk: Tradeoffs in protecting health and the environment*, Cambridge, MA: Harvard University Press, 1995.

38 Better Regulation Commission, *Risk, Responsibility and Regulation – Whose risk is it anyway?* 2006.
http://webarchive.nationalarchives.gov.uk/20100402230200/http://archive.cabinetoffice.gov.uk/brc/publications/risk_report.html

An evidence-based review

16. During the review, the focus has been on collecting clear concrete examples and hard scientific evidence on the impact of regulations, rather than anecdotes or personal views.
17. A number of academic studies and research reports funded by HSE and others have been considered during the review, though it has become apparent that there is relatively little robust independent peer-reviewed evidence available to inform the issues under investigation, beyond Government-commissioned reviews and evaluations.
18. A previous stock-take of evidence on the impact of HSE's work on health and safety outcomes concluded that whilst there was a great deal of work concerned with health and safety broadly, there were relatively few studies where the methodology was sufficiently robust and which measured the impact of health and safety regulation. A number of deficiencies existed in the evidence. These include the narrow scope of many studies (for example, considering interventions from one perspective), a lack of longitudinal data in most and relatively few considered the impact of potentially intervening variables (such as macroeconomic factors)³⁹.

Further Considerations

19. Within the time available I was not able to undertake a systematic review of each and every regulation so my approach has been to:
 - a. consider the scope and application of the health and safety regulatory framework as a whole from a risk- and evidence-based perspective and then;
 - b. focus on areas where the evidence and contributions I have received indicate that regulations are putting burdens on business without improving health and safety outcomes.
20. Where I have identified there is a valid concern but a lack of sufficient evidence to determine an appropriate course of action, I have recommended further careful review.

³⁹ Hillage J, Tyers C, Davis S and Guppy A, *The impact of the HSC/E: A review*, Institute of Employment Studies for Health and Safety Executive, 2001. www.hse.gov.uk/research/crr_pdf/2001/crr01385.pdf

21. Those who responded to the call for evidence commented on a very wide range of Acts and Regulations. Some (such as the Corporate Manslaughter Act, Occupiers Liability Act, REACH⁴⁰, the Education Act 2002, land use planning legislation and the Regulatory Reform (Fire Safety) Order 2005) are not owned by HSE and so were outside the scope of this review. I did not consider the Adventure Activities Licensing Regulations because they have been subject to a separate consultation exercise following the Government's acceptance of a recommendation in Lord Young's report, 'Common Sense Common Safety'.
22. Similarly, since my terms of reference did not extend to the introduction of new regulation, I did not explore suggestions from stakeholders for duties that should be added to the regulations, such as the introduction of an explicit duty on company directors or a requirement to report work-related road traffic accidents.
23. A detailed consideration of guidance was also outside the scope of my review.
24. Many respondents to the call for evidence commented on the Control of Asbestos Regulations (2006) (CAR06) and its associated ACoPs. HSE is currently consulting on proposals to introduce 'revised Control of Asbestos Regulations to implement the legislative changes required to comply with the European Commission's (EC) reasoned opinion on the UK Government's transposition of Directive 83/477/EEC as amended by 2003/18/EC on the protection of workers from the risks to exposure to asbestos at work. The Government has accepted the reasoned opinion that the UK has not fully implemented the Directive. Rather than use amending regulations to make the necessary changes it has been decided to revoke the existing CAR06 regulations in their entirety and issue a single set of revised regulations⁴¹. In the light of these proposed regulatory changes I have not considered further changes to these regulations.
25. With these considerations in mind, the next chapter considers the evidence on the impact of health and safety regulation.

⁴⁰ REACH is a European Union regulation concerning the Registration, Evaluation, Authorisation & restriction of Chemicals.
http://ec.europa.eu/enterprise/sectors/chemicals/reach/index_en.htm

⁴¹ www.hse.gov.uk/consult/condocs/cd237.htm and
<http://consultations.hse.gov.uk/gf2.ti/f/15426/401829.1/pdf/-/CD237%20Complete.pdf>

The costs and benefits of health and safety regulation

3

This chapter covers:

- **The cost to business from health and safety regulation and the costs of injuries and ill health on employers, employees and society.**
- **Evidence on the benefit of health and safety regulation in terms of reduced injuries and ill health, and support for health and safety regulation.**
- **The problems that need to be addressed.**

The costs

1. A number of reports have sought to assess the burden of health and safety regulation on business. According to a survey of 2,000 small businesses carried out by the British Chambers of Commerce (BCC), more than half (53 per cent) reported health and safety regulation to be extremely or fairly burdensome⁴², whilst a recent survey by the Forum of Private Business (FPB) found that health and safety law was the third most costly area of 'red tape'⁴³.
2. The regulations can impose costs on businesses in a number of ways. These include the time it takes to understand and comply with duties, the administrative requirements associated with completing risk assessments and records, the cost of new inputs or processes, or the time and cost associated with training and obtaining external advice.
3. The available evidence suggests that these costs can be significant. A study in 2003 found that, on average, a large firm spent £420,000 a year or more on health and safety⁴⁴. A more recent survey by the FPB found that small and medium-sized companies in total face an annual bill of over £2 million in time and money spent on health and safety guidelines, the second-largest of seven different types of regulation businesses must comply with⁴⁵.
4. Meanwhile, two-thirds of SMEs feel that the implementation of health and safety law is too time consuming⁴⁶, and it has been found that small businesses are spending around one working day a month on compliance⁴⁷.
5. A cross-government exercise in 2005 measuring, for all businesses, the administrative burdens resulting from legislation⁴⁸ calculated an annual cost of over £2 billion of administrative burdens stemming from health and safety legislation⁴⁹. The bulk of these costs were driven by just a small number of regulations – around five per cent of regulations accounted for around three-quarters (77 per cent) of the total annual costs⁵⁰, as shown in Figure 2.

42 British Chambers of Commerce, *The Workforce Survey: Small Businesses*, 2011.

www.britishchambers.org.uk/toolkit/g17013-bcc_workforce_survey-small_all-pages-pdf.html

43 www.cohpa.co.uk/news/78-27-07-11-employment-law-no-longer-top-regulatory-burden

44 Lancaster R, Ward R, Talbot P and Brazier A, *Costs of compliance with health and safety regulations in SMEs*, Health and Safety Executive Research Report 174, 2003. www.hse.gov.uk/research/rrpdf/rr174.pdf

45 Forum of Private Business, *The cost of compliance on micro, small and medium-sized business employers*, 2009. www.fpb.org/images/PDFs/referendum/FPB%20Referendum%20188%20report.pdf

46 Ibid.

47 Taylor C, *Health and Safety: Reducing the Burden*, Policy Exchange, 2010.

www.policyexchange.org.uk/images/publications/pdfs/Health_and_Safety_-_Reducing_the_burden_-_March__10.pdf

48 www.bis.gov.uk/files/file35841.pdf

49 This has been modified, mainly as a result of machinery of government changes, to a total cost of £2.022.5 billion.

50 Administrative Burdens Exercise. www.hse.gov.uk/simplification/annex2.htm

The final report confirmed that since 2005 HSE had delivered an estimated administrative burden reduction of £559.2 million (an estimated 27.7 per cent reduction). An independent External Validation Panel validated 98.47 per cent of the final administrative burdens reduction programme savings claimed by HSE.

6. The BCC has estimated that the overall, cumulative cost of health and safety regulation introduced in the UK since 1998 amounts to over £4 billion⁵¹.
7. The costs of uncertainty over regulations, and the wasted time and effort are also likely to be significant. The Anderson Review estimated that the current “uncertainty” over regulations in general (with the under/over-compliance it brings) is costing business over £880 million a year⁵².
8. However, the costs of complying with health and safety regulations need to be considered alongside the cost of the injuries and accidents that the regulations are designed to prevent.

The benefits

The cost of injury and ill health

9. The cost of injury and ill health can appear in various guises – to business in the form of sickness absence, for individuals as lost earnings (as well as pain, grief and suffering), to Government as costs to the health service, and society more generally from reduced productivity.
10. Estimates suggest that the cost to UK business alone could be just over £3 billion⁵³, whilst the overall cost of workplace accidents and ill health has been estimated to be up to a staggering £20 billion a year⁵⁴.
11. The potential benefits of regulation are therefore significant and the following section examines the evidence for their role in reducing the number of injuries and accidents in the workplace.

51 British Chambers of Commerce, *Health and Safety – a Risky Business?* 2011. www.britishchambers.org.uk/zones/policy/press-releases_1/bcc-half-of-businesses-tied-up-in-health-and-safety-yellow-tape.html

52 Anderson S, *The Good Guidance Guide: Taking the Uncertainty out of Regulation*, 2009. www.bis.gov.uk/files/file49881.pdf

53 Pathak M, *The costs to employers in Britain of workplace injuries and work-related ill health in 2005/06*, HSE Discussion Paper Series No. 002, 2008.

54 Health and Safety Executive, *The Health and Safety of Great Britain: Be Part of the Solution*, 2009. www.hse.gov.uk/strategy/strategy09.pdf

Figure 2 Regulations accounting for the majority of administrative costs

Regulation	Most expensive administrative elements
Management of Health and Safety at Work Regulations 1999	Risk management and risk assessment
Gas Safety (Installation and Use) Regulations 1998	Landlords' gas safety check
Lifting Operations and Lifting Equipment Regulations 1998	Checking and recording examinations of equipment
Control of Substances Hazardous to Health Regulations 2002	Risk assessment; Employee training and maintaining records of training
Manual Handling Operations Regulations 1992	Risk assessment; Information to employees
Health and Safety at Work etc Act 1974	Health and safety policy statement; Health and safety information to employees
Control of Asbestos at Work Regulations 2002	Compiling information on emergency arrangements for the emergency services
Safety Representatives and Safety Committees Regulations 1977	Providing information to safety representatives to enable them to fulfil their functions
Construction (Design and Management) Regulations 1994	Preparing rules for the management of health and safety; Updating the health and safety file and delivering it to the client on completion of the job
Provision and Use of Work Equipment Regulations 1998	Checking and recording examinations of equipment

The impact of regulation on health and safety

12. Since the introduction of the HSWA nearly 40 years ago, the number of incidents and accidents in the workplace has dropped significantly. According to HSE statistics, the number of fatal injuries in 1974 when the Act was introduced was 651 compared to 171 in 2010/11⁵⁵. The rate of fatal injuries to workers has fallen by 38 per cent between 1999/2000 and 2009/10⁵⁶. Meanwhile the number of reported non-fatal injuries fell by 70 per cent between 1974 and 2007, while the rate of injuries per 100,000 employees fell by 76 per cent⁵⁷ (See Figure 3).
13. Although there is little peer-reviewed research on the direct effect of legislation on workplace injuries⁵⁸, the regulations are broadly accepted to have been an important contributory factor with the evidence showing that legislation is the primary driver for organisations to initiate changes to improve management of health and safety⁵⁹. According to one survey that asked businesses about the three main reasons for managing health and safety, almost 70 per cent said legal obligations, compared with 52 per cent that said publicity, 27 per cent that said insurance, and 24 per cent that said because of experience of accidents⁶⁰.
14. In their review of evidence on the impact of HSE's work, the Institute for Employment Studies found that "legislation and associated guidance is a major form of leverage over employers in terms of bringing about change in their health and safety policies and practices. Most employers are motivated to change their practices to comply with the law". The study also concluded that there was some evidence of a link between regulations in the construction and offshore sectors and lower incidence of harm⁶¹.
15. Meanwhile, HSE research has found that only 24 per cent of the reduction in the rate of fatal incidents achieved in the last ten years can be attributed to a shift in employment away from manufacturing and heavy industry to lower risk service industries, and about half of the reduction in the non-fatal injury rate since 1986 is due to changes in occupations of the workforce^{62, 63}.

55 www.hse.gov.uk/statistics/history/histfatals.xls

56 Health and Safety Executive, *Progress in Health and Safety outcomes since 2000*. www.hse.gov.uk/statistics/history/progress-since-2000.pdf

57 Comments by Lord Grocott in Parliament in 2007.

www.publications.parliament.uk/pa/ld200708/ldhansrd/text/80704-0001.htm#08070478000003

58 Centre for Strategy & Evaluation Services, *Assessing the cumulative economic impacts of health and safety regulations*, Health and Safety Executive Research Report 692, 2009. www.hse.gov.uk/research/rrpdf/rr692.pdf

59 Davis C, *Making Companies Safe: What works?*, Report for the Centre for Corporate Accountability, 2004.

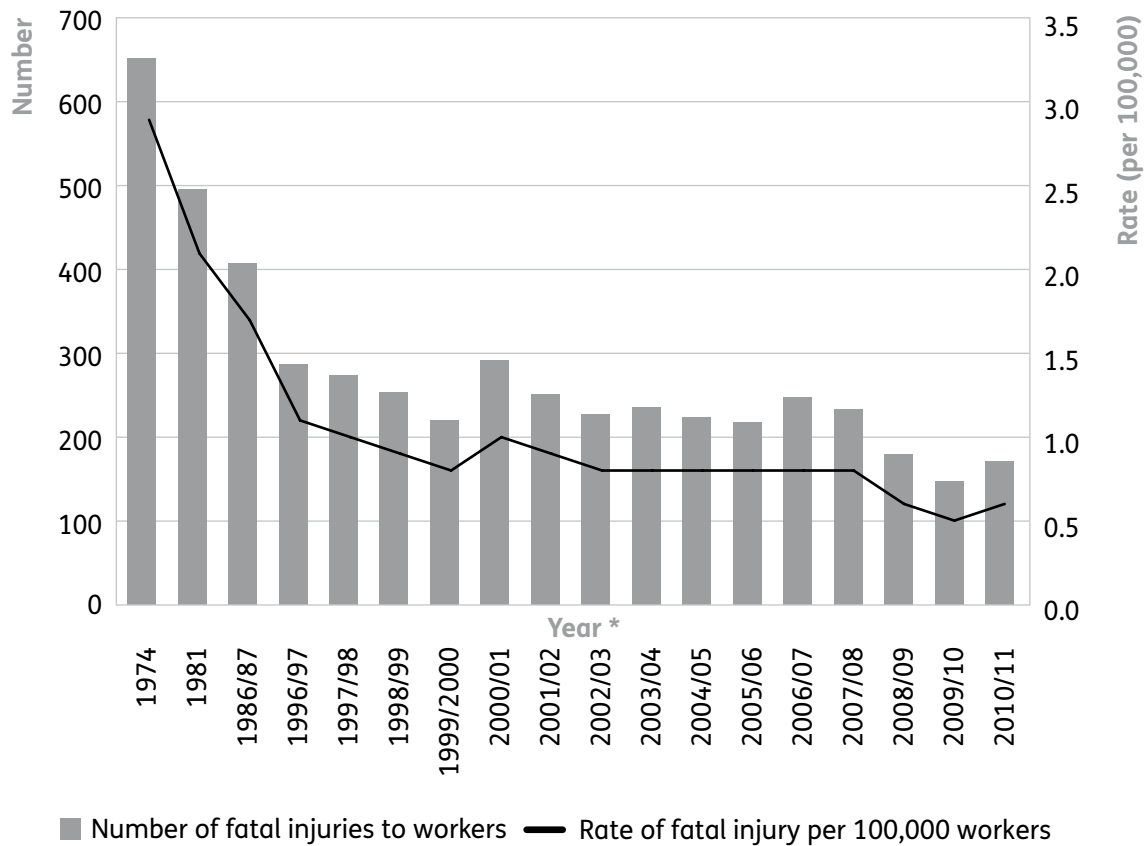
60 Lancaster R, Ward R, Talbot P and Brazier A, *Costs of compliance with health and safety regulations in SMEs*, Health and Safety Executive Research Report 174, 2003. www.hse.gov.uk/research/rrpdf/rr174.pdf

61 Hillage J, Tyers C, Davis S and Guppy A, *The impact of the HSC/E: A review*, Institute of Employment Studies for Health and Safety Executive, 2001. www.hse.gov.uk/research/crr_pdf/2001/crr01385.pdf

62 Takala J and Hämäläinen P, *Globalisation of Risks*, 2009. <http://osha.europa.eu/en/press/articles/globalization-of-risks>

63 www.hse.gov.uk/statistics/history/

Figure 3 Number and rate of fatal injuries to workers



Source: Health and Safety Executive Statistics⁶⁴

16. The impact on injuries and accidents has knock-on implications for the relationship between health and safety regulation and business growth, particularly if an increase in the health of employees makes them more productive and improves the quality of work, or if equipment and the working environment are optimised to the needs of the working process that leads to higher productivity and better quality^{65,66}. One study which examined the relationship between movements in indexes of labour regulation and trends in productivity, employment and growth found no significant relationship in the UK, while in Germany there was a positive relationship⁶⁷.

64 www.hse.gov.uk/statistics/history/histfatals.xls

65 Centre for Strategy & Evaluation Services, *Assessing the cumulative economic impacts of health and safety regulations*, Health and Safety Executive Research Report 692, 2009. www.hse.gov.uk/research/rrpdf/rr692.pdf

66 Mossink J, *Understanding and performing economic assessments at the company level*, World Health Organisation, 2002. www.bvsde.paho.org/bvsast/i/fulltext/protecting/protecting.pdf

67 Deakin S and Sarkar P, *Assessing the long-run economic impact of labour law systems: a theoretical reappraisal and analysis of new time series data*, *International Relations Journal*, 2008, 39 (6), 453–487.

17. The benefits may be hidden from business however, since the evidence has shown that the effect of workplace accidents and ill health is largely ‘externalised’ onto individuals and society⁶⁸. Although business can incur significant costs from injury and ill health, the vast majority of costs are borne by individuals and society. For example, in a study of the costs of occupational asthma in the UK it has been estimated that individuals and society shared around 97 per cent of the overall burden (49 per cent were borne by the individual and 48 per cent by the state), and only 3 per cent by the employer⁶⁹.
18. Furthermore, whilst the costs of regulations may be felt immediately, as businesses adjust processes and inputs to comply, the benefits may not be felt for a period of time afterwards. Meanwhile, for any given small business, the statistical chance of seeing an accident in their particular workplace is only once every fourteen years⁷⁰. All of this may affect perspectives on the benefits of regulation.

Need for change

19. The evidence therefore suggests that whilst the costs associated with compliance can be significant, current health and safety regulation plays a significantly beneficial role. Indeed, the vast majority of employers and employer organisations acknowledged the importance of health and safety regulation in their responses to the call for evidence and felt that, in general, the regulations were broadly fit for purpose. During the course of my review, I have neither seen nor heard any evidence to suggest that there is a case for radically altering or stripping back current health and safety regulation.
20. A number of respondents noted that the process by which new regulations are made or amended should ensure that they are proportional, evidence-based and represent a consensus between employers (both large and small) and employees⁷¹. There are also examples where HSE has not introduced regulations as a ‘first resort’, including its response to regulating nanotechnologies⁷² and emerging energy technologies⁷³.

68 Pathak M, *The costs to employers in Britain of workplace injuries and work-related ill health in 2005/06*, HSE Discussion Paper Series No. 002, September 2008. www.hse.gov.uk/economics/research/injuryill0506.pdf

69 Ayres JA, Boyd R, Cowie H and Hurley JF, *Costs of occupational asthma in the UK*, Thorax, 2011, 66, 128-133, <http://thorax.bmj.com/content/66/2/128.full.pdf>

70 Lansdown T, Deighan C and Brotherton C, *Health and safety in the small to medium-sized enterprise*, Health and Safety Executive Research Report, 2007. www.hse.gov.uk/research/rrpdf/rr578.pdf

71 *A guide to health and safety regulation in Great Britain*, 2009. www.hse.gov.uk/pubns/web42.pdf p7

72 *Review of the adequacy of current regulatory regimes to secure effective regulation of nanoparticles created by nanotechnology*, 2006. www.hse.gov.uk/nanotechnology/regulatoryreview.pdf

73 *Health and safety in the new energy economy: Meeting the challenge of major change – A report to the HSE Board*, 2010. www.hse.gov.uk/eet/new-energy-economy.pdf

21. However, there are clearly still issues which need to be addressed. There are various examples where businesses are having to spend considerable time and money on health and safety related activities which are of questionable value. Whilst health and safety regulation is generally supported that is not to say that every piece of regulation contributes to a safer and healthier workplace, and in a few instances there is a case for reviewing regulations which introduce unnecessary requirements.

Misapplication and simplification of regulations

22. In general, the problem lies less with the regulations themselves and more with the way they are applied⁷⁴. During the course of the review many examples have been put forward where health and safety regulations have been misinterpreted or misapplied.

Box 3 Misapplication of health and safety

One example of where health and safety has been wrongly applied was in April 2011, just after my review began, when Butlins banned bumping on dodgems in all three of their resorts, citing health and safety reasons.

The Minister for Employment, Rt Hon Chris Grayling MP, in a response to the Managing Director released to the media, made it clear that there was nothing in health and safety legislation or guidance banning 'bumping' in dodgems and said that he hoped Butlins would make it clear publicly that the decision had no basis in health and safety rules.

23. In some cases this is caused by third parties who promote actions that go above and beyond the regulatory requirements or through inconsistent application by enforcing authorities. In others, the legislation itself may contribute to the confusion either through a lack of clarity or due to the sheer number of regulations that can at times appear to duplicate requirements.
24. So there is a case for looking at the way health and safety legislation is applied and enforced. These issues are explored in more detail in the following chapters, but first the opportunity for reducing or simplifying certain regulatory requirements is considered.

⁷⁴ Taylor C, *Health and Safety: Reducing the burden*, 2010.
www.policyexchange.org.uk/images/publications/pdfs/Health_and_Safety_-_Reducing_the_burden_-_March__10.pdf

The scope of health and safety regulation

4

This chapter covers:

- The case for and against regulating on the basis of the size or type of business.
- The treatment of the self-employed in health and safety regulation, and scope for legislative changes.
- The application of health and safety regulation in schools and the emergency services.
- Consideration of whether responsibilities are appropriately placed upon those who create risk, how they apply in practice, and opportunities for emphasising the role of employees.

1. This chapter and the next discuss whether, taking the risk-based and evidence-based approach outlined in Chapter 2, health and safety regulation is being applied to the right business sectors and workplace activities. That is, whether the scope and application of the regulations are appropriate for today's workplace.

Size of business

2. Many smaller businesses appear to feel that what is sensible when regulating bigger businesses should not automatically be applied to them, as they are closer-knit organisations, where the manager will usually have a better control of what goes on in the workplace, and where staff turnover is often lower and so there is a greater build-up of workplace knowledge⁷⁵.
3. There have been various studies showing that smaller organisations find it difficult to understand how to comply with current health and safety legislation^{76,77}. This is compounded by differences in the cost of complying with health and safety regulation for small and large firms. One report⁷⁸ has found that on risk assessments, small firms spend almost six times more per employee, whilst the cost of taking action to manage manual handling risks was £341 per employee for small organisations compared to just £37 per employee for large organisations⁷⁹.
4. These observations need to be treated seriously, and the Government should continue to find better ways to make it easier for small businesses to understand and comply with the regulatory requirements. It does not, however, follow that the legislation itself should be based upon the size of the firm. Legal requirements should reflect the level of risk and businesses regulated accordingly.
5. Many SMEs operate in sectors that have high risk of injuries and fatalities, such as construction⁸⁰. Previous research has also found that small firms tend to be more prone to accidents than larger businesses⁸¹. The evidence therefore does not support reducing regulatory requirements for smaller firms, and attention should be focused on improving guidance and support.

75 Vanilla Research, *Perceptions of the Health and Safety Regime*, Summary Report to the Better Regulation Executive, 2008, p12. www.bis.gov.uk/files/file47058.pdf

76 Risk and Regulation Advisory Council, *Health and Safety in small organisations*, 2009. www.bis.gov.uk/files/file52340.pdf

77 The House of Commons Work and Pensions Select Committee, *The role of the Health and Safety Commission and the Health and Safety Executive in regulating workplace health and safety: third report of the session*, 2008. www.publications.parliament.uk/pa/cm200708/cmselect/cmworpen/246/246i.pdf

78 Lancaster R, Ward R, Talbot P and Brazier A, *Costs of compliance with health and safety regulations in SMEs*, Health and Safety Executive Research Report 174, 2003. www.hse.gov.uk/research/rrpdf/rr174.pdf

79 The same report suggested that these differences are driven by economies of scale, ability of larger organisations to adopt generic risk assessment processes and lack of an in-house specialist in smaller firms.

80 www.bis.gov.uk/assets/biscore/statistics/docs/b/business-population-estimates-2011_statistical-release.pdf

81 Fairman R and Yapp C, *Making an impact on SME compliance behaviour*, 2005. www.hse.gov.uk/research/rrpdf/rr366.pdf

6. Responses have, for example, welcomed HSE's example risk assessments in this context⁸². Furthermore to deliver recommendations in Lord Young's review, HSE has recently also published new guidance 'Health and Safety Made Simple'⁸³ that provides lower risk SMEs with the information they need to achieve a basic level of health and safety management in their workplace⁸⁴ and online risk assessment tools for offices, shops and charity shops⁸⁵.
7. Meanwhile, the Health and Safety Authority of the Republic of Ireland provides another good example on its website of a one-stop shop for small businesses⁸⁶. It has a specific section for SMEs that provides information about the issues that they would need in terms of health and safety and which they tend to struggle with most, including how to do risk assessments in a plain language with examples, sector specific guidance on health and safety and business licensing, as well as help with how to notify dangerous incidents. I was also impressed by the work of the Scottish Centre for Healthy Working Lives, funded by NHS Health Scotland, which provides, amongst other things, free confidential workplace visits, practical information and advice⁸⁷.

Type of business

8. Another view is that health and safety regulation should be tailored to the level of risk in a workplace. A number of respondents have agreed with Lord Young's view that health and safety regulations that were originally designed for high-hazard or high-risk industries have been extended inappropriately and disproportionately to other workplaces where risks are much lower⁸⁸.
9. The broad goal-setting approach at the core of health and safety regulation should ensure that it is adaptable to different risks and working conditions and that the measures employers need to take to comply should be proportionate to the risk. Furthermore, there is a question of how to define low risk, as although health and safety has traditionally focused on safety concerns in certain industries, evidence has been provided to show that occupational health conditions can occur in the kinds of workplaces that are traditionally considered less risky, such as offices and the service industry (as discussed earlier).

82 www.hse.gov.uk/risk/casestudies/

83 www.hse.gov.uk/simple-health-safety

84 www.dwp.gov.uk/docs/good-health-and-safety.pdf

85 www.hse.gov.uk/risk/risk-assessment-tools.htm

86 www.hsa.ie/eng/Small_Business/

87 www.healthyworkinglives.com/home/index.aspx

88 Lord Young of Graffham, *Common Sense, Common Safety*, 2010.

www.number10.gov.uk/wp-content/uploads/402906_CommonSense_acc.pdf

10. Nonetheless, one of the main causes of concern is the legal duty to carry out a risk assessment. Although the concept of a risk assessment was implicit in HSWA, the requirement to carry one out was made explicit in the Management of Health and Safety at Work Regulations 1999, and there is a question over whether this requirement is necessary for some low-risk small businesses⁸⁹.
11. In May 2009, the High-Level Group of Independent Stakeholders on Administrative Burdens (the Stoiber Group – See Box 4) issued an opinion paper recommending that very small firms taking certain low-risk activities should be exempt from the obligation to have a written risk assessment (although they would still have to carry out a risk assessment)⁹⁰. Following it, the European Commission has agreed to carry out a cost-benefit analysis of the risk assessment obligation of these businesses⁹¹. I very much welcome this initiative and suggest the UK Government engages closely in this process to ensure a thorough and robust assessment that informs the outcome. In the meantime, one area where there is greater scope for change is the case of the self-employed.

Box 4 The Stoiber Group⁹²

In 2007, the EU Commission set up the “*High Level Group of Independent Stakeholders on Administrative Burdens*”. The group’s task was to advise the Commission with regard to the Action Programme for Reducing Administrative Burdens in the European Union whose aim is to reduce administrative burdens on businesses arising from EU legislation by 25 per cent by 2012.

The members have been chosen from a diverse group of fifteen individuals who have first-hand experience in better regulation and were able to cover the thirteen policy areas in which administrative costs are being measured. They were primarily composed of the leaders of various bodies fighting with red tape at Member State level, representatives from industry, small and medium-sized enterprises (SMEs), trade unions as well as environmental and consumer organisations. Mr. Edmund Stoiber, former Minister-President of Bavaria, is the group’s chair and the UK is represented by Mr. Michael Gibbons OBE who is the chairman of the UK Government’s independent Regulatory Policy Committee.

89 Under the Management of Health and Safety at Work Regulations, every business has to conduct a risk assessment. However, those with fewer than 5 employees do not have to write this assessment down.
www.hse.gov.uk/pubns/indg163.pdf

90 http://ec.europa.eu/enterprise/policies/smart-regulation/files/hlg_opinion_working_environment_09052009_en.pdf

91 <http://ec.europa.eu/social/main.jsp?catId=626&langId=en&callId=308&furtherCalls=yes>
 (see Tender Specifications document).

92 http://ec.europa.eu/enterprise/policies/smart-regulation/administrative-burdens/high-level-group/index_en.htm

Self-employed

12. The HSWA currently imposes a general duty on self-employed people to conduct their work in a way that they and other persons affected by their work are not exposed to risks to their health or safety, so far as is reasonably practicable, whilst the Management of Health and Safety at Work Regulations requires them to make an assessment of the risks to their health and safety as well as the health and safety of others arising from their work. EU legislation does not generally apply to the self-employed⁹³, and the approach by other member states varies, with some countries choosing not to apply health and safety law to the self-employed, whilst several apply the law to the self-employed only where activities are considered particularly hazardous or if they present risks to others. For example, in Sweden the self-employed are only covered in relation to chemicals and machinery to protect their safety and that of those who may be affected by their work, whilst in Germany the law does not apply to the self-employed except where their work may affect the safety of employees.

The case for including the self-employed in UK law

13. Lord Davidson previously identified the extension of health and safety law to the self-employed as a particular example of gold-plating⁹⁴. This has been defended on achieving consistency with the 1974 Act, and on the basis of risk. As Lord Davidson noted, the type of work self-employed people are engaged in varies widely, and in many cases can carry significant risk of injury or harm – for example, agriculture or construction.
14. A blanket exception could therefore potentially lead to an increase in accidents and ill health amongst not only the self-employed but also others affected by their work activities.
15. Whilst there appeared to be no case, or indeed little appetite, for a complete exemption from health and safety regulation for the self-employed in previous reviews⁹⁵, the Davidson review did suggest that when implementing EU Directives “the HSE should continue to consult on whether it is appropriate to extend their scope to the self-employed, and ensure that the benefits justify the costs. In low-risk sectors, the HSE should consider exempting the self-employed from the legislation.” A number of respondents to my review have argued for the self-employed in low-risk workplaces to be exempt from health and safety law, echoing Lord Young’s recommendation that self-employed people from low-hazard businesses should be exempt from risk assessments.

93 Except in *The implementation of minimum safety and health requirements at temporary or mobile construction sites Directive*, where member states are required to impose duties on the self-employed for the protection of employees. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0057:EN:HTML>

94 Davidson Review, Final Report, 2006. www.bis.gov.uk/files/file44583.pdf

95 Health and Safety Commission, *Review of Health and Safety Regulation*, Main Report 1994, HSE Books, ISBN 0 7176 0794 1.

The case for change

16. There is a case for following a similar approach to other countries and exempting from health and safety law those self-employed people (i.e. those who do not have any employees) whose workplace activities pose no potential risk of harm to others.
17. This would benefit approximately 1 million people⁹⁶. The actual burden that the regulations currently place upon these self-employed may not be particularly significant due to existing exceptions in some regulations⁹⁷ and the limited prospect of these being enforced but it will help reduce the perception that health and safety law is inappropriately applied. This will complement HSE's recently revised guidance for employers on homeworkers⁹⁸.

I therefore recommend exempting from health and safety law those self-employed whose work activities pose no potential risk of harm to others.

18. This change should not affect the duties that others have towards a self-employed person.
19. It is vital that this change is accompanied by clear guidance to ensure that the limited scope of the change is clearly understood and that not all the self-employed will be exempt.
20. HSE should also take steps to ensure that they provide suitable guidance and support that will help businesses understand their health and safety duties if they take on an employee. There is evidence to suggest that almost one in five of those who work alone already consider health and safety regulation as a significant or total barrier to taking on their first employees⁹⁹. Getting this right could help to ensure that both the employer and employees are clear on their duties under health and safety regulation at the outset. The role of employees is considered in more detail at the end of the chapter.

⁹⁶ Based on an estimate provided by HSE.

⁹⁷ For example, the Health and Safety (Display Screen Equipment) Regulations 1992 did not place any duties on the self-employed. www.hse.gov.uk/msd/dse/

⁹⁸ The Health and Safety Executive published revised guidance to employers on homeworking in August 2011. www.hse.gov.uk/pubns/indg226.pdf

⁹⁹ British Chambers of Commerce, *Health and Safety – A Risky Business?* 2011. www.britishchambers.org.uk/zones/policy/press-releases_1/bcc-half-of-businesses-tied-up-in-health-and-safety-yellow-tape.html

Specific sectors

Schools

21. A significant proportion of the stories that appear in the media concerning disproportionate management of health and safety relate not to traditional workplaces but to schools, and other local authority run activities (such as leisure centres)¹⁰⁰.
22. There is a clear case for schools being included under health and safety legislation, so that they have the same duties as other employers to protect their employees and others from risks arising from their workplace. However, at the same time they are unlike most other workplaces, and the focus on educating children presents a rather particular setting for health and safety legislation.
23. Care should be taken to ensure that the regulations do not prevent children from being exposed to new or exciting activities that contribute to their education and development. The benefits of such activities should not be disregarded as a result of a narrow focus on minimising risk.
24. Unfortunately there are numerous examples of schools producing excessive paper work or taking unnecessary precautions on health and safety grounds. These include banning school yard football games unless the ball is made of sponge and children not being allowed to take part in a sack race at sports day¹⁰¹. These examples clearly demonstrate that something needs to be done, but the evidence suggests that it is the way that regulations are being interpreted and applied which results in such unreasonable outcomes, rather than the regulations themselves.
25. In September 2011 the House of Commons Science and Technology Committee published the findings of an inquiry into practical experiments in school science lessons and field trips, which came about due to “the perception that health and safety concerns are preventing practical science in schools and fieldwork and field trips”. The inquiry concluded that this perception was largely misconceived, and that there was no credible evidence to support health and safety as the reason for the decline of practicals and work outside the classroom¹⁰².

100 Wright M, Beardwell C, Pennie D, Smith R, Norton Doyle J and Dimopoulos E, *Evidence based evaluation of the scale of disproportionate decisions on risk assessment and management*, 2008. www.hse.gov.uk/research/rrpdf/rr536.pdf

101 www.hse.gov.uk/news/bizarre-bans/

102 www.publications.parliament.uk/pa/cm201012/cmselect/cmsctech/1060/1060i.pdf

26. Following a number of recommendations made by Lord Young, the Department for Education (DfE) has already published revised guidance on health and safety law¹⁰³ and produced a generic consent form to be made available to schools¹⁰⁴. HSE has also issued a high level statement with clear messages to tackle the myths about bureaucracy and prosecution¹⁰⁵.
27. These changes should enable schools to apply health and safety regulations to their particular circumstances more easily. However, examples of disproportionate health and safety are not restricted to schools, they are found in all sectors and some recommendations I set out in the following chapters to improve the way health and safety regulations are applied should benefit all workplaces, including schools.

Emergency Services

28. The application of health and safety regulation to the Emergency Services is another area which has received considerable media attention, and cited as the reason why in some cases they have had to take different courses of action or no action at all¹⁰⁶.
29. The call for evidence received many submissions from the Emergency Services. Most who contributed were largely supportive of the health and safety regulations and found some particularly useful in the event of an incident by providing correct information at an early stage.
30. Some concern remains that the law does not always fully recognise the environment in which they work¹⁰⁷, but given the recommendations that have already been made by Lord Young¹⁰⁸, and the measures taken by the Government^{109,110}, I do not recommend any regulatory changes at this stage, although if further clarification is needed following the recent measures taken, the Government should consider producing an ACoP specifically for the Emergency Services to clarify how the legal requirements apply to them.

103 <http://media.education.gov.uk/assets/files/pdf/d/departmental%20advice%20on%20health%20and%20safety%20for%20schools.pdf>

104 www.education.gov.uk/schools/adminandfinance/healthandsafety/f00191759/departmental-health-and-safety-advice-on-legal-duties-and-powers-for-local-authorities-headteachers-staff-and-governing-bodies

105 School trips and outdoor learning activities – Tackling the health and safety myths. www.hse.gov.uk/services/education/school-trips.pdf

106 See for example www.telegraph.co.uk/news/uknews/1565292/PCSOs-who-stood-by-as-boy-drowned-named.html

107 Emergency Services are exempt from some requirements during the early stages of an incident for example, Work at Height Regulations and Manual Handling Operations Regulations.

108 The report recommended that “Police officers and fire fighters should not be at risk of investigation or prosecution under health and safety legislation when engaged in the course of their duties if they have put themselves at risk as a result of committing a heroic act. The HSE, Association of Chief Police Officers and Crown Prosecution Service should consider further guidance to put this into effect.”

109 Striking the balance between operational and health and safety duties in the Police Service, 2009. www.hse.gov.uk/services/police/duties.pdf

110 Striking the balance between operational and health and safety duties in the Fire and Rescue Service, 2010. www.hse.gov.uk/services/fire/duties.pdf

Placing responsibility on those who create risk

31. I was asked as part of my review to also consider whether the legislation placed responsibility on those who create the risk in the most appropriate way.
32. There was general agreement in the responses I received that the legislation appropriately places responsibility on those who create risk, with clear duties for a range of individuals, including employers (in Sections 2 and 3) and employees (Section 7), as well as those responsible for premises (Section 4) and designers, manufacturers and suppliers (Section 6).
33. Like much of health and safety regulation, however, a number of respondents believe that in practice the duties are not always applied appropriately, particularly in civil litigation where too much onus is placed on employers rather than the actions of employees¹¹¹ (which I will return to later).
34. More could be done to emphasise an employee's responsibilities, perhaps using the health and safety poster that employers are required to display in the workplace (or they can provide employees with the HSE approved leaflet) under the Health and Safety Information for Employees Regulations (HSIER)¹¹².
35. The poster already sets out what employees must do, including their duties to:
 - a. follow the training received when using any work items their employer has given them;
 - b. take reasonable care of their own and other people's health and safety;
 - c. co-operate with their employer on health and safety; and
 - d. tell someone (their employer, supervisor, or health and safety representative) if they think the work or inadequate precautions are putting anyone's health and safety at serious risk.
36. There is very little evidence to suggest employers, in the main, view this regulation as a particular burden. In fact a Health and Safety Laboratory (HSL) survey in 2006¹¹³ found support, with 93 per cent of 194 respondents agreeing with the statement: "The Health and Safety Law information (on the poster/leaflet) will be helpful in my workplace" and 78 per cent of 182 respondents agreeing with the statement: "I am likely to ask my employer to act on the information given in the poster in the future." Some, however, have voiced concerns over the costs this requirement can generate for multi-site businesses.

111 This finding was also made in Vanilla Research's report to the Better Regulation Executive, *Perceptions of the Health and Safety Regime*, 2008. www.bis.gov.uk/files/file47058.pdf

112 See the HSE Impact Assessment, *Health and Safety Information for Employees Regulations (HSIER)*. www.hse.gov.uk/ria/full09/infoemployees.pdf

113 Daniels C, Binch S and Greaves D, *Exploring Awareness of the Health and Safety Law Poster Amongst Employees*. www.hse.gov.uk/research/hsl_pdf/2007/hsl0740.pdf

37. Since the poster was only redesigned in 2009 and employers still have until April 2014 to replace their existing copies with the new version, I am reluctant to suggest further amendments to the text at this stage. I would, however, ask HSE to reconsider the case for making the poster free to download to reduce further the administrative burden on business.
38. Furthermore, I suggest that the health and safety poster could be used as a tool to emphasise, where necessary, that both the employer and employees have responsibilities to ensure a healthy and safe working environment.

The Role of Employees

39. Boosting the responsibility and involvement of employees has the potential to bring about significant improvements in health and safety in the workplace. Evidence clearly shows that when employees are actively engaged in health and safety, workplaces have lower accident rates. One study found that workplaces with safety representatives and joint safety committees record up to 50 per cent fewer injuries than those with no consultation mechanism¹¹⁴.
40. The Safety Representatives and Safety Committees Regulations 1977 and Health and Safety (Consultation with employees) Regulations 1996 set out clear consultation arrangements which need to be made between employers and employees.
41. Employees are in a unique position to provide feedback to employers on how best to manage risks in the workplace¹¹⁵, yet many small firms with no recognised union representation have no formal structures in place for representation and consultation on health and safety matters. One model suggested by some respondents is the Swedish system of Roving Safety Representatives.
42. A pilot project, testing the introduction of roving health and safety advisors in the UK in 2003, found evidence that it could benefit both employers and employees in small businesses¹¹⁶. However, it also has the potential to introduce an additional layer of administration and advice in the regulatory structure that promotes excessive precaution, and is also likely to have significant cost implications. I therefore have decided that this is not an option that should be pursued.

Chapter recommendation:

I recommend exempting from health and safety law those self-employed whose work activities pose no potential risk of harm to others.

114 Reilly B, Paci P and Holl P, *Unions, Safety Committees and Workplace Injuries*, British Journal of Industrial Relations, 1995, 33, 275-288.

115 Shaw N and Turner R, *The Worker Safety Advisor (WSA) pilot*, York Consulting Ltd, Health and Safety Executive Research Report 144, 2003. www.hse.gov.uk/research/RRpdf/RR144.pdf

116 Ibid.

The application of health and safety regulation

5

This chapter covers:

- **Proposals for revoking, amending or clarifying a number of specific regulations which could be achieved without reducing health and safety outcomes.**
- **Support for the principle of 'reasonably practicable' in health and safety legislation.**
- **The role of Approved Codes of Practice in helping businesses to comply with law.**
- **The case for risk assessment and the drivers behind the production of excessive written records.**

1. The call for evidence and the RTC generated a long list of regulations to consider. I have concentrated on those that appear from the evidence to have resulted in unnecessary costs to business, and that could be reviewed without reducing health and safety outcomes.

Clarifying regulatory requirements and removing unnecessary duties

Notification of Tower Cranes Regulations 2010

2. Whilst there are legitimate reasons for some regulations that impose information obligations on employers (as in the case of the HSIER) the Notification of Conventional Tower Cranes Regulations 2010, which requires notification to HSE of certain tower cranes used on construction sites, has little value. The Impact Assessment was not able to quantify any benefits but estimated costs to industry to be £72,000 in the first year and £203,000 over ten years.
3. The regulations were introduced following a series of tower crane accidents, some involving fatalities, but according to HSE's Impact Assessment, it was "not expected that a tower crane register will have direct health and safety benefits, i.e. reductions in injury or ill health" but that the "main benefit of implementing a tower crane register will be an increase in public assurance"¹¹⁷.
4. It is not clear that a statutory requirement to register tower cranes is the most appropriate way to provide public assurance, and the Impact Assessment did not consider any alternative approaches. If it is considered necessary, HSE should explore alternative, non-regulatory ways of assuring the public of the safety of tower cranes.

I therefore recommend that the Notification of Tower Cranes Regulations 2010 and the Notification of Conventional Tower Cranes (Amendment) Regulations 2010 are revoked.

¹¹⁷ Health and Safety Executive, *Impact Assessment of the statutory registration of tower cranes*, 2009. www.ialibrary.bis.gov.uk/uploaded/Impact%20Assessment%20-%20tower%20cranes%20-%20final%20published%20version2.DOC

Health and Safety (First Aid) Regulations 1981

5. A number of organisations have identified the requirement under the Health and Safety (First Aid) Regulations 1981 to have a qualified first-aid person appointed in the workplace as being an unnecessary requirement for low-risk workplaces.
6. In fact the regulations do not insist upon a particular number of first-aid personnel¹¹⁸ and there is a requirement for employers to make provision for first-aid under the Framework Directive 89/391. However, the regulations do currently stipulate that the training and qualifications for the appointed first-aid person must be approved by HSE and this appears to both go beyond the requirements of the Directive and have little justification. So long as they meet a certain standard, allowing businesses to choose training providers should allow them greater flexibility to choose what is right for their workplace, and possibly reduce costs.
7. This should be accompanied by revised guidance clarifying what is suitable for different environments to help businesses adopt measures that are suitable for their workplace, and that explains clearly what the regulations actually require.

I therefore recommend that HSE amends the Health and Safety (First Aid) Regulations 1981 to remove the requirement for HSE to approve the training and qualifications of appointed first-aid personnel.

The Construction (Design and Management) Regulations 2007

8. A number of responses to the call for evidence had concerns about the way that the Construction (Design and Management) Regulations 2007 (CDM 2007) were working in practice.
9. These regulations replaced the Construction (Design and Management) Regulations 1994 and the Construction (Health, Safety and Welfare) Regulations 1996 in April 2007. Guidance on how to comply with the regulations is contained with the ACoP 'Managing Health and Safety in Construction' (L144). CDM 2007 enacts the requirements of the Temporary or Mobile Construction Sites Directive (TMCSA) (89/391/EEC of June 1992 and 92/57/EEC). Some elements of the Directive are implemented by the Work at Height Regulations 2005.

118 The regulations state that the requirement for the employer is simply to have 'such number of suitable persons as is adequate and appropriate in the circumstances for rendering first-aid to his employees'. See www.legislation.gov.uk/ukxi/1981/917/contents/made

10. A recent review of the impact of CDM 2007 reported to the Construction Industry Advisory Committee in July 2011¹¹⁹. It concluded that the regulations were meeting the objectives of the 2007 changes with respect to improving clarity and the management of health and safety within the construction industry¹²⁰. The research did, however, note that there remain concerns, echoed by a number of those who replied to the call for evidence and the RTC, over the effectiveness of the regulations in minimising bureaucracy, bringing about integrated teams and addressing issues of competence.
11. The requirement for competence of all duty holders seems to go further than required by the TCMsD, making explicit the general duties on employers and the self-employed under HSWA, and it appears to have led to some unintended consequences, with a proliferation of accreditation schemes and competency qualifications that are costly for industry, particularly small firms, and which have questionable benefits.
12. The issue of competence, training and proliferation of overlapping accreditation schemes was raised by many during the evidence gathering phase of this review. The Safety Schemes In Procurement (SSIP) Forum¹²¹, launched in 2009, is a welcome initiative. The SSIP Forum aims to “act as an umbrella organisation to facilitate mutual recognition between health and safety pre-qualification schemes wherever it is practicable to do so; actively advise and influence clients about acceptable interpretation and appropriateness of health and safety competence standards in UK schemes; and embrace the core guidance on competence and training in the Approved Code of Practice (ACoP) of the Construction (Design and Management) Regulations 2007.”
13. Although this goes at least some way to addressing concerns about pre-qualification schemes more needs to be done to tackle this and the wider issue of competency. Recent research undertaken on behalf of HSE and ConstructionSkills questions whether current routes to competence are adequate for the sector and whether “our understanding of what makes a construction worker ‘competent’, in the deepest health and safety sense remains sufficiently robust for current day needs”¹²². The research concludes that “the industry’s current understanding of ‘competence’ may warrant extension to develop an ‘industry-specific’ definition and broadening to encompass both situational awareness and the sustaining of appropriate behaviours”. It also suggested that industry should consider establishing a single “Construction Industry Card Registration Authority” as an independent agency.

119 Evaluation of the Construction (Design and Management) Regulations 2007. www.hse.gov.uk/aboutus/meetings/iacs/coniac/130711/m2-2011-2.pdf

120 Frontline Consultants, *Evaluation of Construction (Design and Management) Regulations*, Health and Safety Executive Research Report 845, 2011. www.hse.gov.uk/research/rrpdf/rr845.pdf

121 www.ssip.org.uk/index.html

122 Pye Tait Consulting, *A commentary on routes to competence in the construction sector*, Prepared for the HSE and ConstructionSkills, Health and Safety Executive Research Report 877, 2011. www.hse.gov.uk/research/rrhtm/rr877.htm

14. Some hold the view that the ACoP is over complicated (though some find it helpful) and some question its relevance especially with respect to small employers/ renovation work where most of the improvements on the regulatory framework and revision of guidance needs to be undertaken.

I recommend that HSE should complete the evaluation of the effectiveness of CDM 2007 and the associated ACoP by April 2012 to ensure there is a clearer expression of duties, a reduction of bureaucracy and appropriate guidance for small projects.

15. Further careful analysis and consultation with the industry will be required to decide the best approach. For example, whether amending the regulation, perhaps to amend the requirement 'to take reasonable steps to demonstrate competence' is necessary or if it is possible to achieve the desired outcome by amending the ACoP.
16. It is vital that any changes do not result in a diminution of current standards which may have unintended consequences for effective health and safety regulation of the construction industry.

Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995

17. The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) places a legal duty on employers, self-employed people and people in control of premises to report work-related deaths, major injuries, diseases and dangerous occurrences (near miss accidents).
18. This requirement is designed to both guide the enforcing authorities' activities, and ensure duty holders are aware of health and safety failures and act upon them to improve their health and safety management systems. It also serves to provide data (which is used for published statistics on injuries and ill health and national health and safety targets).
19. However, the extent to which it is achieving these aims appears to be rather limited. The considerable degree of under-reporting is well established, with HSE estimating that only around half of reportable, non-fatal injuries are reported under RIDDOR¹²³.
20. One related concern is that those companies who are responsible and do report are more likely to be visited by enforcing authorities than those who fail to report. The introduction of 'fee for intervention' by HSE¹²⁴ (i.e. the proposal that those who are found not to be compliant with the law during an inspection should be charged for the work that HSE does following the issuing of a notice or other requirement for action to rectify the fault) could potentially further deter businesses from reporting, and HSE should monitor this as part of any review of the fee for intervention policy.

123 www.hse.gov.uk/statistics/overall/hssh1011.pdf

124 www.hse.gov.uk/press/2011/hse-costrecovery.htm

21. Another concern amongst employers is the ambiguity over what to report. Various respondents have raised this in some form – that the categories of reportable accident are unnecessarily complicated, or that it is time consuming for organisations to determine if accidents/incidents should be reported and that this uncertainty creates inconsistency in reporting between organisations. This can be particularly problematic when deciding how to treat incidents involving members of the public.
22. The confusion which leads to inconsistency and under-reporting limits its effectiveness in providing useful statistics or indicators for the enforcing authorities and business, and supports a view that the regulations pose an unnecessary burden.
23. There remains however an underlying case for requiring businesses to report accidents and incidents in the workplace. If a company currently finds itself submitting regular RIDDOR reports, then it implies that business may have health and safety issues which need to be addressed.
24. Yet there is a need to make the requirements less burdensome for business. Lord Young recommended in his review of health and safety to extend to seven days the period before an injury or accident needs to be reported. This recommendation has been fully endorsed by the Government.
25. He also recommended a more fundamental review. Given the difficulties businesses are having with understanding what they are required to report under RIDDOR, I believe that this more fundamental review is needed. The aim should be to reduce the ambiguity over the reporting requirements for businesses, particularly in relation to incidents involving members of the public, and improve the quality of information collected.

I recommend RIDDOR and its associated guidance should be amended by the end of 2013 to provide clarity for businesses on how to comply with the requirements.

26. There are some instances where regulations that were designed to address real risks are being misapplied to cover trivial ones.

Electricity at Work Regulations 1989

27. Electricity represents a genuine risk in the workplace. According to HSE about 1,000 accidents at work involving electric shock or burns are reported to them each year¹²⁵. Around 30 of these are fatal.
28. However, many businesses are currently having their portable appliances, such as kettles and microwaves, tested annually, which is both costly and of questionable value. Furthermore, it has been indicated that businesses are going further and applying testing to all electrical equipment, not just to items that are truly portable.

29. This is an example of a regulation that is being applied too widely and disproportionately. There is no specific requirement in the Electricity of Work Regulations 1989 for portable appliances to be tested annually. HSE's guidance 'Maintaining portable electric equipment in offices and other low-risk environments'¹²⁶, reissued in April 2011, seeks to reinforce this. But more needs to be done because respondents to the call for evidence and the RTC still identified this as an issue of concern, whilst others recognised that the misunderstanding had arisen from the guidance rather than the regulation.

I therefore recommend that HSE further clarifies the requirement for portable appliance testing (including through changes to the wording of regulations if necessary) by April 2012 to stop over-compliance and ensure that these messages reach all appropriate stakeholder groups.

Work at Height Regulations 2005

30. Working at height continues to be the most common cause of occupational fatality, and is the second most common cause of major injuries suffered by employees (16 per cent in 2010/11)¹²⁷. The Work at Height Regulations 2005, which transposed Directive 2001/45/EC, apply to all work at height where there is a risk of a fall liable to cause personal injury. Amongst other things the regulations impose a simple hierarchy for managing work at height and selecting the appropriate access equipment. Duty holders must first avoid work at height where possible, for example by doing the work from ground level; use work equipment or other measures to prevent falls, where work at height cannot be avoided; use work equipment or other measures to minimise the distance and consequences of potential falls, where the risk cannot be eliminated.
31. The previous Construction (Health, Safety and Welfare) Regulations 1996 had a general duty to prevent falls and a requirement to select and use specific types of work equipment to protect against falls when working at or above two metres, the 'two metre rule'. A consultation in 2004 led to the construction industry being divided broadly 50:50 on the necessity to retain the 'two metre rule'. The then HSC took the decision not to include this reference point so that duties to assess the risks of falls from height, at all heights, were consistent across all sectors and that the most appropriate work equipment was selected to control risks in each case. This was considered to be the most effective way of ensuring standards were maintained for work at height at or above two metres and improved for work at height below two metres¹²⁸.

126 www.hse.gov.uk/pubns/indg236.pdf

127 www.hse.gov.uk/statistics/overall/hssh1011.pdf

128 Wearing S, Peebles L, Jefferies D, Lee K and Anjorin E, *First Evaluation of the impact of the work at height regulations: First evaluation of the removal of the 'two metre rule'*, Health and Safety Research Report 521, 2007. www.hse.gov.uk/research/rrpdf/rr521.pdf

32. The evidence supports the removal of the two metre rule, with HSE statistics showing that 2,949 falls from below two metres resulted in a major injury in 2010/11 (compared to 475 major injuries from a fall over two metres)¹²⁹, and the evaluation of the Work at Height Regulations finding that many employers had made changes to the way they managed working at height as a result of the regulations and removal of the two metre rule, including the provision of new access or safety equipment. However, the evidence also suggests that only a small number of managers were able to correctly define working at height and very few actually understood the regulatory requirements¹³⁰. The blanket requirement has also led to some employers complaining that the requirements are onerous and unrealistic.
33. The regulations “apply to all work at height where there is a risk of a fall liable to cause injury” and “a place is ‘at height’ if (unless these regulations are followed) a person could be injured from falling from it, even if it is at or below ground level”. Some respondents to the call for evidence and elsewhere¹³¹ feel this leaves scope for the regulations to apply to work being carried out on the bottom rung of a stepladder or small stool, as someone could be injured, even though the risk may be low.
34. There have also been suggestions that the regulations appear to introduce an element of gold-plating. The Temporary Work at Height Directive (2001/45/EC) refers to ‘rungs’ and ‘stiles’, thus describing a ‘traditional’ ladder, but the Work at Height Regulations 2005 definition of a ladder includes steps and stepladders (stepladders are also used as an example in HSE guidance¹³²). This could be interpreted as going beyond the scope of the original Directive and beyond what some consider practical given that stepladders are the most common piece of equipment used in retailing to gain temporary access at height. Another study argues that the regulations extend the scope of the Directive to including not only temporary workplaces but also permanent workplaces¹³³.
35. The regulations themselves offer a risk-based approach but it is clear that there is a great deal of confusion about how to apply these regulations in practice.

I therefore recommend that the Work at Height Regulations and the associated guidance should be reviewed by April 2013 to ensure that they do not lead to people going beyond what is either proportionate or beyond what the legislation was originally intended to cover.

36. Any changes to the regulations should not result in an increased risk to employees or others.

129 www.hse.gov.uk/statistics/tables/ridkind1.xls

130 Wearing S, Peebles L, Jefferies D, Lee K and Anjorin E, *First Evaluation of the impact of the work at height regulations: First evaluation of the removal of the ‘two metre rule’*, Health and Safety Research Report 521, 2007. www.hse.gov.uk/research/rrpdf/rr521.pdf

131 Taylor C, *Health and Safety: Reducing the Burden*, 2010. www.policyexchange.org.uk/images/publications/pdfs/Health_and_Safety_-_Reducing_the_burden_-_March__10.pdf

132 See Health and Safety Executive, *The Working at Height Regulations 2005 (as amended): a brief guide*, INDG401(rev1) 2007. www.hse.gov.uk/falls/guidance.htm

133 Schaefer S and Young E, *Burdened by Brussels or the UK? Improving the Implementation of EU Directives*, FSB and The Foreign Policy Centre, 2006. www.fsb.org.uk/policy/rpu/ni/images/burdened_by_brussels_or_the_uk%5B1%5D.pdf

So far as is reasonably practicable

37. 'So far as is reasonably practicable' (SFAIRP) is the key principle at the heart of Great Britain's health and safety legislation. The concept (that employers should ensure *so far as is reasonably practicable*, the health, safety and welfare at work of their employees¹³⁴) has a clear purpose. It gives employers flexibility to manage risks in a proportionate way and recognises that hazards cannot be eliminated altogether.
38. Case law has helped define what this means in practice. In the words of Lord Justice Asquith in 1949: "a computation must be made by the owner, in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other; and if it be shown that there is a gross disproportion between them – the risk being insignificant in relation to the sacrifice – the Defendant discharges the onus on them"¹³⁵.
39. There is an overwhelming view from those who responded to the call for evidence that SFAIRP should remain at the centre of health and safety regulation. It ensures a level playing field for businesses to compete with those in other EU countries whose legal systems are different.
40. At the same time there is general confusion over what it means in many quarters, with small businesses in particular (who are less likely to have in-house expert health and safety professionals) finding it difficult to interpret and apply, with the risk that they take health and safety precautions that are either excessive or insufficient.
41. Where it is applied and applied correctly, SFAIRP should, by its very nature, ensure that health and safety risks are managed in a proportionate manner and ensure that unnecessary burdens are minimised but the ambiguity is a significant drawback.

I therefore recommend that HSE should continue to help businesses understand what is reasonably practicable for specific activities where the evidence demonstrates that they need further advice to comply with the law in a proportionate way.

42. As well as publishing guidance (if necessary) HSE could also use its website and its contacts with industry to promote the sharing of practical examples between businesses engaged in similar activities.

134 See Section 2(1) and Section 3(1) of the Health and Safety at Work etc Act 1974. www.legislation.gov.uk/ukpga/1974/37/contents

135 This was the formal legal interpretation of the phrase following the Court of Appeal judgment in *Edwards v National Coal Board* [1949] 1 KB 704. www.hse.gov.uk/risk/theory/alarp1.htm#P21_2414

Risk assessment

43. The Management of Health and Safety at Work Regulations 1999, that implements the Framework Directive, requires duty holders to carry out a risk assessment. This has been flagged up as a cause of concern by many respondents to the call for evidence and the RTC though many also noted that this regulation has significantly improved health and safety. The requirements featured prominently in the Administrative Burdens Measurement Exercise with the report calculating that the average business spends approximately 20 hours and just over £350 a year on the administrative costs of complying with the Management of Health and Safety at Work Regulations 1999¹³⁶.
44. There is no question in my mind, on the basis of the evidence I have seen and heard, that a legal requirement to do a risk assessment is a fundamental step in the appropriate management of risk for any business. It is a vital step that enables them to identify the issues that have the potential to cause harm and that need to be controlled. But the process needs to be conducted in a proportionate way. This appears to be a considerable problem in practice, with many organisations producing or paying for lengthy risk assessments that may not be relevant or help the business manage the real risks.
45. Risk assessment is a key part of a process in managing risk, but it seems as though attention has become too focused on the written record. This has created a perception that health and safety is a bureaucratic exercise divorced from the day to day running of a business.
46. Some regulatory changes, such as those proposed by the Stoiber Group, may help bring about the necessary shift, but there is little evidence to suggest that the regulatory requirements themselves are the cause of the unnecessary steps some businesses are taking.
47. A number of steps have been taken to reduce the burden of written records (such as the on-line risk assessments developed by HSE following recommendations made by Lord Young)¹³⁷, but more can be done to address some of the underlying causes.

136 Better Regulation Executive, *Improving outcomes from Health and Safety*, 2008, A Report to Government, 2008. www.bis.gov.uk/files/file47324.pdf

137 www.hse.gov.uk/risk/assessment.htm

48. One of the major causes is a fear of civil litigation¹³⁸, and this is considered in more detail in Chapter 9. The potential for third parties to encourage unnecessary paperwork is another factor that has already been identified and the new Occupational Safety and Health Consultants Register (OSHCR) should help with this. It is noteworthy that at the end of October 2011 over 2,600 consultants were on the register¹³⁹. But I believe more can be done to encourage businesses to take greater control when buying their services. For example, more awareness of the advice in HSE's leaflet 'Getting specialist help with health and safety'¹⁴⁰ could help them get the advice they actually need.
49. Meanwhile, Approved Codes of Practice can also play an important role.

Approved Codes of Practice

50. There are currently some 53 Approved Codes of Practice (ACoPs) covering a wide range of issues. They can relate to a specific set of regulations (for example the 'Managing health and safety in construction' ACoP that relates to the Construction (Design and Management) Regulations 2007) or bring together the requirements of several regulations for a particular issue or sector (for example the ACoPs on Legionnaires' Disease and 'Preventing accidents to children in agriculture').
51. ACoPs have their origins in the Robens report. This stated that 'No statutory regulation should be made before detailed consideration had been given to whether the objectives might adequately be met by a non-statutory code of practice or standard'¹⁴¹.

138 Wright M, Beardwell C, Pennie D, Smith R, Norton Doyle J and Dimopoulos E, *Evidence based evaluation of the scale of disproportionate decisions on risk assessment and management*, Health and Safety Executive Research Report 536, 2008. www.hse.gov.uk/research/rrpdf/rr536.pdf

139 www.oshcr.org/Page/AboutOSHCR

140 www.hse.gov.uk/pubns/indg420.pdf

141 Lord Robens, *Safety and Health at Work*, Report of the Committee 1970-1972, Cmnd. 5034.

52. ACoPs have a special legal status and each includes a clear statement that explains this¹⁴². They mainly cover areas where some precision is necessary and offer an alternative to prescriptive legislation. ACoPs can provide practical examples of good practice and give advice on how to comply with the law by, for example, providing a guide to what is ‘reasonably practicable’. For example if regulations use words like ‘suitable and sufficient’, an ACoP can illustrate what this requires in particular circumstances¹⁴³. They can be updated more easily (than regulation) and provide flexibility to cope with innovation and technological change without a lowering of standards^{144,145}.
53. The 1994 review of regulation found that “...the limited role of Approved Codes of Practice is not generally appreciated” and committed the then HSC to “re-examine the current portfolio of ACoPs including their coverage, style, content and practical value to industry”. The subsequent consultation on the role of ACoPs in the health and safety system in 1995 concluded that they should still be used in support of legal duties in specific circumstances¹⁴⁶. HSE’s publication ‘Reducing Risks, Protecting People’ sets out in more detail when they are used¹⁴⁷.

Evidence from stakeholders

54. Overall, a wide range of stakeholders supported the principles of ACoPs and saw them as a vital part of the system, forming a key link between the goal setting legislation and guidance, though many also felt there was room for improvement.
55. Some noted that ACoPs are clear and interpreted the legislation in a concise and understandable way whilst others felt that they are too lengthy, complex and technical for many businesses and would benefit from being simplified. There was also the suggestion that the structure of some HSE documents created the potential for confusion between the elements that are regulation, those that have ACoP status, and what is guidance.
56. ACoPs define what a business needs to do to comply with the law so they have the potential to be a valuable resource, particularly for SMEs, to help reduce uncertainty and over-compliance whilst at the same time giving others the flexibility to comply in other ways.

142 For example, the status paragraph from ‘Managing health and safety in construction - Construction (Design and Management) Regulations 2007 – Approved Code of Practice <http://www.hse.gov.uk/pubns/priced/l144.pdf> states: “This Code has been approved by the Health and Safety Commission, with the consent of the Secretary of State. It gives practical advice on how to comply with the law. If you follow the advice you will be doing enough to comply with the law in respect of those specific matters on which the Code gives advice. You may use alternative methods to those set out in the Code in order to comply with the law. However, the Code has a special legal status. If you are prosecuted for breach of health and safety law, and it is proved that you did not follow the relevant provisions of the Code, you will need to show that you have complied with the law in some other way or a Court will find you at fault”.

143 Health and safety regulation... a short guide. www.hse.gov.uk/pubns/hsc13.pdf

144 ACoPs are approved by HSE with the consent of the appropriate Secretary of State. They do not require agreement from Parliament.

145 A guide to health and safety regulation in Great Britain, Health and Safety Executive, 2009. www.hse.gov.uk/pubns/web42.pdf

146 Health and safety regulation... a short guide. www.hse.gov.uk/pubns/hsc13.pdf

147 Reducing Risks, Protecting People – HSE’s decision making process, HSE 2001. ISBN 0-7176-2151-0. www.hse.gov.uk/risk/theory/r2p2.pdf

57. HSE is currently undertaking a major review of its guidance. This is focusing on publications, web guidance and tools that have a generic application across business and will look for opportunities to consolidate guidance. It will ensure this portfolio represents a “practical, proportionate approach to help organisations comply with health and safety law. This will be achieved by ensuring the guidance:
- focuses on compliance and avoids unnecessary duplication;
 - is proportionate to the risk;
 - maintains health and safety standards; and
 - preserves important information and messages that have been developed over many years which currently work for stakeholders”¹⁴⁸.
58. ACoPs are not included in this exercise but a similar risk- and evidence-based review would provide the opportunity to consult with the relevant industry stakeholders to ensure that the material in each ACoP is:
- still required (in this form);
 - gives an unambiguous guide to what the law requires for specific activities;
 - up-to-date and properly reflects changes in technology; and
 - presented in the most appropriate way for the intended audience.
59. Each should also be checked for any ambiguity that can give rise to inconsistency and confusion and consideration given to ensuring that they provide help with defining terms such as ‘reasonably practicable’ in specific situations to reduce the risks of over-compliance.
60. There were a range of comments on the ‘Management of Health and Safety at Work’ ACoP that is published alongside the Management of Health and Safety at Work Regulations (1999) and associated guidance. This key publication would particularly benefit from a comprehensive review with particular attention paid to what information is included and how it is presented (with an SME audience in mind). Some felt that more could be done to emphasise the fact that only the significant findings of a risk assessment have to be recorded to reinforce the statement (in paragraph 13) that “the level of detail in a risk assessment should be proportionate to the risks”¹⁴⁹. This would help address the view expressed by many, that businesses feel they are expected to complete risk assessments for every hazard.

I recommend that HSE should review all its ACoPs to address the issues highlighted in this review. The initial phase of the review should be completed by June 2012 so businesses have certainty about what is planned and when changes can be anticipated.

148 Review of health and safety guidance, HSE Board paper HSE/11/31. www.hse.gov.uk/aboutus/meetings/hseboard/2011/250511/pmayb1131.pdf

149 Management of health and safety at work – Management of Health and Safety at Work Regulations 1999, Approved Code of Practice & guidance, L21. www.hse.gov.uk/pubns/priced/l21.pdf

61. Whilst the evidence suggests that the focus should be on clarifying legal requirements and addressing the way they are applied, rather than cutting back on the regulations themselves, in practice the scope for amending health and safety regulation is limited by the extent to which they implement EU Directives. The next chapter considers the regulations arising from the EU and how these are developed.

Chapter recommendations:

I recommend that:

- the Notification of Tower Cranes Regulations 2010 and the Notification of Conventional Tower Cranes (Amendment) Regulations 2010 are revoked;
- HSE amends the Health and Safety (First Aid) Regulations 1981 to remove the requirement for HSE to approve the training and qualifications of appointed first-aid personnel;
- HSE should complete the evaluation of the effectiveness of the Construction (Design and Management) Regulations 2007 and the associated ACoP by April 2012 to ensure there is a clearer expression of duties, a reduction of bureaucracy and appropriate guidance for small projects;
- the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 and its associated guidance should be amended by the end of 2013 to provide clarity for businesses on how to comply with the requirements;
- HSE further clarifies the requirement for portable appliance testing (including through changes to the wording of the Electricity at Work Regulations 1989 if necessary) by April 2012 to stop over-compliance and ensure that these messages reach all appropriate stakeholder groups;
- the Work at Height Regulations 2005 and the associated guidance should be reviewed by April 2013 to ensure that they do not lead to people going beyond what is either proportionate or beyond what the legislation was originally intended to cover.

I recommend that HSE should continue to help businesses understand what is reasonably practicable for specific activities where the evidence demonstrates that they need further advice to comply with the law in a proportionate way.

I recommend that HSE should review all its ACoPs. The initial phase of the review should be completed by June 2012 so businesses have certainty about what is planned and when changes can be anticipated.

Engaging with the EU

6

This chapter covers:

- **The importance of the EU in driving UK health and safety regulation, where this has been of benefit and where there is room for improvement.**
- **Developments in the EU regulatory making process and suggestions for further improvements to ensure EU health and safety legislation is risk-based and evidence-based.**
- **The role of social dialogue and social partner agreements, and their link to EU law and to risk-based and evidence-based policy making.**
- **The extent to which UK health and safety legislation has enhanced (gold-plated) EU Directives.**

The increasing role of the EU

1. Since changes were introduced under the Single European Act in 1986 to facilitate the free movement of workers within a single market, in particular through the new Article 118a, there has been a significant increase in the volume of health and safety Directives.
2. Although the pace of activity peaked soon after the Single European Act, with the introduction of the 'six-pack', activity has continued and health and safety regulation is now firmly driven by the EU.
3. The extent to which regulation is driven by the EU has been the focus of various studies. According to Open Europe, an independent think-tank based in London and Brussels, 41 of the 65 new health and safety regulations introduced between 1997 and 2009 originated in the EU¹⁵⁰, and EU Directives accounted for a massive 94 per cent of the cumulative cost of UK health and safety regulation introduced between 1998 and 2009^{151, 152}.
4. Elsewhere it has been noted that approximately half of all new regulations that impact upon businesses in the UK originate from the EU¹⁵³, and seven of the ten regulations contributing to the majority of HSE costs, listed in Figure 2, originate from the EU.
5. The UK therefore needs to focus its attention on working with the EU if it is to improve health and safety regulation and ensure it remains appropriate.

Benefits of EU legislation

6. The increasing influence of the EU in health and safety regulation has provided a number of benefits to the UK. The more prescriptive nature of much of EU legislation may have helped small businesses who often welcome greater certainty over what they are required to do¹⁵⁴. Where EU Directives have been implemented, it has provided an opportunity to consolidate a number of previous sets of regulations. Furthermore, the Directives provide a level playing field across Europe, which can help competitiveness, particularly as UK health and safety law was already well established.

150 Taylor C, *Health and Safety: Reducing the burden*, 2010. www.policyexchange.org.uk/images/publications/pdfs/Health_and_Safety_-_Reducing_the_burden_-_March__10.pdf

151 Gaskell S and Persson M, *Still out of Control? Measuring Eleven Years of EU Regulation*, Open Europe, 2010. www.openeurope.org.uk/research/stilloutofcontrol.pdf

152 The British Chambers of Commerce have separately estimated that around £2.5 billion of the £4 billion cumulative cost of health and safety legislation introduced since 1998 originates from the EU, but that once the Control of Asbestos at Work Regulations are excluded, the EU accounts for over 90 per cent of costs. See Taylor C, *Health and Safety: Reducing the burden*, 2010.

153 Schaefer S and Young E, *Burdened by Brussels or the UK? Improving the implementation of EU Directives*, Foreign Policy Centre, 2006. www.fsb.org.uk/policy/rpu/ni/images/burdened_by_brussels_or_the_uk%5B1%5D.pdf

154 Vickers I, Baldock R, Smallbone D, James P and Ekanem I, *Cultural influences on health and safety attitudes and behaviour in small businesses*, Health and Safety Executive Research Report 150, 2003. www.hse.gov.uk/research/rrpdf/rr150.pdf

7. A number of regulations introduced as a result of EU Directives were identified as particularly helpful in the responses I received and discussions I had. The evaluation of the Provision and Use of Work Equipment Regulations, originally introduced as part of the six-pack of regulations, suggests that it led to improved working practices without causing significant financial concerns¹⁵⁵. The evidence suggests another of the six-pack, the Manual Handling Operations Regulations, was also generally well received by duty holders¹⁵⁶, with a case study of one organisation reporting a six per cent reduction in sickness absence and 50 per cent fall in lost time due to accidents directly as a result of measures introduced to comply with the law¹⁵⁷.

Room for improvement in EU legislation

8. However, there does appear to be some scope for improving some of the legislation that originates from the EU as well as the process that leads to its development.
9. Although the EU has driven UK health and safety regulation over the last thirty years, perhaps less important than the extent of regulation originating from the EU is the way in which it is formulated. After all, Michael Connarty, the former Chairman of the EU Scrutiny Committee in the House of Commons is reported as saying that “probably 90 per cent” of all EU laws currently in force in the UK would have existed even in the absence of the EU¹⁵⁸.
10. In this context it is important to consider the extent to which EU regulations are contributing to improved outcomes. A review of Impact Assessments (IAs) for all regulations (not just health and safety) introduced between 1998 and 2010 suggests that there is some room for improvement. Whilst it found an overall benefit/cost ratio of 1.58 from the regulations (demonstrating a positive net outcome from regulation), the ratio for EU regulations was just 1.02 – considerably lower than for UK regulations, at 2.35, and very close to the costs outweighing the benefits¹⁵⁹.

155 Wright M, Marsden S, Hopkins C, Collier D and Turner D, *Evaluation of the implementation of the use of work equipment directive and the amending directive to the use of work equipment directive in the UK*, Health and Safety Executive Research Report 125, 2003. www.hse.gov.uk/research/rrpdf/rr125.pdf

156 Lancaster R, Jacobson Maher C and Alder A, *Second Evaluation of the Manual Handling Operations Regulations (1992) and Guidance*, Health and Safety Executive Research Report 346, 2001. www.hse.gov.uk/research/crr_pdf/2001/crr01346.pdf

157 Tesh KM, Lancaster RJ, Hanson MA, Ritchie PJ, Donnan PT, Graveling RA, *Evaluation of the manual handling regulations 1992 and Guidance Vol 1*, Health and Safety Executive Contract Research Report 152, 1997. www.hse.gov.uk/research/crr_pdf/1997/CRR97152.pdf

158 Speaking on the BBC Politics Show, 1 February 2009.

159 Gaskell S and Persson M, *Still out of Control? Measuring Eleven Years of EU Regulation*, Open Europe, 2010. www.openeurope.org.uk/research/stillofcontrol.pdf, no breakdowns are provided for health and safety regulation specifically.

Specific regulations

11. There are some specific health and safety regulations that have been identified as introducing additional requirements on business with limited health and safety improvements.

Display Screen Equipment

12. The Health and Safety (Display Screen Equipment) Regulations 1992 were introduced as part of the 'six-pack' of regulations that implemented the daughter Directives arising from the Framework Directive 89/391 (the first Directive adopted following the Single European Act).
13. Recent evaluation has found that over 60 per cent of employers found the regulations to be relevant or very relevant to their daily work, and were aware of the main risks associated with display screen equipment, including musculoskeletal disorders, temporary eyestrain and tiredness¹⁶⁰.
14. However, there is also evidence to suggest that some elements of the regulations create burdens on business without any significant benefit to health and safety outcomes. A particular concern is the requirement to provide eye tests, which three quarters of business report providing¹⁶¹, as well as the requirement to contribute to spectacles for employees using Visual Display Units, when despite extensive research no evidence has been found that they can cause disease or permanent damage to eyes¹⁶². With many people now choosing to regularly use personal computers, laptops, video games and phones with e-mail and home entertainment capability outside the workplace, the requirement on business has become even more questionable.
15. A new Directive being considered in Europe which may bring into scope the six classes of computer equipment that are excluded from current regulations, would create even more of a financial burden on the UK retail sector and its 2.8 million employees. The changes could extend eligibility to eye tests, with most staff expected to work on check-outs, and most staff in retail distribution centres using handheld devices.

160 Gervais R, Williamson J, Sanders V and Hopkinson J, *Evaluation of the success in Great Britain of the directive on minimum health and safety requirements for work and display screen equipment*, Health and Safety Research Report 628, 2008. www.hse.gov.uk/research/rrpdf/rr628.pdf

161 Ibid.

162 Health and Safety Executive, *Working with VDUs*, 2011. www.hse.gov.uk/pubns/indg36.pdf

Artificial Optical Radiation

16. The Control of Artificial Optical Radiation at Work Regulations 2010 (AOR) provides another particular example. The regulations implement the Physical Agents (Artificial Optical Radiations) Directive 2006/25/EC and seek to manage the risk of exposure to strong light sources and lasers.
17. In its Board paper, HSE identified that: “this directive has no health and safety benefits in Great Britain”. In the IA¹⁶³, it concluded that the health and safety benefits of introducing new regulations are expected to be limited and even if alternative minimum and best case estimates of the benefits are made, the overall message (that “benefits are expected to be significantly lower than costs under any credible cost scenario”) does not change.
18. The UK Government needs to work with the EU to remove UK businesses from these requirements. However, these findings illustrate the importance of ensuring that regulation is risk-based and evidence-based.

Strengthening the EU regulatory making process

Hazard versus risk-based regulation

19. The UK needs to work with the EU to ensure that risk is used as the basis for regulation. I have already outlined the significant drawbacks with regulating on the basis of hazard and the AOR provides a case in point.
20. Whilst AOR can produce sufficiently high levels of radiation to damage eyes and skin if not managed properly, in practice the hazards are well understood and well managed, at least in Britain. As a result the actual risk of harm is very low, as demonstrated in the statistics which show that there were very few cases of ill health or injury that arose from known exposure to AOR even before the regulations were introduced. Harm from exposure also tends to clear after a few days¹⁶⁴. This explains the limited benefit found in the IA.
21. Part of the problem could be due to the fact that there is confusion between the terms risk and hazard. The whole language around risk assessment is grounded in English, which has a clear linguistic distinction between risk and hazard. That distinction is not the same in other European countries. For example, in the Swedish language there is no expression for hazard. The closest word is ‘fara’ which means danger¹⁶⁵. In a detailed study by Peter Wiedemann and his colleagues for the German Federal Risk Assessment Bureau, more than 80 per cent of German respondents confused the term¹⁶⁶.

163 Health and Safety Executive, *Impact Assessment of the Control of Artificial Optical Radiation at Work Regulations 2010*, 2010. www.hse.gov.uk/ria/full2010/aor-radiation.pdf

164 Ibid.

165 Löfstedt R, *Risk versus Hazard – How to regulate in the 21st Century*, *European Journal of Risk Regulation*, 2011, 2 (2), 149-168.

166 Ulbig E, Hertel RF and Böhl GF, *Evaluation of Communication on the Differences between “Risk” and “Hazard”*, Berlin Federal Institute for Risk Assessment, 2010.

22. Trying to apply the same regulatory requirements to all member states may also have some part to play. The 27 member states are populated with individuals who have different values and ideas. They differ markedly in their concerns about different risk topics and are different in their industrial and economic make-up¹⁶⁷. They also have different views on regulation, with some countries promoting better regulation and others less keen on reducing administrative burdens¹⁶⁸.
23. To strengthen the focus on risk and get around the inherent differences across member states, it is crucial that the EU regulatory making process is informed by hard scientific evidence.

The EU's Better Regulation agenda

24. The EU has introduced a number of measures to improve the way it designs, implements and reviews regulation, to generate more effective and less burdensome regulation, and support growth¹⁶⁹. For example, the Commission announced a reduction target of 25 per cent of the administrative burden to businesses across the EU to be achieved by 2012, calling on member states to set targets of comparable ambition, whilst the Stoiber Group has identified a wide range of measures to reduce unnecessary red tape (I have already touched upon one proposal around risk assessments).
25. The EU Impact Assessment Board (IAB) meanwhile was created in 2006 to further develop a knowledge-based approach to EU decision making and improve the quality of IAs, which themselves were first published in 2003.
26. The IAB in particular has been a key step in ensuring a clear evidence-base for EU legislation, with its opinions on the quality of the IA accompanying the proposal and the IA throughout the decision making process. Its importance is clearly demonstrated by the fact that in 2010 it requested 42 per cent of IAs to be re-submitted due to serious concerns over quality that it believed could and should be resolved¹⁷⁰. The European Court of Auditors meanwhile has found that the quality of Commission IA reports is raised by the Board¹⁷¹.

167 Löfstedt R, *Risk versus Hazard – How to regulate in the 21st Century*, European Journal of Risk Regulation, 2011, 2 (2), 149-168.

168 Löfstedt R, *The 'Plateau-ing' of the European Better Regulation Agenda: An Analysis of Activities Carried out by the Barroso Commission*, Journal of Risk Research, 2007, 10 (4), 423-447.

169 Ibid.

170 The European Commission, *Impact Assessment Board Report for 2010*, Commission Staff Working Paper, SEC(2011) 126, 2011. http://ec.europa.eu/governance/impact/key_docs/docs/sec_2011_126_en.pdf

171 Ibid.

Scope for strengthening the evidence base of regulations further

27. However, the impact of the IAs and the EU IAB is still somewhat limited, and there is scope for strengthening both further. Only a very small proportion of EU legislative proposals are accompanied by IAs. One study has estimated that only 81 EU IAs for binding initiatives (legislation) were published in 2008/09 compared to a total of 2,314 EU binding instruments in the same period. It also concluded that the basis on which it is decided an IA is or is not needed is ambiguous¹⁷². Similar findings have been made by others¹⁷³.
28. Without a robust IA, it is extremely difficult to provide assurance that there is actually a need for regulation, and that the benefits of the proposal outweigh the costs.
29. I therefore believe that all proposed Directives and regulations (and amendments to them) that have a perceived cost to society of more than 100 million Euros should go through an automatic regulatory impact assessment.
30. There also appears to be room for improvement in the IAs themselves^{174,175}, as the Board acknowledge in their 2010 report, in which they emphasise that “there is no room for complacency, as the quality of IA reports first submitted to it remains inconsistent and at times disappointing”¹⁷⁶, and a number of previous studies of EU Impact Assessments have found multiple methodological failures^{177,178}.
31. There is a case for ensuring that those who are responsible for developing the IAs should be different from those who have drafted the Directives or regulations. The EU could also consider introducing into its IAs greater consideration of the impact of proposals on individual member states within the EU. This could help the EU to better realise its ‘subsidiarity principle’ (not to take action unless it is more effective than action taken at the national, regional or local level)¹⁷⁹.

172 Ambler T, Chittenden F, and Miccini A, *Is Regulation Really Good For Us?*, British Chambers of Commerce, 2010 p9-10.

173 Persson M with Booth S and Gaskell S, *Out of Control? Measuring a decade of EU regulation*, Open Europe, 2009. www.openeurope.org.uk/research/outofcontrol.pdf

174 Raedelli C, *What does regulatory impact assessment mean in Europe?* AEI-Brookings, Joint Center for Regulatory Studies, Working paper n.05-022005, Washington DC.

175 Torriti J and Löfstedt R, *The first five years of the EU Impact Assessment system: a risk economics perspective on gaps between rationale and practice*, Journal of Risk Research, ISSN 1466-4461 2011 (In Press).

176 The European Commission, *Impact Assessment Board Report for 2010*, Commission Staff Working Paper, SEC(2011) 126, 2011. http://ec.europa.eu/governance/impact/key_docs/docs/sec_2011_126_en.pdf

177 Renda A, *Impact assessment in the EU: The state of the art and the art of the state*, Brussels: Centre for European Policy Studies, 2006. www.ceps.be/book/impact-assessment-eu-state-art-and-art-state

178 Torriti J, *(Regulatory) Impact assessment in the EU: A tool for better regulation, less regulation, or less bad regulation?* Journal of Risk Research, 2007, 10 (2), 239-276.

179 A study in 2007, by the OECD found that less than 50 percent of EIAs considered a proposal's compatibility with this principle – OECD, *OECD Economic Survey: European Union, 2007*, p107. www.oecd.org/document/8/0,3343,en_2649_34111_38958856_1_1_1_1,00.html

32. Another proposal which I have recommended elsewhere to ensure that IAs remain of the highest quality, is to introduce strict scientific peer review. Such a peer review could be achieved through a stronger, more independent EU Impact Assessment Board, or based on the US Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) 2004¹⁸⁰. Alongside this, a European Parliamentary Committee looking at risk could assist EU regulators and policymakers to regulate on the basis of risk and scientific evidence.
33. These steps would build upon the improvements the EU has already introduced in its regulatory making process, and would help to ensure that regulations are risk-based and evidence-based. To accompany this, there needs to be at the same time a broader discussion across Europe about risk, grounded in science and evidence.
34. However, as I have indicated elsewhere, it is likely to take some time to change the culture around risk and regulation, as well as the regulatory system that currently exists within Europe¹⁸¹.
35. In the meantime, given the considerable influence that the EU has over UK health and safety regulation, it is imperative that the UK focuses its attention towards working more closely with the EU on health and safety issues. The proposed review of health and safety regulation by the EU in 2013 provides a great opportunity to improve the existing stock of regulation. Meanwhile, there should be closer engagement and sharing of best practice to bring about improvements in the processes leading to new regulations.

I therefore recommend that the Government works more closely with the Commission and others, particularly during the planned review in 2013, to ensure that both new and existing EU health and safety legislation is risk-based and evidence-based.

180 Lofstedt R, *The 'Plateau-ing' of the European Better Regulation Agenda: An Analysis of Activities Carried out by the Barroso Commission*, *Journal of Risk Research*, 2007, 10 (4), 423-447.

181 *Ibid.*

Social Dialogue

36. Under the Protocol on Social Policy in the 1992 Maastricht Treaty, organisations representing employers and employees (also known as social partners) were given a formal role in framing EU action in the field of employment and social affairs.
37. The 'social dialogue' (that is the discussions, consultations, negotiations and joint actions) between these partners focuses on promoting consensus building and results in various 'social partner agreements'.
38. The social dialogue and agreements that result have the potential to resolve important social issues, encourage good governance and advance social and economic progress, without the need for legislation. However, at the social partners' request, a social dialogue agreement can become a Directive which member states must implement in the same way as any other Directive, if the Council agrees. So far this has happened once in the health and safety field, relating to the prevention of sharp injuries in the healthcare sector¹⁸².
39. Whilst social dialogue should be encouraged, the process by which they can currently become a Directive is cause for concern. There is a lack of transparency as the European Parliament has no formal role in agreeing them and the Parliamentary Scrutiny Committees have no opportunity to consider them before they are agreed.
40. There is also a lack of scrutiny as the Council are only able to agree or refuse to implement the agreement (not amend the agreement), and the Commission do not undertake impact assessments of the agreements. In my view there should be greater clarity and awareness of the process.

I recommend the Government works with the Commission to introduce greater clarity and raise awareness around social partner agreements, and to ensure that Impact Assessments are produced for agreements before they are adopted.

182 The Council of the European Union Directive 2010/32/EU of May 2010 implementing the Framework Agreement on prevention from sharps injuries in the hospital and healthcare sector.
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:134:0066:0072:EN:PDF>

Flow versus stock of regulation

41. Whilst these changes are primarily focused on improving the way in which regulations are formulated, and may have minimal impact on the current stock of regulations, it is perhaps more important to address the flow of regulations.
42. Whilst the Government has sought to reduce the stock of UK regulation over the last 30 years, and reduce the administrative costs that arise from complying with them, new regulations have continued to appear from EU Directives, and continued to increase the actual and perceived cost of health and safety regulation for UK business.
43. Businesses tend to have coping strategies for old regulation, and it is the flow that causes them the biggest difficulties¹⁸³.
44. That is not to say however that these principles and approaches should not be adopted for the current stock of EU regulations. The proposed review in 2013 provides a perfect opportunity in which to do this.

Gold-plating

45. As part of my considerations, I was asked to consider where in health and safety legislation there were examples of gold-plating: that is the UK enhancing the requirements of EU Directives.
46. Previous studies^{184,185} have looked into the extent of gold-plating and found little hard robust evidence suggesting it is a widespread problem. Lord Davidson carried out probably the most comprehensive review of gold-plating in 2006, and found that it was not as big a problem as often suggested.
47. My review was not principally focused on the issue of gold-plating, and I did not have the time or resource to carry out the analysis that would be necessary to expand upon the studies previously done on this issue, but I found little evidence to significantly challenge the conclusions of these previous studies.
48. There were some instances that I have identified and already touched on but in many ways consideration of whether or not the UK has tended to enhance the requirements of EU Directives detracts from the more fundamental question of whether the underlying Directive is fit for purpose and poses justifiable requirements on business. My findings suggest that in certain cases the answer to this is no, and the consequences can be significant. In such cases, gold-plating is not the main driver of regulatory costs.

183 Institute of Chartered Accountants evidence to, "Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda", House of Commons Regulatory Reform Committee, Fifth Report of Session 2007-08, 2008. www.publications.parliament.uk/pa/cm200708/cmselect/cmdereg/474/474.pdf

184 Davidson Review, Final report, 2006. www.bis.gov.uk/files/file44583.pdf

185 Persson M with Booth S and Gaskell S, *Out of Control? Measuring a decade of EU regulation*, Open Europe, 2009. www.openeurope.org.uk/research/outofcontrol.pdf

49. The commonly held view amongst respondents to the call for evidence and stakeholders I met was that the problem was not so much that the regulations themselves went above and beyond what EU Directives required, but that requirements were enhanced in the way they were being used – that is, gold-plating arose during the application rather than drafting of regulations.
50. As indicated earlier, this can be due to a lack of clarity in what is required by regulations, as in the case of the Electricity at Work and Work at Height Regulations, or due to the structure and complexity of the overall regulatory structure, which the next chapter considers in more detail.

Chapter recommendations:

I recommend that the Government works more closely with the Commission and others, particularly during the planned review in 2013, to ensure that both new and existing EU health and safety legislation is risk-based and evidence-based.

As well as working with the EU on specific regulatory proposals or amendments I recommend that:

- All proposed Directives and regulations (and amendments to them) that have a perceived cost to society of more than 100 million Euros should go through an automatic regulatory impact assessment.
- Those who are responsible for developing the IAs should be different from those who have drafted the Directives or regulations.
- A stronger peer review is introduced through a stronger, more independent EU Impact Assessment Board, or that a separate independent powerful regulatory oversight body is established, modelled on the US Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB). This body should sit within the Secretariat general and would need to be properly resourced.
- A European Parliamentary Committee is established to look at risk-based policy making that could assist EU regulators and policymakers to regulate on the basis of risk and scientific evidence.

I recommend that the UK Government also works with the Commission to introduce greater clarity and raise awareness around social partner agreements, and to ensure that Impact Assessments are produced for agreements before they are adopted as a Directive.

Simplifying the regulatory framework

7

This chapter covers:

- **Business concerns over the volume of regulation, as opposed to any particular set of regulations.**
- **Proposals for sector-specific regulation, and the case for and against consolidation of regulations that apply to all businesses.**

1. Health and safety regulations could be broadly categorised into three sections (See Figure 4): general management regulations that apply to the majority of workplaces, hazard-specific regulations that also apply to most workplaces, and others that apply only to specific, complex activities.
2. The publication 'Health and safety regulation... a short guide' outlines 13 regulations that apply generally to all workplaces, along with a further five that cover particular hazards, such as asbestos and lead¹⁸⁶.
3. This chapter considers the case for simplifying the regulatory framework to make compliance with the law more straightforward. The call for evidence asked whether there were any regulations which it would be helpful to merge together. Many suggestions were offered in written responses or during meetings.

Sector-specific consolidation

4. Although the amount of regulation has reduced over the past few decades (there is "46 per cent less health and safety regulation than 35 years ago and 37 per cent less than just 15 years ago"¹⁸⁷) many stakeholders expressed the view that the sheer number of regulations, as much as any particular regulation, causes problems for businesses. The BCC, for example, has suggested that reducing the volume and associated bureaucracy of regulations would make legislation more effective. It believes that there is an opportunity for the consolidation and simplification of numerous health and safety regulations, which would significantly reduce the compliance burden on businesses. There is no one particular health and safety regulation that causes businesses problems, rather the problems emanate from the multitude of regulations and the lack of clarity surrounding inspections¹⁸⁸.
5. One approach to tackle this concern is to consolidate those regulations that apply only to a particular industry sector. This will provide an opportunity to:
 - ensure the regulations reflect current industry practices;
 - check for any unnecessary gold-plating; and
 - simplify the regulations (for example by reducing any duplication).

186 Health and safety regulation...a short guide. HSC13(rev1) August 2003. www.hse.gov.uk/pubns/hsc13.pdf
See Appendix 1.

187 Veale S, "Better Regulation Yes – De-regulation No": A Trade Union's perspective on the regulatory reform agenda in the UK, *European Journal of Risk Regulation*, 2011, 2 (2), 263-265.

188 British Chambers of Commerce, *Health and Safety – a Risky Business?* 2011.
www.britishchambers.org.uk/zones/policy/press-releases_1/bcc-half-of-businesses-tied-up-in-health-and-safety-yellow-tape.html

Figure 4 Overview of health and safety legislative framework

Health and Safety at Work etc Act 1974		
Management regulations	Hazard specific regulations	Activity or process specific regulations
<p>Generic requirements for good health and safety management.</p> <p>e.g. Management of Health and Safety at Work Regulations (competence, information and training, co-operation with and relationships between duty holders); Workplace (Health, Safety and Welfare) Regulations; first-aid.</p>	<p>Generic application to all work environments.</p> <p>e.g. work at heights, confined spaces, provision and use of work equipment, electricity, manual handling, chemical and biological agents regulations, noise & vibration.</p>	<p>Applies to specific processes or complex activities. Often includes prescriptive or 'permissioning' elements.</p> <p>e.g. asbestos licensing; construction design & management; gas safety and management; offshore safety cases – oil & gas; control of major hazard accidents; pressure systems; pipelines safety; borehole operations; etc.</p>
Approved Codes of Practice, Standards and Guidance etc.		
Information, Advice, Inspection and Enforcement		

Source: adapted from 'Options for HSE regulation of emerging energy technologies', Health and Safety Executive Senior Management Team Paper, December 2010
<http://www.hse.gov.uk/aboutus/meetings/smt/2010/011210/pdecsmt10136.pdf>

Explosives regulations

6. HSE has already proposed consolidating regulations in one sector. In 2010 it began a review of explosives legislation (a fragmented set of requirements with multiple sets of regulations and subsequent amendments) to reduce the regulatory burden on business and regulators through clarification and simplification¹⁸⁹. "The review is expected to:
- assist HSE in meeting its administrative burden reduction target, for example, by incorporating amendments into parent legislation and producing a co-ordinated suite of amended legislation making it simpler for industry to understand and comply;
 - assist in reducing the policy costs of regulation, for example, by eliminating the need for short-term piecemeal amendment of regulations and reducing the need for future major revisions; and
 - assist in reducing the amount of regulation, for example, by reducing the total number of regulations through more effective integration and amalgamation of the numerous Orders and amending Regulations into the parent legislation".

¹⁸⁹ Better regulation review of explosives legislation and the proposed approach to transposing the Traceability Directive. www.hse.gov.uk/aboutus/meetings/hseboard/2009/260809/p-aug-b09-79.pdf

7. The HSE Board paper also noted that stakeholders have identified desired amendments to legislation, particularly Manufacture and Storage of Explosives Regulations 2005 and Control of Explosives Regulations 1991¹⁹⁰.

Other sectors

8. There could be similar benefits from consolidating other sector-specific regulations. Some of the sets that could be treated in this way include mining, genetically modified organisms, biocides and petroleum, though this list isn't intended to be exhaustive and other groupings could also be considered. This approach was suggested by many who responded to the call for evidence.
9. But it is vital that the consolidation process should not in any way reduce the health and safety protection afforded by the current regulations. HSE should work closely with all the key stakeholders during the preparation of the consolidated regulations to ensure this is the case and that businesses are familiar with any proposed changes well in advance of them coming into force.
10. The resulting slimmed down set of regulations will help establish a suite of up-to-date regulation that will help businesses to comply with the legislation, particularly those that are new entrants to the sector.

Mining

11. The consolidation of mining regulations was supported by a number of responses to the call for evidence who noted that the mining legislation should be updated. All the associated ACoPs should also be reviewed as part of the consolidation exercise. During the course of this review four miners died at the Gleision Mine in South Wales following an inrush of water and materials. This was followed shortly after by the death of another miner after a roof fall in North Yorkshire. These tragic events are a reminder of the hazardous nature of this work and although the results of the investigations are not yet available I expect HSE to take account of the findings during the consolidation of the regulations and review of the ACoPs and recognise that this might influence the timing of this work.

Genetically modified organisms

12. The Genetically Modified Organisms (Contained Use) Regulations 2000 and the three subsequent amendments should be consolidated.

¹⁹⁰ The Control of Explosives Regulations 1991 is Home Office legislation (under which HSE has enforcement duties) so is outside the scope of this review. www.hse.gov.uk/explosives/licensing/storage/storage-security.htm

Petroleum

13. The Dangerous Substances and Explosive Atmospheres Regulations 2002 partly repealed the Petroleum (Consolidation) Act 1928 and replaced many pieces of outdated legislation and simplified the regulatory system¹⁹¹. But some petroleum-related regulations remain. It would be helpful if these could also be merged and at the same time any inconsistencies caused by the remnants of the old prescriptive legislation addressed.

Biocides

14. The European Commission has proposed a new Regulation to replace the Biocidal Products Directive (BPD) (98/8/EC). The proposed Regulation¹⁹² would be directly acting on all Member States, requiring no transposition as such but will need national legislation for other issues (e.g. penalties, fees)¹⁹³. So when the new Regulation has been agreed the existing regulations and amendments should be revoked and replaced by one dealing with fees and penalties.

I recommend therefore that HSE undertakes a programme of sector-specific consolidations to be completed by April 2015.

15. This will reduce the number of regulations by about 35 per cent. A list of the regulations proposed for consolidation is in Annex D.
16. This should be given priority and the resources necessary to ensure there are no unintended consequences.

Clarifying the regulations that apply to businesses

17. Some regulations do not impose specific duties on businesses but define 'administrative requirements' or revoke/amend earlier regulations. Many that responded to the call for evidence suggested consolidating these to reduce the overall number of Statutory Instruments (SIs) whilst others called for old legislation to be reviewed or removed.
18. A number of amendments do, in one sense, demonstrate that regulations are kept under review and updated if necessary but they may also contribute to the impression of a complex and piecemeal framework. Merging this type of regulation would, however, take resource and neither reduce costs to businesses nor significantly lower the overall number of SIs.

191 The Dangerous Substances and Explosives Atmospheres Regulations 2002.
www.legislation.gov.uk/ukxi/2002/2776/contents/made

192 <http://register.consilium.europa.eu/pdf/en/11/st05/st05032-re02.en11.pdf>

193 Consolidation and negotiating strategy for a draft European Regulation on biocides, HSE Board, July 2009.
www.hse.gov.uk/aboutus/meetings/hseboard/2009/220709/p-jul-b09-67.pdf

19. But I agree that businesses should be able to see clearly the regulations that apply to them.

I therefore recommend that HSE should redesign the information on its website to distinguish between the regulations that impose specific duties on businesses and those that define administrative requirements or revoke/amend earlier regulations¹⁹⁴.

20. I can also see a case for removing some older regulations (not in scope of the sector-specific consolidation exercise) that are no longer needed to control health and safety risks or that duplicate more recent regulations.

I recommend therefore that the following regulations are revoked following a suitable consultation process:

- **The Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations 1980** and the **Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974**. The 1974 Regulations contain repeals and modifications of the Celluloid and Cinematograph Film Act 1922 whilst the 1980 Regulations allow HSE to grant exemptions from any requirement or prohibition imposed by that Act.
- **The Construction (Head Protection) Regulations 1989**. The duties in the Construction (Head Protection) Regulations 1989 largely replicate regulatory responsibilities set out in the later Personal Protective Equipment at Work Regulations 1992, so separate regulations now seem unnecessary. HSE should revoke these regulations (amending others if necessary) provided that the consultation process does not identify any evidence that their revocation would result in reduced protection within the industry. It is vital that the awareness of this important protection is maintained.

¹⁹⁴ For example DWP's Blue Volumes (that set out the law relating to social security) provides not only links to current SIs but also, in an appendix, a chronological list of SIs not reproduced in the volumes. Entries are either marked as: "R" indicating revoked followed by the SI number which revoked it; "lapsed", where this is appropriate; or "D" which indicates that the SI has been deleted as it contains no substantive provisions other than amendments or revocations. www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/

Consolidation of regulations that apply to all businesses

21. Some have argued that the complexity of the regulations and the apparent duplication of some specific duties create an undue burden, or at least the perception of a burden, and that further simplification is required. It follows that if businesses view the regime as virtually impossible to understand and this leads them to ‘contract out’ the responsibility for health and safety to third parties, then the issue will be seen as an administrative burden.
22. Another approach to reducing the stock of existing legislation is to undertake a further consolidation of the core set of (non-sector-specific) regulations that apply to the majority of workplaces. Many respondents offered a wide range of possible regulations that could be merged.
23. There are four broad options that could be considered. These are to:
 - a. consolidate all the regulations into one overarching regulation¹⁹⁵;
 - b. bring together those regulations that contain common provisions (for example the requirement to do a risk assessment or provide information and training);
 - c. consolidate the regulations into a smaller number according to theme (for example those that relate to general management issues or by hazard); and
 - d. merge sets of regulations that cover related topics.
24. The stakeholder responses to the call for evidence gave a mixed picture on this issue with a number commenting that they would not be in favour of a major consolidation. There would certainly be one-off familiarisation costs for those businesses that chose to read the new regulations (though this might have less impact on SMEs who tend to rely on guidance rather than the regulations themselves) and there would also be a risk that combining a large number of regulations may lead some businesses to consider duties that don’t apply to them. Furthermore, any consolidation would take considerable time and resources to ensure that there were no unintended consequences.
25. One potentially significant benefit of consolidating the regulations into a few sets, linked by common themes or principles, is that the streamlined sets of regulations would help businesses, particularly new ones, understand their duties better and reduce apparent duplication by having all related requirements (such as the risk assessment duties) in one place. Merging sets of related regulations (such as the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER) with the Provision and Use of Work Equipment Regulations 1998 (PUWER) may help some, but would not reduce the number of SIs to any significant extent, would still take time and duty holders would still incur familiarisation costs.

¹⁹⁵ Lord Young’s report ‘Common Sense, Common Safety’ recommended that ‘The current raft of health and safety regulations should be consolidated into a single set of accessible regulations’.
www.number10.gov.uk/wp-content/uploads/402906_CommonSense_acc.pdf

26. Any consolidation would not reduce health and safety outcomes because there would be no change in the duties. Businesses already complying with health and safety law should be reassured that the changes will not place additional costs on them and that the exercise will not require them to do anything different.
27. There is little evidence on which approach, if any, would deliver the desired outcome. One relatively recent example is the Regulatory Reform (Fire Safety) Order 2005, which consolidated a large number of pieces of legislation on general fire safety, but it is not necessarily comparable because the Order also introduced a risk-based approach. Other consolidation exercises are underway or planned elsewhere. For example the Medicines and Healthcare products Regulatory Agency is undertaking a project to consolidate and review UK medicines legislation¹⁹⁶ and the Government has recently announced a streamlining of food safety regulations with remaining legislation being consolidated¹⁹⁷. So lessons can be learnt from these exercises in due course. The experiences of other countries (such as Ireland¹⁹⁸) could also be considered.
28. The clear priority is to progress the sector-specific consolidation in parallel with working with the EU to ensure a risk-based approach is taken to the review of occupational safety and health regulations.

In the meantime I recommend that HSE commissions research by January 2012 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.

29. But any changes should not impose excessive costs on businesses or reduce the protections offered by the legislation.

196 www.mhra.gov.uk/Howweregulate/Medicines/Overviewofmedicineslegislationandguidance/ProjecttoconsolidateandreviewUKmedicineslegislation/index.htm

197 www.culture.gov.uk/news/media_releases/8465.aspx

198 Ireland's Safety, Health and Welfare Act 2005 includes risk assessment requirements and the Safety, Health and Welfare at Work (General Application) Regulations 2007, made under it implement the workplace, use of work equipment, personal protective equipment, manual handling, display screen equipment, work at height, noise, vibration, pregnant workers, young workers and explosive atmospheres directives. Separate regulations include the Safety, Health and Welfare at Work (Construction) Regulations 2006 and the Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations. There is a separate Chemicals Act. www.hsa.ie/eng/Publications_and_Forms/Publications/Safety_and_Health_Management/Short_Guide_to_SHWWA_2005.pdf

Chapter recommendations:

I recommend that HSE undertakes a programme of sector-specific consolidations.

I recommend that HSE should redesign the information on its website to distinguish between the regulations that impose specific duties on businesses and those that define administrative requirements or revoke/amend earlier regulations.

I recommend that the following regulations are revoked following a suitable consultation process:

- the Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations 1980 and the Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974;
- the Construction (Head Protection) Regulations 1989.

I recommend that HSE commissions research 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.

The enforcement of health and safety regulations

8

This chapter covers:

- **The current division of responsibility between HSE and local authorities for enforcement of health and safety regulation.**
- **Improvements made in the way the two enforcing authorities work together to reduce work-related injuries and ill health.**
- **Concerns over inconsistency in enforcement, the regulatory barriers to targeting the most risky workplaces, and proposals to address these.**
- **Scope for speeding-up the prosecution process.**

Enforcement

1. A large number of responses and comments I received related to the issue of enforcement of the regulations. A wide-ranging consideration of the extent and nature of enforcement activity is largely beyond the scope of this review, and has already been considered in some detail previously by Sir Philip Hampton¹⁹⁹.
2. The evidence suggests that businesses can benefit from and value inspections, with SMEs welcoming the constructive, reasonable advice and guidance that it can provide to help them improve health and safety in the workplace²⁰⁰. Nearly nine out of ten employers who have had contact with HSE see it as a 'helpful' organisation²⁰¹. The evidence also suggests enforcement action can be particularly helpful when the regulations themselves are broadly defined and allow for discretion²⁰², as is the case with health and safety regulation, and that inspection is an effective means of securing employer compliance and, if targeted at key groups, can bring about significant improvements in health and safety performance^{203,204}.
3. However, one issue that does require further consideration and which falls within the scope of health and safety regulation is the division of responsibility in enforcement between HSE and local authorities.

Health and Safety (Enforcing Authority) Regulations 1998

4. Although HSE is the national regulatory body responsible for promoting better health and safety at work in Great Britain and sets the parameters for enforcement activity, enforcement and inspection activity is actually split between the Health and Safety Executive and local authorities.
5. The division of responsibility is set out in the Health and Safety (Enforcing Authority) Regulations²⁰⁵, which has its roots in the Acts which preceded the HSWA²⁰⁶. Figure 5 presents some examples of the types of premises enforced by HSE and local authorities. Broadly speaking, HSE is responsible for traditionally higher-risk workplaces, whilst local authorities are responsible for less-risky premises.

199 Hampton P, *Reducing Administrative Burdens: effective inspection and enforcement*, 2005. www.bis.gov.uk/files/file22988.pdf

200 Vanilla Research, *Perceptions of the Health and Safety Regime*, Summary Report to the Better Regulation Executive, 2008. www.bis.gov.uk/files/file47058.pdf

201 www.hse.gov.uk/risk/attitudes.htm

202 Amodu T, *The determinants of compliance with laws and regulations with special reference to health and safety*, Health and Safety Executive Research Report 638, 2008. www.hse.gov.uk/research/rrpdf/rr638.pdf

203 Hillage J, Tyers C, Davis S and Guppy A, *The impact of the HSC/E: A review*, Institute of Employment Studies for Health and Safety Executive, 2001. www.hse.gov.uk/research/crr_pdf/2001/crr01385.pdf

204 For a good discussion of the regulation of workplace risks see Walters D et al, *Regulating Workplace Risks*, Edward Elgar, ISBN9780857931641, 2011.

205 www.legislation.gov.uk/ukSI/1998/494/contents/made

206 Before 1974, local authorities enforced the Offices, Shops and Railway Premises Act 1963 and the HSE's predecessors enforced the Factories Act 1961.

6. Although there can be significant risks in some local authority inspected workplaces, the level of fatal and non-fatal injuries is generally lower. There also does not appear to be a higher risk of occupational ill health, when compared with HSE inspected premises²⁰⁷.
7. Due to the growth of the service sector and decline of industrial sectors, the role of local authorities has increased over time²⁰⁸ and nowadays they inspect the majority (over 1 million²⁰⁹) of workplaces.
8. Despite this, local authority Environmental Health Officers combine their health and safety inspections with other responsibilities, such as food safety, environmental protection, and waste management, developing their knowledge and understanding of health and safety as part of a broader qualification in environmental health, and therefore only spend some of their time on health and safety enforcement.

Figure 5 Enforcing authority for different premises

Health and Safety Executive	Local Authorities
Factories	Shops
Forestry work	Office activities
Mines and quarries	Banks
Agricultural activities	Hotels
Building and construction sites	Hairdressers and beauty parlours
Chemical plants	Skin piercing and tattooing
Offshore installations	Nightclubs and restaurants
Dock premises	Street carnivals and parties
Fairgrounds	Timber merchants

Source: Health and Safety (Enforcing Authority) Regulations 1998: A-Z guide to allocation. www.hse.gov.uk/foi/internalops/fod/oc/100-199/124_11.pdf

207 Better Regulation Executive, *Improving outcomes from Health and Safety*, 2008, A Report to Government, 2008. www.bis.gov.uk/files/file47324.pdf

208 Ibid.

209 House of Commons Work and Pensions Select Committee, *The role of the Health and Safety Commission and the Health and Safety Executive in regulating workplace health and safety: third report of the session*, 2008. www.publications.parliament.uk/pa/cm200708/cmselect/cmworpen/246/246i.pdf

Successful joint-working

9. There are various examples²¹⁰ of the two bodies co-ordinating resources and information and working together to reduce work-related fatalities, injuries and cases of ill health. This happens through liaison groups and regional forums such as HELA²¹¹ and the HSE/Local Government Panel, underpinned by a Joint Statement of Commitment²¹² and Section 18 Standard²¹³ outlining what Enforcing Authorities must do to meet their duties under Section 18 of the HSWA²¹⁴.
10. Evaluation of the HSE/Local Authority partnership formally established in 2004 found it to be delivering real and tangible benefits through joint working, with a step change in the way HSE and local authorities work together²¹⁵.
11. Steps have been taken to improve consistency across local authorities, including through the development of the Regulators' Development Needs Analysis tool and the Guidance for Regulators Information Point, which aim to help inspectors identify and address their development needs and provide consistent standards and approaches. The Primary Authority Scheme²¹⁶, which has been introduced to provide more consistent regulatory enforcement for businesses operating in more than one local authority area, has gained widespread support, with over 886 partnerships covering 253 businesses and 56 local authorities. The Government has recently consulted on strengthening the scheme²¹⁷.
12. Meanwhile, considerable effort has been taken to better target enforcement towards the greatest risks, including for example through joint inspections and the Flexible Warrant Scheme²¹⁸, as well as the Government's recent announcement to preserve inspection for higher-risk premises^{219,220}.

210 See for example LACORS Partnership Annual Report 2008/09. www.hse.gov.uk/lau/pdfs/lacors08ar.pdf

211 The Health and Safety Executive/Local Authority Enforcement Liaison Committee (HELA) was set up in 1975 to provide effective liaison between the Health and Safety Executive (HSE) and local authorities (LAs), and ensure that health and safety legislation is enforced in a consistent way among local authorities, and between local authorities and HSE. See www.hse.gov.uk/lau/hela/ for more details.

212 Agreed in June 2009, it sets out a commitment to improved standards of partnership working to prevent the death, injury and ill health of those at work and those affected by work activities. www.hse.gov.uk/lau/statement-of-commitment-4page-09.pdf

213 www.hse.gov.uk/section18/s18.pdf

214 Section 18 of the Health and Safety at Work etc Act puts a duty on the Health and Safety Executive and local authorities to make adequate arrangements for enforcement.

215 PA Consulting Group, *Local Authorities and HSE in Partnership: An evaluation*, 2008. www.hse.gov.uk/research/rrpdf/rr680.pdf

216 The Primary Authority Scheme allows business to establish a partnership with a single local authority (the primary authority) who then liaise with other relevant councils to ensure they are consistent in terms of inspection and enforcement action. It was established under the Regulatory Enforcement and Sanctions Act 2008.

217 Department for Business, Innovation and Skills, *The Future of the Local Better Regulation Office and extending the benefits of the Primary Authority Scheme: A Consultation*, 2011. www.bis.gov.uk/assets/biscore/better-regulation/docs/ff/11-985-future-local-better-regulation-office-consultation.pdf

218 This allows local authorities to address risks they identify when on HSE premises, so that they are done so more quickly and efficiently.

219 Announced in *Good Health and Safety, Good for Everyone*, Department for Work and Pensions, 2011. www.dwp.gov.uk/docs/good-health-and-safety.pdf

220 *Advice/Guidance to Local Authorities on Priority Planning – LAC 67/2*, Health and Safety Executive/Local Authorities Enforcement Liaison Committee (HELA). www.hse.gov.uk/lau/lacs/67-2.htm

Addressing underlying problems

13. Despite the significant improvements these initiatives have brought about, they have largely been contained to finding ways of working around the current division of responsibility set out in the regulations, rather than revising them, and as a result there remain persistent and inherent problems.
14. First, having more than 380 local authorities responsible for health and safety, each with different resources, internal pressures, competing local concerns and priorities, and responsibilities which extend beyond health and safety, will inevitably lead to some variation in enforcement, and recent evaluation has confirmed that there continues to be real inconsistency in implementation of health and safety across local authorities, with some local authorities putting it below other priorities, such as food safety²²¹. Schemes such as the Primary Authority Scheme can only go so far in addressing this.
15. A second consequence of the current regulatory arrangements is that each enforcing authority can only consider the subset of workplaces that rests within their area of control, generating an artificial barrier to the most efficient targeting of enforcement activity across the board. Premises that are considered relatively low risk amongst the workplaces overseen by HSE (and which are therefore not inspected) may nevertheless be riskier than many of those under local authority control. This will result in too many inspections of relatively low-risk workplaces.
16. This so-called ‘twin-peaks’ problem was analysed in some detail by the Better Regulation Executive, who summarized some of its key problems, including how it “limits the ability of regulators to target overall inspection resource on workplaces where the risk of injury and ill health is highest” and “leads to inconsistency in inspection activity across the country as a whole”. It found that many individuals supported a more fundamental review of the regulations and concluded that there was a strong case for doing so²²².
17. The regulations, and the twin-peaks effect they lead to, have also been identified by some respondents to the call for evidence, and to the House of Commons Scottish Affairs Committee inquiry into health and safety in Scotland²²³ as an obstacle to a proportionate and efficient regulatory enforcement regime. Meanwhile the then HSC itself acknowledged in its Strategy to 2010 and beyond that there was no lasting logic to the division of enforcement responsibility between HSE and Local Authorities²²⁴ and evaluation of the partnership found that the regulations were unhelpful in supporting partnership arrangements²²⁵.

221 PA Consulting Group, *Local Authorities and HSE in partnership*, Health and Safety Executive Research Report 680, 2008. www.hse.gov.uk/research/rrpdf/rr680.pdf

222 Better Regulation Executive, *Improving outcomes from Health and Safety*, A Report to Government, 2008. www.bis.gov.uk/files/file47324.pdf

223 House of Commons Scottish Affairs Committee, *Health and Safety in Scotland Written Evidence*, 2011. www.parliament.uk/business/committees/committees-a-z/commons-select/scottish-affairs-committee/inquiries/health-and-safety-in-scotland/

224 Health and Safety Commission, *A strategy for workplace health and safety in Great Britain to 2010 and beyond*, 2004. www.hse.gov.uk/consult/condocs/strategycd.pdf

225 PA Consulting Group, *Local Authorities and HSE in partnership*, Health and Safety Executive Research Report 680, 2008. www.hse.gov.uk/research/rrpdf/rr680.pdf

18. The problem is accentuated by the fact that local authorities undertake significantly more inspections than HSE²²⁶ – local authority enforcement officers currently carry out approximately 196,000 visits a year compared to around 33,000 proactive visits conducted by HSE²²⁷ – although, as already indicated, local authority inspectors tend to spend only part of their time on health and safety, combining it with their other responsibilities. It will be further exacerbated by the recent announcement to reduce proactive inspections.

The case for a single body directing all enforcement

19. The focus of HSE and contributors above has generally been directed towards opportunities for enhancing the role of local authorities to address these problems. However, to ensure that enforcement is consistent and targeted on risk, there needs to be one single body directing health and safety enforcement across all workplaces. The only way to achieve this would be to pass responsibility to HSE.
20. Whilst this may risk losing the local knowledge as well as the synergies with other enforcement responsibilities that local authorities can currently exploit, it has at the same time the advantage of putting responsibility in the hands of a single organisation dedicated to health and safety, and ensuring that enforcement is not influenced by the range of other concerns that local authorities have, which in turn contributes to the continued variation in enforcement across the different local authorities.
21. This could also help provide greater assurance and clarity to businesses, many of whom we know are unable to make a distinction between different regulators, and use the term health and safety to cover a wide range of regulations for which HSE is not responsible, including food hygiene and trading standards²²⁸.

I recommend that legislation is changed to give HSE the authority to direct all local authority health and safety inspection and enforcement activity, in order to ensure that it is consistent and targeted towards the most risky workplaces.

In addition, HSE should also be the Primary Authority for multi-site national organisations.

226 Better Regulation Executive, *Improving outcomes from Health and Safety*, A Report to Government, 2008. www.bis.gov.uk/files/file47324.pdf

227 DWP's plans for reform 'Good Health and Safety, Good for Everyone'. www.dwp.gov.uk/docs/good-health-and-safety.pdf

228 Better Regulation Executive, *Improving Outcomes from Health and Safety*, 2008. www.bis.gov.uk/files/file47324.pdf

Speeding up the Prosecution Process

22. At the same time, there remains scope for HSE to improve its enforcement of health and safety regulation, particularly when bringing prosecutions. Prosecutions are an important deterrent and driver of compliance, and the statistics do not indicate that the level of prosecutions is particularly excessive. Indeed, according to latest statistics, the number of prosecutions by HSE was relatively low at 1,090 in 2008/09, falling from just under 2,000 in 2001/02.
23. The majority of prosecutions are dealt with quickly and efficiently, but I have heard of a number of examples in the course of my review where HSE enforcement action has taken place several years after the incident, in some cases five or six years afterwards.
24. I recognise that some investigations are very technical. In particular, those involving a fatality are complex and involve others such as the police and the Crown Prosecution Service. I welcome the recent changes to the Work-Related Death Protocol²²⁹ to allow more health and safety prosecutions to take place before Inquest which should speed up the process in England and Wales. HSE should build on this and work with others to seek to reduce the time it takes to prosecute following an incident to avoid delays that cause considerable problems for employers, who need to recover evidence and recall events from many years ago, and for victims and their families who have to wait too long for a resolution.

I therefore recommend that all those involved should work together with the aim of commencing health and safety prosecutions within three years of an incident occurring.

25. Whilst these changes should improve the efficiency of criminal prosecutions, it will not address the much bigger issue of the litigation system. Compared to around only 1,000 criminal prosecutions a year, statistics from the Compensation Recovery Unit show that employer liability claims in 2009/10 were over 78,000 (albeit from just under 220,000 in 2000/01), and it is the prospect and incidence of civil compensation, rather than prosecution by HSE, that most employers have concerns about. The fear of litigation was found to be a key cause of disproportionate health and safety management in a recent HSE research report²³⁰.
26. The next chapter therefore considers the role of civil litigation, the fear of a compensation culture and the extent to which they link with health and safety regulation.

229 The protocol sets out the principles for effective liaison between a number of parties in relation to work-related deaths in England and Wales. www.hse.gov.uk/pubns/wrdp1.pdf

230 Wright M, Beardwell C, Pennie D, Smith R, Norton Doyle J and Dimopoulos E, *Evidence based evaluation of the scale of disproportionate decisions on risk assessment and management*, Health and Safety Executive Research Report 536, 2008. www.hse.gov.uk/research/rrpdf/rr536.pdf

Chapter recommendations:

I recommend that legislation is changed to give HSE the authority to direct all local authority health and safety inspection and enforcement activity, in order to ensure that it is consistent and targeted towards the most risky workplaces.

In addition, HSE should also be the Primary Authority for multi-site national organisations.

I recommend that all those involved should work together with the aim of commencing health and safety prosecutions within three years of an incident occurring.

The wider perspective

9

This chapter covers:

- **The role of compensation (and the fear of compensation) in driving over-compliance with health and safety regulations and steps that are already being taken to address this.**
- **The link between the civil justice system and health and safety regulations, with a particular focus on the role of pre-disclosure lists and strict liability.**
- **Consideration of the way in which health and safety legislation and risk is viewed by society, and the establishment of bodies to support risk-based policy making.**

The role of health and safety law in the civil justice system

The extent and perception of compensation

1. The ‘compensation culture’ (or the perception of it) in the UK has been the subject of several reviews over the last few years^{231,232}, but no evidence has been presented for its existence. For example, the House of Lords Select Committee on Economic Affairs found no clear evidence that a compensation culture has developed, and concluded that the notion appears to be based more on widely reported anecdotes than extensive analysis.
2. Despite this, a wide range of stakeholders through written submissions and during various meetings presented a different view. For example the experience of members of one trade body was that “the appetite for and expectation of financial recompense for any type of perceived harm has increased considerably in recent years,” with one company reporting that “annual numbers of claims have consistently increased such that in 2010 they received three times as many as they did in 2004 (i.e. an ‘average’ increase of 50 per cent a year)”. It noted, in contrast, that there is a long term trend of reducing injury rates in their industry.
3. The evidence does seem to suggest the belief in a compensation culture is still having a significant impact on the behaviour and outlook of business, with the Better Regulation Task Force²³³ concluding that, although it is a myth, the perception of its existence, driven by media coverage, has a significant impact on the behaviour of both public and private employers²³⁴.
4. In 2008, Lord Justice Jackson was commissioned to review the rules and principles governing the costs of civil litigation in England and Wales²³⁵. His report made a range of recommendations for reducing costs in the civil justice system, for example a reform of conditional fee agreements (CFAs)²³⁶.

231 See for example House of Commons Constitutional Affairs Committee, *Compensation culture*, Third Report of Session 2005–06, 2006. www.publications.parliament.uk/pa/cm200506/cmselect/cmconst/754/754i.pdf

232 House of Lords Select Committee on Economic Affairs, *Government Policy on the Management of Risk*, 5th report of Session 2005–2006. www.publications.parliament.uk/pa/ld200506/ldselect/ldeconaf/183/18302.htm

233 Better Regulation Task Force, *Better Routes to Redress*, 2004

234 Better Regulation Executive, *Improving Outcomes from Health and Safety*, 2008. www.bis.gov.uk/files/file47324.pdf

235 Lord Justice Jackson, *Review of Civil Litigation Costs: Final Report*, 2010. www.judiciary.gov.uk/publications-and-reports/reports/civil/review-of-civil-litigation-costs/civil-litigation-costs-review-reports

236 Proposals for Reform of Civil Litigation Funding and Costs in England and Wales, Nov 2010. www.justice.gov.uk/consultations/docs/jackson-consultation-paper.pdf

5. Meanwhile, Lord Young's report noted that "the advent of 'no win, no fee' claims and the all-pervasive advertising by claims management companies have significantly added to the belief that there is a nationwide compensation culture"²³⁷. It made a number of recommendations, including introducing the recommendations in Lord Justice Jackson's review of civil litigation costs.

Health and safety regulation and the civil justice system

6. The issues relating to compensation raised by Lord Justice Jackson and Lord Young are unquestionably important and were raised by a number of respondents to my review. But there is considerable work already underway to address these concerns, and many of the issues fall outside the scope of my review since the process of compensation is covered by civil law whereas health and safety regulation is criminal law.
7. Nonetheless there are links between the two systems. Although the general duties in the HSWA are not enforceable under civil law the Act does state that "Breach of a duty imposed by health and safety regulations... shall so far as it causes damage, be actionable, except in so far as the regulations provide otherwise"²³⁸. Redgrave's 'Health and Safety' notes that few regulations exclude civil liability and so "as a result the regulations made under HSWA 1974 occupy central stage in civil litigation concerned with work-related injuries and death; their importance has increased since the 1990s, with the wave of regulations introduced to implement the general duties laid down by European Directives"²³⁹.

237 Lord Young of Graffham, *Common Sense, Common Safety*, 2010. www.number10.gov.uk/wp-content/uploads/402906_CommonSense_acc.pdf
Compensation culture recommendations were to:

- Introduce a simplified claims procedure for personal injury claims similar to that for road traffic accidents under £10,000 on a fixed costs basis. Explore the possibility of extending the framework of such a scheme to cover low value medical negligence claims.
- Examine the option of extending the upper limit for road traffic accident personal injury claims to £25,000.
- Introduce the recommendations in Lord Justice Jackson's review of civil litigation costs.
- Restrict the operation of referral agencies and personal injury lawyers and control the volume and type of advertising.
- Clarify (through legislation if necessary) that people will not be held liable for any consequences due to well-intentioned voluntary acts on their part.

238 See section 47 (2) Health and Safety at Work etc. Act 1974. www.legislation.gov.uk/ukpga/1974/37/contents

239 Ford M and Clarke J, *Redgrave's Health and Safety*, 6th edition, 2008, LexisNexis, ISBN 978-1-4057-3450-9.

8. Furthermore an amendment to the Management of Health and Safety at Work Regulations 1999 (and to the Fire Precautions (Workplace) Regulations 1997) in 2003²⁴⁰ introduced amendments to allow employees to claim damages from their employer in a civil action where they suffer injury or illness as a result of the employer breaching either of those Regulations. HSE funded a survey to review whether there had been an increase in claims for damages arising from occupational injury or ill health for breaches of the 1999 Regulations, and, if so, the extent of that increase; and whether the change in the law has led to new claims, or whether claimants are adding claims for damages to existing heads of claim²⁴¹. From the limited available evidence the authors concluded that there had been no significant increase in the number of civil liability claims arising from the introduction of the Regulations. They did note, however, that the review was probably carried out too early to see any emerging trend and that it might be helpful to repeat the investigation in another five years (i.e. in early 2010).
9. There is also evidence to suggest that employers do not make a distinction between health and safety regulation and civil law. So what happens within the civil justice system can affect the perceived burden of regulation. Court judgements that appear inconsistent can add to the confusion over the scope of health and safety law and lead to unnecessary over-compliance²⁴².
10. So there are a couple of areas where health and safety regulations interact with the civil justice system, and where further attention is need. These are:
 - The use of pre-action protocols;
 - The effect of strict liability requirements in some regulations.

²⁴⁰ The Management of Health and Safety at Work and Fire Precautions (Workplace) (Amendment) Regulations 2003. www.legislation.gov.uk/ukSI/2003/2457/contents/made

²⁴¹ Neal A and Wright F, *A survey of changes in the volume and composition of claims for damages for occupational injury or ill health resulting from the Management of Health and Safety at Work and Fire Precautions (Workplace) (Amendment) Regulations 2003*, Health and Safety Executive Research Report 593, 2007. www.hse.gov.uk/research/rrhtm/rr593.htm

²⁴² Risk and Regulation Advisory Council, *Health and Safety in small organisations*, 2009. www.bis.gov.uk/files/file52340.pdf

Pre-action protocols

11. One specific concern that was raised by a number of those who gave evidence was the influence of pre-action protocols (also known as the ‘Woolf lists’), which arose from Lord Woolf’s final Access to Justice report²⁴³.
12. The original intention of the pre-action protocols was to support early settlements through better and earlier exchanges of information between parties. The pre-action protocol for personal injury claims seeks to achieve this by stating that if the defendant denies liability, they should enclose with their letter of reply, any documents in their possession which are material to the issues between the parties, and which are likely to be ordered for disclosure by the court. A “specimen, but non-exhaustive, list of documents” is provided in an annex to the pre-action protocol. This standard disclosure list for the personal injury claims protocol lists many documents relating to 13 different sets of regulations for workplace claims²⁴⁴.
13. The need for individuals to have effective access to redress through the compensation system is not disputed and the original intention of the protocols is welcome. However, there are indications that the lists are being used inappropriately and causing considerable and unnecessary burden to business. This was identified previously by the Risk and Regulation Advisory Council (RRAC) report that noted the protocols are putting unnecessary burdens on small organisations because they are leading health and safety consultants to advise them to keep very large numbers of records in case they are taken to court²⁴⁵. This finding was echoed in evidence submitted to this review.
14. It was reported that some claims handlers are using the protocols as definitive lists and insurance companies will not contest a claim if all the paperwork is not in place, on the basis that it cannot be defended. This could be one reason why employers feel the need to complete risk assessments for every activity and which leads to an emphasis on paperwork at the expense of resources that should be spent controlling risks and improving health and safety.
15. The interpretation of the lists as an absolute requirement appears to be different from what was intended. For example the practice direction for pre-action conduct states that when considering compliance the court will be concerned about “whether the parties have complied in substance with the relevant principles and requirements and is not likely to be concerned with minor or technical shortcomings”²⁴⁶.

²⁴³ Lord Woolf, *Access to Justice Report*, 1996, <http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/civil/final/index.htm>

²⁴⁴ www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/protocols/prot_pic.htm#IDA23G5B

²⁴⁵ Risk and Regulation Advisory Council, *Health and Safety in small organisations*, 2009. www.bis.gov.uk/files/file52340.pdf

²⁴⁶ www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/practice_directions/pd_pre-action_conduct.htm#IDAVIU1

16. Steps need to be taken to ensure that the absence of a particular document is not in itself proof of non-compliance and that the original purpose of the lists is widely communicated to all those involved in the civil litigation system. This could help address concerns that the balance in civil cases has tipped too much in favour of claimants²⁴⁷.
17. I am concerned that the work to deliver the recommendations in Common Sense, Common Safety and the recommendations proposed in this review to simplify the regulatory framework will not have the desired effect if fears over civil litigation continue to drive businesses to over comply with the regulations.

I recommend therefore that the original intention of the pre-action protocol standard disclosure list is clarified and restated.

Strict liability

18. Another concern that has been raised relates to where regulations impose a strict liability on employers, making them legally responsible for the damage and loss caused by their acts and omissions regardless of their culpability.
19. A number of examples²⁴⁸ have been provided where strict liabilities in health and safety regulations have resulted in individuals being paid compensation even though the employer did everything that was reasonably practicable and foreseeable. Box 5 gives one example.

Box 5 Stark v Post Office

Mr Stark, a postman, was injured at work when the front brake on his bicycle, supplied by the Post Office, snapped in two and he was thrown over the handlebars. It was found that the defect which caused the brake to snap could not have been detected.

The question for the court was whether the Post Office had breached its statutory duty under regulations 6 of the Provision and Use of Work Equipment Regulations 1992 that “every employer shall ensure that work equipment is maintained in an efficient state, in efficient working order and in good repair”.

The court said the duty was not breached as it required a reasonable level of maintenance and found that the Post Office had done their best to maintain the bike and everything they could to check for faults.

However, the Court of Appeal overturned the decision and ruled that Regulation 6 could be interpreted in light of UK case law that where an employer “shall ensure”, the duty imposed by the regulation is an absolute one, and since the bike broke, the employers must have been in breach.

The employer was in breach and Mr Stark was awarded compensation.

²⁴⁷ Vanilla Research, *Perceptions of the Health and Safety Regime*, Summary report for the Better Regulation Executive, 2008, p 21. www.bis.gov.uk/files/file47058.pdf

²⁴⁸ For example *Dugmore v NHS Trust and Morriston NHS Trust* and *Allison v London Underground Ltd*.

20. It is not clear that the outcomes are either reasonable or what the Government intended. In some cases these duties may be necessary and in other cases may be required to comply with a European Directive, but awarding compensation on the basis of a technical breach where there is no opportunity for the defendant to be aware of the danger, and no actions could have been taken to prevent the accident, clearly has the potential to stop employers taking a common sense approach to health and safety.
21. The concept of reasonable practicability is widely supported and assumed to underpin health and safety regulation, but these examples demonstrate a number of instances where regulations impose a strict liability that are unqualified by reasonable practicability.

I recommend 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.

Improving the understanding of risk

22. No review of health and safety legislation would be complete without a consideration of the way it is viewed by society in general.
23. As we have seen, the perception of health and safety as a ‘burden’ amongst businesses can be influenced by a range of factors such as civil litigation and the media’s negative portrayal of the subject. In response to the media stories HSE launched its ‘Principles of sensible risk management’ in 2006²⁴⁹ and the ‘Myth of the Month’ series that ran until December 2010 to help dispel some of the most widely believed health and safety myths²⁵⁰. It continues to counter claims that health and safety legislation is to blame for preventing activities.
24. I welcome this approach and would like to go further by proposing that the Government looks at introducing a challenge mechanism that allows for cases of incorrect, over-application of health and safety legislation to be addressed. This will help restore proportionality and inform the broader debate about risk.

249 Principles of sensible risk management. www.hse.gov.uk/risk/principlespoints.htm

250 www.hse.gov.uk/myth/

25. Many myths focus on issues where health and safety is apparently responsible for curtailing beneficial public activities. This has been reflected in the evidence I received. Some are concerned that health and safety law is now being applied to situations for which the original legislation was not intended (for example operational activities of the Emergency Services, the education sector and public events). Ball and Ball-King's recent book helpfully summarises the key issues surrounding the risk assessment process in the context of public safety²⁵¹. I also note that in response to Lord Young's recommendation to "Shift from a system of risk assessment to a system of risk-benefit assessment and consider reviewing the Health and Safety at Work etc Act to separate out play and leisure from workplace contexts" a workshop was held with HSE, Play Safety Forum and others to consider the proposal and discuss the development of a high-level statement²⁵².
26. I have commented elsewhere that the consideration of risk requires an inclusion of the 'social context' and recognising that the public, stakeholders and regulators perceive risks differently. So risk communication techniques need to recognise that traditional practices are no longer effective in 'post trust' environments²⁵³.
27. I note that it is now ten years since HSE published 'Reducing Risks, Protecting People', the document that set out the philosophy for securing health, safety and welfare of people at work and those affected by work activities and the procedures, protocols and criteria that underpins it. As well as providing an overview of risk and risk management it considered issues such as the tolerability of risk, how society views risk and the precautionary principle²⁵⁴.
28. I welcome the Institute for Occupational Safety and Health's (IOSH) aim to create a 'risk intelligent society'²⁵⁵ and the range of resources that are already available for young people such as HSE's risk education programme of work²⁵⁶, ROSPA's safety information²⁵⁷, British Safety Council's free qualifications for school children²⁵⁸ and IOSH's free website for schools and colleges²⁵⁹. But I believe there needs to be a wider debate within society about risk. This could build on the work of organisations such as the Risk Commission²⁶⁰ and the RRAC (whose work programme ended in 2009)²⁶¹.

251 Ball DJ and Ball-King L, *Public safety and risk assessment – improving decision making*, 2011, Earthscan, ISBN978-1-84971-381-8.

252 Common sense, common safety – progress report, July 2011. www.dwp.gov.uk/docs/cscs-progress-july-11.pdf

253 Boudier F and Löfstedt R, *Improving health and safety – An analysis of HSE's risk communication in the 21st century*, 2010, Health and Safety Executive Research Report 785. www.hse.gov.uk/research/rrhtm/rr785.htm

254 Health and Safety Executive, *Reducing Risks, Protecting People – HSE's decision making process*, 2001. ISBN 0-7176-2151-0. www.hse.gov.uk/risk/theory/r2p2.pdf

255 www.iosh.co.uk/information_and_resources/policy_and_consultation/policies/education_and_training.aspx

256 www.hse.gov.uk/education/

257 www.rospa.com/safetieducation/default.aspx

258 www.britsafe.org/training-and-qualifications/training-and-qualifications.aspx

259 www.wiseup2work.co.uk

260 www.thersa.org/projects/past-projects/risk-commission

261 webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/deliverypartners/list/rrac/index.html

29. I believe there needs to be a shared understanding of risk and how it should be regulated and that a mechanism is needed to bring together Parliament, policy makers, academics, and the public to achieve this. This should be broader than just health and safety and encompass other areas such as health and environmental issues as well.

I recommend that the House of Lords be invited to set up a Select Committee on risk or establish a sub-committee of the Science and Technology Committee to examine this issue and consider how to engage society in a discussion about risk.

In parallel, I recommend that the Government asks the Chief Scientific Adviser to convene an expert group aimed at addressing this challenge. The outcomes of such work need to be disseminated widely across Parliament, policy makers, academics and the public.

Chapter recommendations:

I recommend that the original intention of the pre-action protocol standard disclosure list is clarified and restated.

I recommend that regulatory provisions that impose strict liability should be reviewed 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.

I recommend that the House of Lords be invited to set up a Select Committee on risk or establish a sub-committee of the Science and Technology Committee to consider how to engage society in a discussion about risk.

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Annex A

Terms of reference

Background

As part of the Government's plans to reform Britain's health and safety system, the Department for Work and Pensions' (DWP) Minister for Employment, the Rt Hon Chris Grayling MP, commissioned an independent review of health and safety legislation.

Purpose

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.

Governance

The review will be chaired by Professor Ragnar Löfstedt, Director of the King's Centre for Risk Management at King's College, London. He will be supported by an Advisory Panel whose role is to work with the Chair and provide constructive challenge to the review.

Review membership Chair:	Professor Ragnar Löfstedt
Advisory Panel:	
Legislature representative (Con)	Andrew Bridgen MP
Legislature representative (Lab)	Andrew Miller MP
Legislature representative (Lib Dem)	To be confirmed*
Employer representative	John Armitt (Olympic Delivery Authority)
Employee representative	Sarah Veale (Trades Union Congress)
Small business representative	Dr Adam Marshall (British Chambers of Commerce)

Timescale

The review was launched on 21 March 2011, and is expected to report to the Minister for Employment by the end of October 2011. The report will be published on the DWP website.

Secretariat

The review will be supported by a small team of civil servants, based in DWP. The Review team will:

- arrange meetings and agree attendees and the agenda with the Chair;
- commission and circulate papers before each meeting;
- produce a record of decisions and actions from each meeting;
- coordinate the call for evidence to the review;
- deal with enquiries arising from the review; and
- provide regular updates to the Minister for Employment.

Contact

Email: Review.healthandsafety@dwp.gsi.gov.uk

* Note: This invitation was not taken up due to availability constraints

Annex B

List of questions from call for evidence

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

1. Are there any particular health and safety regulations (or ACoPs) that have significantly improved health and safety and should not be changed?
2. Are there any particular health and safety regulations (or ACoPs) which need to be simplified?
3. Are there any particular health and safety regulations (or ACoPs) which it would be helpful to merge together and why?
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?
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?
6. To what extent does the concept of 'reasonably practicable' help manage the burden of health and safety regulation?
7. Are there any examples where health and safety regulations have led to unreasonable outcomes, or to inappropriate litigation and compensation?
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?

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?
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?

Annex C

Organisations who contributed to the review

The following list includes those who gave evidence in writing or during meetings.

Organisations	
Access Industry Forum	Borough Council of King's Lynn and West Norfolk
Angus Council	Bovis Homes Ltd
Asbestos in Schools Group	Bradford Area Occupational Health and Safety Forum (and others)
Asbestos Victims Support Groups Forum	British Ceramic Confederation
Association of British Insurers	British Chamber of Commerce
Association of British Orchestras	British Coatings Federation
Association of Chief Police Officers	British Hospitality Association
Association of Convenience Stores	British Institute of Facilities Management
Association of Personal Injury Lawyers	British Occupational Hygiene Society
Association of Police H&S Advisers	British Property Federation/Construction Clients' Group
British Broadcasting Corporation	British Psychological Society
British Constructional Steelwork Association Limited	British Red Cross
Berkshire, Hampshire and Kent Enforcing Authorities	British Retail Consortium
Bibby Consulting and Support	

British Safety Council	Elementus Ltd
British Standards Institution	Energy & Utility Skills Ltd
Care Quality Commission	Energy Networks Association
Confederation of British Industry	Engineering Construction Industry Association
Chartered Institute of Environmental Health	Engineers Contactors' Association
Chemical Business Association	Environmental Services Association
Chemical Industries Association	Essex County Fire and Rescue Service
Cheshire Fire and Rescue Service	Expert Ease International
Chief Fire Officers Association	Faculty of Advocates
Chartered Institution of Building Services Engineers	Families Against Corporate Killers
CITB-ConstructionSkills	FCO Services
City and Guilds	Federation of Master Builders
City of London Corporation	Federation of Piling Specialists
Clearwell Mine Management Ltd	Federation of Small Businesses
Confederation of UK Coal Producers	Field Studies Council
Construction Industry Council and Institution of Civil Engineers'	Forestry Commission
Construction Plant-hire Association	Forum of Private Business
Construction Skills Certification Scheme	Gateshead Council
Council for Learning Outside the Classroom	GE Healthcare and GE Oil and Gas
Cumbria County Council	Gibbon Equipment Hire Ltd.
CWU NW Safety Forum	GMB
Department for Education	Grampian Fire and Rescue Service
Derbyshire Fire and Rescue Service	Greater Manchester Fire and Rescue Service
Devon Chief Environmental Health Officers Group	Greenwoods Solicitors
Devon Health and Safety Sub Group (Environmental Health)	Grosvenor Group Ltd
Dundee City Council	Habilis Health and Safety Solutions Ltd
Durham County Council	Hazards Campaign
East Riding of Yorkshire Council	Health and Safety Lawyers Association
EEF	Hertfordshire Fire and Rescue Service
	Highlands & Islands Fire & Rescue Service
	Home Retail Group

Humberside & South Yorkshire Health & Safety Liaison Group

International Institute of Risk and Safety Management

Institute of Directors

Institute of Ergonomics and Human Factors

Institution of Gas Engineers and Managers

Institution of Occupational Safety and Health

John Lewis

Joint Union Asbestos Committee

Keoghs LLP

Ladders Association

Local Better Regulation Office

Local Government Group

London Borough of Sutton

London Fire Brigade

London Hazards Centre Trust

London School of Hygiene & Tropical Medicine

Mid & West Wales Fire & Rescue Service

Mineral Products Association

Ministry of Defence

NASUWT

National Association of Head Teachers

National Grid

National House Building Council

National Union of Teachers

Neath Port Talbot Council for Voluntary Service

The National Examination Board in Occupational Safety and Health

NHS Health Scotland

NHS Litigation Authority

North Wales Fire & Rescue Service

North Yorkshire County Council

Northern Ireland Fire and Rescue Service

Northumberland County Council

Nottinghamshire Fire and Rescue Service

Outplan for Sport Northern Ireland

Prefabricated Access Suppliers' & Manufacturers' Association Ltd

Patersons Quarries Ltd

PCS London Courts branch

Peebles Rugby Football Club

PHSC plc

Play Safe Forum

Police Federation of England and Wales

Port Skills and Safety

Prospect

Public & Commercial Services Union

Redashe Ltd

Residential Landlords Association

RMI Independent Petrol Retailers Association

The Royal Society for the Prevention of Accidents

Royal Berkshire Fire and Rescue Service

Royal College of Nursing

Royal Institute of Chartered Surveyors

Rail Safety and Standards Board Ltd

Safety Assessment Federation

Safety Directors Forum

Safety Groups UK

Sainsbury's

School Travel Forum

Scotia Gas Networks Ltd

Scottish Resources Group

Scottish Trades Union Congress	The Society of Chief Officers of Environmental Health in Scotland
Sheppard Robson	Thompsons Solicitors
Shropshire Fire Service	Tourism Alliance
Society for Radiological Protection	Trades Union Congress
Society of Chief Officers of Environmental Health in Scotland	Tulip Ltd
South East Wales Health and Safety Liaison Group	UK Coal Mining Ltd
South Eastern Licensing Coordinating Group	UK Contractors Groups
South Wales Fire & Rescue Service	UK Petroleum Industry Association
Southampton City Council	UKLPG
Specialist Engineering Contractors Group	Union of Construction, Allied Trades and Technicians
Speedy Hire	Union of Shop Distributive and Allied Workers
St. Georges House Christian Outdoor Centre	UNISON Birmingham Branch
Strathclyde Fire & Rescue	UNISON Derby branch
Surrey County Council	UNISON
Surrey Health & Safety Group	UNISON, North West Regional H&S Committee
Sussex Health and Safety Liaison Group	Unite
Sussex Police Headquarters	United Kingdom Accreditation Service
Telford & Wrekin Council	Universities and Colleges Employers Association
Tendring District Council	Universities Safety and Health Association
Tesco	University and College Union
The Convention of Scottish Local Authorities	University of Essex
The Educational Institute of Scotland	UPM Tilhill
The Forum of Insurance Lawyers	Voice
The Institution of Construction Safety	Warwickshire Fire and Rescue Service
The Law Society of England and Wales	Westminster City Council
The Royal Environmental Health Institute of Scotland	Workable Management Solutions Ltd
The Royal Society of Chemistry	Yorkshire Ambulance Service NHS Trust
The Scotch Whisky Association	Zurich

Academics

Professor David Ball (Middlesex University) and
Dr Laurence Ball-King

Dr Courtney Davis (University of Sussex)

Dr Julian Etienne (London School of Economics
and Political Science)

Professor Bridget Hutter (London School of
Economics and Political Science)

Professor Steve Toombs and Dr David Whyte
(The Institute of Employment Rights)

Dr Ian Vickers (Middlesex University)

Professor Andrew Watterson and
Professor Rory O'Neill (University of Stirling)

Professor Frank Wright

Individuals

In addition, there were 53 further individuals, including health and safety managers, trades union representatives, practitioners, consultants, legal professionals, employers and employees responding on their own behalf.

I also met with or spoke to a number of others including Ministers, senior officials and the Opposition spokesperson for Work and Pensions, Lord McKenzie of Luton as well as EU officials.

Advisory Panel evidence gathering sessions

The following gave evidence to the Advisory Panel:

Local Government Regulation
(now Local Government Group)

Better Regulation Executive

Regulatory Policy Committee

Health and Safety Executive

Confederation of British Industry

Trades Union Congress

Professor David Ball (Middlesex University)

Professor Bridget Hutter (London School of
Economics and Political Science)

Professor Phil James (Oxford Brookes University)

Dr Henry Rothstein (King's College London)

Dr Ian Vickers (Middlesex University)

Dr David Whyte (The Institute of
Employment Rights)

Professor Frank Wright

Annex D

Regulations recommended for sector specific consolidation

Note: For consistency this list is based on the set of regulations published on the Red Tape Challenge website which had minor differences from that published with the call for evidence.

The Borehole Sites and Operations
Regulations 1995

Coal and Other Mines (Fire and Rescue)
Order 1956

Coal and Other Mines (Fire and Rescue)
(Amendment) Regulations 1980

Coal and Other Mines (General Duties and
Conduct) Order 1956

Coal and Other Mines (Locomotives) Order 1956

Coal and Other Mines (Metrication)
Regulations 1978

Coal and Other Mines (Safety-Lamps and
Lighting) Order 1956

Coal and Other Mines (Sanitary Conveniences)
Order 1956

Coal and Other Mines (Shafts, Outlets and
Roads) (Amendment) Regulations 1968

Coal and Other Mines (Shafts, Outlets and
Roads) Regulations 1960

Coal and Other Mines (Sidings) Order 1956

Coal and Other Mines (Ventilation) (Variation)
Regulations 1966

Coal and Other Mines (Ventilation) Order 1956

The Coal and Other Safety-Lamp Mines
(Explosives) Regulations 1993

Coal Mines (Cardrox and Hydrox) Regulations
1956 (S.I. 1956/1942)

Coal Mines (Clearances in Transport Roads)
Regulations 1959

The Coal Mines (Control of Inhalable Dust)
Regulations 2007

Coal Mines (Firedamp Drainage)
Regulations 1960

The Coal Mines (Owner's Operating Rules)
Regulations 1993

Coal Mines (Precautions against Inflammable
Dust) (Second Amendment) Regulations 1974

Coal Mines (Precautions against Inflammable Dust) Amendment Regulations 1977

Coal Mines (Precautions against Inflammable Dust) (Variation) Regulations 1960

Coal Mines (Precautions against Inflammable Dust) Order 1956

Escape and Rescue from Mines Regulations 1995

Management and Administration of Safety and Health at Mines Regulations 1993

Mines (Control of Ground Movement) Regulations 1999

Mines (Manner of Search for Smoking Materials) Order 1956

Mines (Medical Examinations) Regulations 1964

Mines (Precautions Against Inrushes) Regulations 1979

Mines (Safety of Exit) Regulations 1988

Mines (Shafts and Winding) Regulations 1993

Mines and Quarries (Metrication) Regulations 1976

Mines and Quarries (Tipping Plans) Rules 1971

Mines and Quarries (Tips) Regulations 1971

Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974

Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1975

Mines Miscellaneous Health and Safety Provisions Regulations 1995

Miscellaneous Mines (Explosives) Regulations 1959

Miscellaneous Mines (Metrication) Regulations 1983

Miscellaneous Mines (General) Order 1956

Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956

Classification and Labelling of Explosives Regulations 1983

Compressed Acetylene (Importation) Regulations 1978

Compressed Acetylene Order 1947

Control of Explosives Regulations 1991

Explosive Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974

Explosives Act 1875 (Exemptions) Regulations 1979

Explosives Act 1875 etc. (Metrication and Miscellaneous Amendment) Regulations 1984

Explosives Acts 1875 and 1923 etc (Repeals and Modifications) (Amendment) Regulations 1974

Health and Safety (Miscellaneous Amendments and Revocations) Regulations 2009

Identification and Traceability of Explosives Regulations 2010

Manufacture and Storage of Explosives Regulations 2005

Manufacture and Storage of Explosives and the Health and Safety (Enforcing Authority) (Amendment and Supplementary Provisions) Regulations 2007

Marking of Plastic Explosives for Detection Regulations 1996

Placing on the Market and Supervision of Transfers of Explosives Regulations 1993

Order in Council No. 30 Prohibiting the manufacture, importation, keeping, conveyance or sale of acetylene when an explosive as defined by the order (S.R. & O 1937/54)

Order in Council (No 26) relating to Picric Acid, Picrates and Mixtures of Picric Acid with other Substances (S.I. 1926/823)

Order of Secretary of State (No 11) making Byelaws as to the Conveyance of Explosives on Roads, and in certain special cases

Order of Secretary of State (No 5) relating to Compressed Acetylene in Admixture with Oil-Gas (S.R.& O. 1898/248)

Order of Secretary of State (No 5A) relating to Compressed Acetylene in Admixture with Oil-Gas (1905) (S.R.& O. 1905/1128)

Order of Secretary of State (No 9) relating to Compressed Acetylene contained in a Porous Substance (1919) S.R.& O. 1919/809)

Genetically Modified Organisms (Contained Use) (Amendment) Regulations 2002

Genetically Modified Organisms (Contained Use) (Amendment) Regulations 2005

Genetically Modified Organisms (Contained Use) Regulations 2000

Genetically Modified Organisms (Contained Use) (Amendment) Regulations 2010

Biocidal Products (Amendment) Regulations 2003

Biocidal Products Regulations 2001

Biocidal Products (Amendment) Regulations 2005

Biocidal Products (Amendment) Regulations 2007

Biocidal Products (Amendment) Regulations 2010

Health and Safety (Explosives and Petroleum Fees) (Modification) Regulations 1987

Petroleum (Liquid Methane) Order 1957

Petroleum (Mixtures) Order 1929

Petroleum (Regulation) Acts 1928 and 1936 (Repeals and Modifications) Regulations 1974

Petroleum-Spirit (Motor Vehicles, etc) Regulations 1929

Petroleum-Spirit (Plastic Containers) Regulations 1982