

HEALTH AND SAFETY - A RISKY BUSINESS?

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No one disputes the importance of good health and safety regulations in the workplace; safety of workers is of paramount importance. There is no doubt that sensible rules are needed to prevent serious accidents, however the current regime goes much further than this.

Speaking to businesses across the country, it is clear that in some cases health and safety legislation has gone too far and that some disproportionate health and safety legislation has become increasingly burdensome to businesses. Currently, due to ambiguity and poor interpretation of the law, it is sometimes applied indiscriminately and unintelligently to low-risk businesses. Furthermore, in many cases, we are gold-plating EU rules, to the detriment of our firms in the UK.



Health and safety regulation must be made more industry specific, the burden must be taken off low-risk workplaces and regulations should be kept in place only where they are necessary and appropriate. Time and time again I hear of unnecessary and unreasonable examples of health and safety, such as the fact that home workers in low-risk environments are treated in the same way as those working on-site. Our research shows there is no doubt that many businesses see health and safety regulation as a barrier to growing the number of employees in their business.

The report presents a number of ways that health and safety legislation can be simplified and consolidated without reducing the safety of employees. The current raft of health and safety regulations distracts businesses from driving economic growth and creating employment and it is therefore crucial that the Government commits to reducing the volume and associated bureaucracy of regulations.

Health and safety legislation distracts businesses from driving economic growth and creating employment.

David Frost, CBE DUniv

Director General

The British Chambers of Commerce (BCC) believes that health and safety regulation must be better balanced to avoid unnecessary burdens on business and also to safeguard employees. 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 are currently 131 regulations relating to health and safety in the UK¹. We believe the current stock of health and safety legislation distracts businesses from driving economic growth and creating employment.

1. Low-risk businesses must not be treated in the same way as high-risk businesses

To maximise the effectiveness of health and safety measures while minimising the financial burden on business, regulations and enforcement should be tailored to the risk-level of the workplace. Treating low-risk businesses in the same way as high-risk businesses is not appropriate and costs businesses unnecessary time and money. The BCC therefore calls on the government to change the way it deals with businesses operating in low-risk environments.

2. The cumulative burden undermines the perception of individual regulations

The way businesses approach health and safety is shaped as much by the overall volume of regulations to which they are subject as by the individual regulations. Imposing too heavy a cumulative burden on small businesses can lead to a costly, time-consuming 'tick-box' culture that is in opposition to the principles of sound health and safety. The volume and associated bureaucracy of regulations must be reduced in order to make legislation more effective.

3. Perception often trumps reality

Regulatory inconsistency and a lack of clarity surrounding regulations and their associated costs often leads to over-caution and over-compliance which imposes pointless costs on businesses. The information function of HSE is critical and the government must ensure that despite cuts to its budget and restrictions on marketing spend, its business engagement and information activities are not diminished.

¹ These regulations have been published by the government on the red tape challenge website <http://www.legislation.gov.uk/all?theme=health-and-safety>

4. Implementing the recommendations of the Davidson Review

The Davidson Review of implementation of EU legislation recommended that in low-risk sectors HSE should consider exempting the self-employed from certain Health and Safety legislation. BCC strongly agrees with this as this would significantly reduce the unnecessary burden that is currently placed on these types of businesses.

5. Eliminating duplication will improve health and safety policy

Some EU directives duplicate existing domestic regulations and at a higher cost of compliance. Evidence from the Health and Safety Executive (HSE) Impact Assessments shows, in a number of cases, that these additional demands do not bring any additional health and safety benefits. For that reason the BCC calls for the government to examine any cases of duplication in EU health and safety directives which have been burdensome to businesses in terms of time and/or money.

The BCC supports good health and safety regulation. The UK has a good record on health and safety² and it is essential that this is maintained. There is no doubt that sensible rules are needed to prevent serious accidents.

There needs to be a balance to avoid pointless burdens on business and also ensure the safety of employees. But in recent years some disproportionate health and safety legislation has become increasingly burdensome to SMEs. Currently, due to ambiguity and poor interpretation of the law, it is sometimes applied indiscriminately and unintelligently to low-risk businesses. Health and safety regulation must be made more industry specific, the burden must be taken off low-risk workplaces and regulations should be kept in place only where they are necessary and appropriate. Good health and safety legislation is crucial in high-risk environments and must protect employees from genuinely dangerous hazards in the workplace. However, time and time again we hear of unnecessary and unreasonable examples of health and safety, such as the fact that home workers in low-risk environments are treated in the same way as those working on-site.

The BCC 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 inspections. The equal treatment of low-risk and high-risk firms and unqualified 'cowboy' consultants, who suggest costly and inappropriate health and safety recommendations, have been highly burdensome to businesses. The volume of regulations often invites subjective judgements as the legislation is not made clear enough for businesses. We would like to see a consolidation and simplification of this volume of regulations in order for firms to be able to understand the legislation without impacting on its effect. They must also be able to continue to drive economic growth and create employment, whilst still ensuring that their employees are kept safe in the workplace.

² Eurostat figures show that the UK has had the lowest number of fatal injuries amongst the five largest EU countries for a six-year period. http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database

³ Davidson Review pg 96

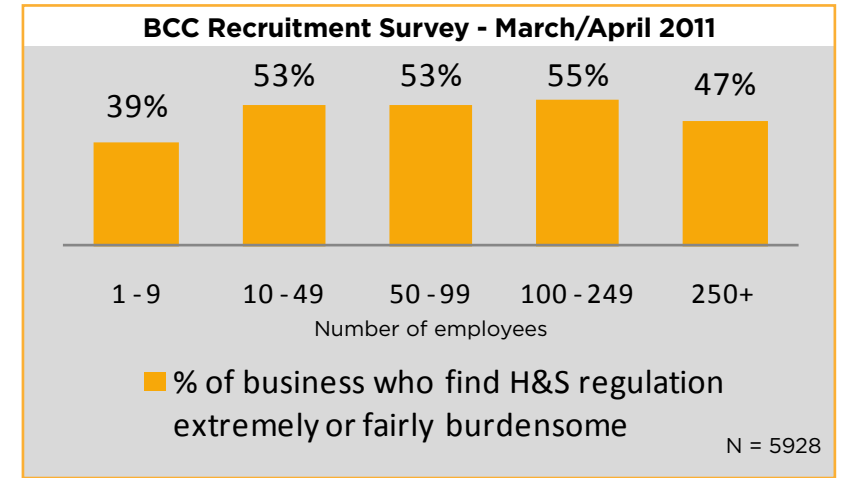
Hasn't Lord Young's report already dealt with all of this

The BCC welcomed Lord Young's recommendations in his 2010 report 'Common Sense Common Safety'. Lord Young's proposals were sensible and long overdue and had the potential to save businesses considerable time and money. In particular, the BCC welcomed the recommendation that health and safety rules should not be applied to hazardous environments and offices in the same way - and that there are too many burdens involved in allowing employees to work from home. For example, most of the regulations made under the Health and Safety at Work Act 1974 apply to homeworkers as well as to employees working at an employer's workplace. Under the management of Health and Safety at Work Regulations 1999, employers are required to do a risk assessment of the work activities carried out at home by homeworkers.

Equally, the announcements made by the government in March regarding health and safety were positive and certainly a step in the right direction. However, some key recommendations by Lord Young, such as the recommendation that home workers in low-risk industries should not be treated the same as on-site workers, are yet to be implemented. This must be a priority for the government going forward, and is a key example of burdensome health and safety regulation that adds costs to employers while not adding any realistic protection for employees. Between 1984 and 1993 more than half of the health and safety regulations laid before Parliament were European in origin³. Therefore, the government must now work with its European partners to review both the incoming flow of regulations and the stock of regulations that derive from the EU.

WHAT DO UK EMPLOYERS REALLY THINK ABOUT HEALTH AND SAFETY REGULATIONS?

Nearly one in two UK employers believe health and safety regulation is extremely or fairly burdensome. This contrasts with only one in five who believe it is not at all burdensome. Broken down by business size, there is some indication that micros have a slightly better perception of health and safety regulation, but a business with 10 employees has a similar perception to a business with two hundred.



There is, as is to be expected, quite a difference between the reactions of employers working in different sectors. 28.3% of firms in the manufacturing/construction industries see health and safety regulation as extremely burdensome, compared to 10.1% in business/professional services⁴. This points to there being recognition of some proportionality in how the rules are applied to workplaces with differing levels of risk, but still, too many firms in low-risk sectors perceive health and safety regulation as burdensome and a barrier to growth.

18.3% of people surveyed in March/April 2011 by the BCC who work alone saw health and safety regulation as either a significant or a total barrier to taking on their first employee⁵. Perhaps surprisingly, this does not vary as much by sector as it does where employers already have staff, suggesting that for individuals working in low risk industries, the HSE's message that burdens are lower has not hit home. To give some indication of how this compares with views across other areas of regulation, only 13.6% of people who work alone saw the recruitment process as a significant or total barrier to taking on their first employee - 4.7% lower than for health and safety. However, health and safety was not the biggest barrier; pensions requirements were seen as a total or significant barrier for 22.4% of individuals working alone⁶.

⁴ Results from BCC Recruitment Survey March/April 2011 of 5,928 employers.

⁵ BCC Recruitment Survey March/April 2011 of 1,068 sole-traders.

⁶ We assume this to be a consequence of the 2012 pensions reforms which will require all employers to enrol qualifying employees into a pension scheme and make a minimum 3% contribution on a prescribed band of earnings.

Often, attention is too centered on particular, well-publicised incidents of 'health and safety gone mad' rather than the genuine issues facing UK businesses.

The Health and Safety Executive (HSE) must understand that in most SMEs, there is generally not a dedicated health and safety department and no specialist staff. Whilst the BCC is not suggesting that SMEs should be entirely exempt from health and safety laws, there needs to be some flexibility when dealing with smaller firms and the level of regulation appropriate for them. Often, the sheer volume of legislation that businesses deal with means that a 'tick box' attitude has been created with regard to health and safety regulation, which is detrimental to business and is in opposition to the principles of good health and safety legislation. It is important that health and safety regulation is not devalued through a culture of 'over cautiousness' in the workplace.

SMEs are often unsure as to whether they are complying effectively with health and safety legislation - not as a result of their own incompetence, but rather due to the confusion surrounding health and safety legislation. Much of the problem lies with the poor interpretation of the regulations and the misdirection of application that is given. This seems, in many cases, to be a consequence of the fact that Health and Safety law is often inaccurately taught as finite rules. Often, businesses are too cautious and over-compliant as a result of the myths and scare stories that have been fabricated.

Interpretation and misunderstanding are therefore two of the most crucial issues and better marketing from HSE will be highly important in terms of improving this situation. However, the HSE budget is being cut by 35%⁷ and therefore BCC is concerned that this will reduce the amount of marketing and therefore information that is available to businesses.

Another problem cited by many SMEs is the volume of regulatory bodies they have to deal with regarding health and safety. There is a perception of a lack of communication across the various regulatory bodies/local authorities, especially when starting a new business - for example, the Health and Safety Executive, Environment Agency, the Fire Authorities, the Food Standards Agency and the Rural Payments Agency. There are some 3,200 local authority inspectors involved in health and safety duties⁸. The laws themselves are often sound pieces of legislation. However they frequently translate into inflexible and obligatory compliance regulations. Moreover, it is also crucial that the channels of litigation through which businesses can be prosecuted for actions (or indeed inactions) that have resulted from no misconduct on their part are reduced. For example, if someone burns themselves on water from a kettle they should not be able to sue their employer who provided the kettle.

Is it the same for the self-employed

⁷ http://www.ucu.org.uk/media/pdf/t/0/hsecuts_allpartygroupreport.pdf

⁸ Lord Young of Graffham Common Sense, Common Safety 2010

UK legislation has extended beyond EU directives to include the self employed. Many regulations such as Work at Height and the Control of Vibrations at Work Regulations 2005 apply to the self-employed, as well as the requirement to carry out a risk assessment regarding their own health and safety at work, and any possible risks that may arise to others.

The Davidson Review on implementation of EU legislation recommended that, 'In low-risk sectors, the HSE should consider exempting the self-employed from the legislation⁹. The BCC's survey results certainly show that this would improve the perception of health and safety in key sectors such as marketing/media/research, where the perception of health and safety as a barrier to taking on an employee is only 0.4% lower than for self employed people in manufacturing or construction. This compares poorly to employers, where there is a 28.6% gap in perception between the two sectors. This suggests that although the message that high and low-risk workplaces are treated differently by the law has reached some micro employers, the same differentiation is not perceived by the self-employed.

⁹ Davidson Review, pg98

The requirement to have an appointed first-aid person in the workplace

The BCC understands the importance of having a qualified first aider on site in high-risk workplaces; however it is not reasonable to require an appointed person to take care of first aid arrangements on site in small low-risk businesses, such as offices. Moreover, a second person is also required for when the appointed person is absent from the workplace due to sickness or annual leave. A consultation into the costs and impact of the requirement for a business found that in terms of cost/ benefit using the above figures, a first-aider would need to intervene to save an average of 1.8 days of lost time per annum due to injury or illness before a benefit can be economically demonstrated¹⁰.

The BCC believes that this is an unreasonable burden to place on SMEs in low-risk sectors and particularly micro businesses (with less than 10 employees and an annual turnover of less than €2 million). That the services of first-aiders are rarely, if ever, used (a fact that is noted by the same HSE report) clearly demonstrates the unnecessary burden that this regulation places on micro businesses. Therefore, the BCC calls for micro businesses in low-risk workplaces such as offices to be exempt from this regulation. This would be an uncomplicated way in which to reduce the compliance burden on firms which engage in low-risk activities and for whom the need to have a qualified first-aider on site is simply unnecessary.

The Control of Artificial Optical Radiation at Work Regulations 2010

The purpose of this regulation is to protect workers against exposure to harmful artificial light, such as laser displays, and includes sources of ultraviolet, infrared, and visible light. Too much exposure to certain light sources can be harmful to the eyes and the skin. Employers already manage the risk of UV exposure and optical radiation under the provision of the Management of Health and Safety at Work regulations and this directive imposes new costs and burdens on employers without improving worker protection¹¹.

The HSE Impact Assessment states that the directive 'brings no additional benefit to health and safety in the UK'. This is because the risks are well understood and managed in those industries where sources are used, because proportionate regulatory control is provided under the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999¹².

Moreover, the same report states that harm as a result of this is extremely rare, and that between 2001 and 2009 there had only been one RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995) report reliably attributed to Artificial Optical Radiation. HSE also states that regulating here does not support the sensible risk debate and notes that misunderstanding by duty holders is a risk, potentially resulting in unnecessary risk assessments and associated costs. The impact on business, charities or voluntary bodies in relation

¹⁰ A review and evaluation of the effectiveness of the Health and Safety (First-Aid) Regulations 1981. <http://www.hse.gov.uk/consult/disdocs/dde21.pdf>

¹¹ EEF Response to the HSE consultation on implementation of the EU Physical Agents (Artificial Agents Optical Radiations Directive) January 2010

¹² Implementing of the Artificial Optical Radiation Directive, HSE Executive Board. <http://www.hse.gov.uk/aboutus/meetings/hseboard/2009/230609/p-jun-b09-56.pdf>

to the first year costs is £4.64 million (best estimate with a range of £2.96m - £6.67m) and a £1.25 million (best estimate with a range of £0.74m - £1.9m) annual recurring cost¹³.

A directive that does not add any health and safety benefit to employees but imposes costs to businesses should not have to be implemented in the UK in any different way to domestic regulations. The BCC therefore recommends that the government re-examines the implementation of this piece of legislation in order to reduce the burden on businesses.

Control of Vibration at Work Regulation 2005

This regulation places a duty on employers to reduce the risk to their employees' health from exposure to vibration - whether this is caused by the use of hand-held or hand-guided power equipment, holding materials which are being processed by machines or is caused by sitting or standing on industrial machines or vehicles.

When assessing the impact of this regulation, only six small businesses were contacted, of which only two answered the questionnaire¹⁴. To have only received feedback from two small businesses is not acceptable when implementing a regulation that costs businesses £230 million every year. This is one of the costliest health and safety regulations, and BCC recommends that this legislation be re-examined in order to find ways to make its implementation less expensive for businesses.

Home-workers and lone workers

The BCC identified a disproportionate burden on employers from regulation which fails to distinguish between routine and occasional home-working, and low and high risk environments¹⁵. Lord Young recommended that these regulations be removed in low risk environments, and the government accepted this recommendation.

The Government has committed to work with other EU Member States to improve the source Directive, but we believe there are also actions that can be taken at a national level. Better guidance, and including these regulations in Professor Löfstedt's review of gold-plating of health and safety regulations, should be a priority for both HSE and DWP. Flexible working is good for business, and a Government objective. These regulations are currently a disproportionate bar to the labour market operating efficiently. Big events, such as the Olympics in London 2012¹⁶, put home-working under the spotlight, and it is crucial that these bottlenecks, caused by the regulations, are dealt with promptly.

¹³ The Control of Artificial Optical radiation at Work Regulation 2010 Explanatory Memorandum http://www.legislation.gov.uk/ukxi/2010/1140/pdfs/ukxiem_20101140_en.pdf

¹⁴ Regulatory Impact Assessment (Full) The Draft Control of Vibration at Work Regulations O225 <http://www.hse.gov.uk/vibration/ria05.pdf>

¹⁵ Employment law: Up to the Job' BCC

¹⁶ In order to help ease congestion in London, and elsewhere, the Department for Transport and Transport for London, are encouraging employers to be flexible and allow for home-working during the Games

The table below shows the estimated administrative burden compiled by the National Audit Office. The HSE has the third largest administrative burden at £2.023 billion - with most of this being borne by businesses. It is not reasonable for the HSE to place such a high administrative burden on businesses in the UK, particularly when some of these regulations are unnecessary and do not increase the safety of the employee.

DEPARTMENT	MAIN REGULATORY AREAS	ADMINISTRATIVE BURDEN £M
Department for Business, Innovation and Skills	Employment, company law	4,541
Department for Communities and Local Government	Planning	2,486
Health and Safety Executive	Health and safety	2,023
Department of Health	Medicine control, social care	1,202
Department for Transport	Vehicle licensing and registration	585
TOTAL		10,837

SOURCE: NAO Report, Delivering Regulatory Reform, February 2011

Total cost of these regulations as of July 2011 is £4.138 billion

REGULATION	ONE OFF COST £m	RECURRING COST £m	COST BY JULY 2011 £m
The Biocidal Products Regulation 2001	107	8	180
Control of Asbestos at Work Regulations 2002	1,359	13	1,456
Dangerous Substances and Explosives Atmospheres Regulations 2002	200	15	314
The Control of Substances Hazardous to Health (Amendment) Regulations 2003	137	17	256
Occupation Exposure Limit - Framework Revision 2004	43	n/a	43
Work at Height Regulations 2005	n/a	45	236
Control of Vibration at Work Regulation 2005	n/a	230	1,208
Control of Noise at Work Regulation 2005	160	67	445
TOTAL			4,138

Figures are taken from the BCC Burdens Barometer 2010 and have been updated for 2011. The figures quoted are based on the Regulatory Impact Assessments published by government departments.



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