

Good Health and Safety, Good for Everyone

The Department for Work and Pensions has recently published its proposed next steps for reforming health and safety. This follows Lord Young's Report last year, which focussed on shifting health and safety away from what he perceived as the 'compensation culture' driving it.

The main objective of these reforms is to reduce bureaucracy and simplify the steps duty holders (particularly those in low hazard environments) need to take to achieve compliance. The Health and Safety Executive (HSE) is moving towards a position where it concentrates on higher risk industries with little or no pro-active investigations of low risk, small and medium sized businesses. The four key aspects to the changes proposed are:

- Reviewing and implementing guidance for low risk, small and medium sized businesses to assist with simplifying health and safety compliance;
- A full review of health and safety regulation, with consideration given to consolidating the legislation to make it more accessible and easier to understand;
- Significantly reducing health and safety inspections overall; and
- Standardising the professional qualifications of health and safety consultants to assist with reducing what the HSE considers "rogue" health and safety advisors. A web based Occupational Safety and Health Consultants Register has been created so that businesses can access reputable advice.

Making Health and Safety Simpler

The objective of these proposals is to move away from the current compliance driven approach towards a more proportionate approach. The Government's concern is that straight-forward legislation designed to protect people from major hazards has been extended inappropriately to cover relatively low risk activities, placing unnecessary burden on small and medium sized businesses. It is hoped the new proposals can relieve this burden.

The view of the Government is that the current raft of health and safety legislation can lead to confusion and uncertainty for small businesses in particular with regard to their

responsibilities under the law. The HSE has launched new guidance, 'Health and Safety made Simple' <http://www.hse.gov.uk/simple-health-safety/index.htm>, aimed at small and medium sized employers in low risk businesses. This assists businesses with performing their basic health and safety requirements including risk assessments, health and safety policies and training.

More widely, an independent advisory panel made up of politicians, industry and employee representatives has been established. The panel's brief is to explore opportunities to simplify legislation and to further ease the burden on business. The panel will also consider changes to clarify the legal position of employers in cases where employees act in a grossly irresponsible manner. However, it appears that this review will stop short of detailed consideration of the meaning of *reasonable practicability*. Detailed consideration could provide much needed guidance for businesses in determining the extent of measures necessary to control risks, i.e. addressing what is a proportionate response.

Lord Young also recommended extending the period (from three to seven days) that someone must be absent from work before a report under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR). HSE is now consulting on this change.

Targeting and Reducing Inspection

Overall the HSE has announced that inspections will reduce by around a third (this will also be the case for Local Authority Inspections). This will be achieved by pro-active inspections no longer being made of low risk businesses and activities. However, it will remain the case that investigations (and potentially prosecutions) will follow health and safety incidents. This is not an exemption from compliance.

Major Hazard Industries

The shift in focus by the HSE to closer inspection and pro-active regulation of major hazard industries will continue. This includes a proposal for the creation of an Office for Nuclear Regulation to meet the requirements arising from new civil nuclear builds as well as existing plants and decommissioning.

Non Major Hazard Industries

The Government has identified three categories of non-major hazard industries:

- High risk, where proactive inspections remain necessary as part of the regulatory approach. These will include construction (in particular SME's engaged in commercial and domestic refurbishments) and in some areas of manufacturing;
- Comparatively high risk, where proactive inspection is not considered necessary. These will include sectors such as agriculture and health and social care; and
- Areas where proactive inspection is not justified in terms of outcome. These may include low risk manufacturing, electrical engineering and the transport sector.

The sectors which fall into category 2 raise some interesting questions. Whilst the health and social care sectors are subject to scrutiny from other regulations, that cannot be said for agriculture. The number of deaths and serious injuries each year in the agriculture sector are not significantly lower than the construction sector.

Cost Recovery for the HSE

HSE has always been able to recover costs as a result of a prosecution. However, it is now proposing to recover all the costs of an inspection or investigation resulting in a formal requirement for remedial measures, together with the cost of any follow-up work. Compliant businesses will not be charged for inspection nor will there be any recovery in relation to purely technical breaches.

The government also intends that HSE should also recover its costs from businesses for additional services such as acting as a statutory consultant in planning issues.

Occupational Safety and Health Consultants Register

The Government view is that advice given by some health and safety consultants used by many small and medium sized businesses is inaccurate and not sufficiently tailored to their particular needs. The OSHCR will be an accredited register, listing only those consultants with a minimum level of relevant professional qualifications. The register can be accessed at <http://www.oshcr.org/>

There have already been some concerns raised about the value of the register as there is no independent check of the sectors which registrants identify as areas they are competent to advise in. Businesses using the register should still check that the consultant is experienced in its sector.

Conclusion

Until these proposals and recommendations produce changes in legislation, Approved Codes of Practice and guidance it is difficult to be certain how far reaching they will be and whether they will change duty holders' approach to health and safety. However, what is clear is that:

- the trend of reducing HSE and Local Authority inspections will continue;
- HSE will be focussing its inspection and enforcement effort on business in the highest risk environments;
- the role of health and safety professionals is likely to become better regulated; and
- changes to health and safety legislation are likely.

What is less clear is which businesses will be considered small enough or sufficiently low risk to benefit from the various proposed exemptions and assistance relating to health and safety compliance. In particular, it is not immediately obvious where sectors such as agriculture and transport will fit into this regime, given that there continues to be a relatively high number of health and safety incidents in those sectors.

It is expected that this update will be the first of many in the year ahead, with the advisory panel tasked with reviewing health and safety legislation due to report in the autumn.

If you would like to discuss any of the issues in this briefing do please get in touch with:



Ann Metherall
Partner

+ 44 (0)117 902 6629
ann.metherall@burges-salmon.com



Matt Kyle
Solicitor

+44 (0) 117 902 7215
matt.kyle@burges-salmon.com