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**Self-employed and the HSW Act.  
Deregulation Bill – Clause 1  
Briefing for Peers - March 2015.**

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## **Deregulation Bill – Clause 1. Dangerous and Confusing.**

On Wednesday 4<sup>th</sup> March the Deregulation Bill will have its Third Reading. Clause 1 of the Bill is one of the most dangerous pieces of deregulation on health and safety ever to have been proposed. It undermines the simple message in the Health and Safety at Work Act, which is that everyone should be covered, by removing most of the 4.2 million self-employed people who do not employ others from the requirements of the Act.

### ***Background***

The Government says that it is implementing a recommendation from the Lofstedt review of health and safety regulation published in November 2011, where he proposed “exempting from health and safety law those self-employed whose work activities pose no potential risk of harm to others”. However the current proposal turns that on its head and states that all self-employed people are exempt unless they are on a specific list. Professor Lofstedt has confirmed this and has stated “*The proposed Government list of dangerous jobs that would not be exempt from health and safety law is the opposite to what I proposed and it is something that I do not support*”.

### ***What is proposed?***

Clause 1 of the Bill will amend section 3 of the Health and Safety at Work Act which currently places a duty on all employers and self-employed people to ensure, as far as is reasonably practicable, the health and safety of others.

This will be changed to: “It shall be the duty of every self-employed person **who conducts an undertaking of a prescribed description** to conduct **the** undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.”

This means that any self-employed person who is not on a prescribed list will have no duties under the Act and will not be able to be convicted of any criminal act, or be issued with enforcement proceedings regardless of any risk that they pose to themselves or others.

## ***Why is it dangerous?***

Professor Lofstedt has already stated *"The proposed Government list may increase injury and death in the workplace, something that I never intended with my original recommendation."*

There are no statistics on how many people are killed or injured as a result of the activities of the self-employed but there is currently a fatality rate of 1.1 per 100,000 for the self-employed as against 0.4 per 100,000 for employees.

The changes will mean that neither the HSE nor a local authority will have any power to stop any self-employed person who is not on the prescribed list from doing anything that puts either another worker or a member of the public at risk. This is virtually a licence to kill. It will be a green light to cowboys and incompetents to cut corners and take risks – not only with their own lives but also with those of others.

The Government amendment, which will be debated during Third Reading, does nothing to change that. It simply lists a number of things that the government **may** take into account when framing regulations, but the Government could have taken these into account anyway regardless of the amendment and this is simply a cosmetic exercise aimed at trying to stop the Lords rejecting the Governments proposals. There has been no consultation on the amendment and it will simply mean that an already confusing proposal gets even more confusing as self-employed people struggle to find out what the amendment actually means in practice and whether they are, or are not, exempt from the HSW Act.

Employers organisations have also said the Government's proposals are unworkable. The CBI has said *"We are extremely concerned that the self-employed exemption in its current form is not fit for purpose and will not lead to substantial improvements....we have become concerned by the change in the scope of the legislation. This has shifted from an exemption for those whose work poses no risk of harm to others, as originally suggested by the Lofstedt review as an "easy-to-grasp" concept, to an exemption for all self-employed persons except those undertaking activities on a prescribed list.*

*The new scope as it currently stands is not fit for purpose. Above all, a list of prescribed activities to be exempt from the legal change will never be fully inclusive. In short, the new exemption will be costly to implement, without bringing the intended benefits. The potential business burden associated with introducing this new exemption – originally intended to reduce burden – is substantial."*

The other main Employer's Body, the EEF have stated *"That the current proposals being put forward on exempting the self-employed are not fit for purpose in their current form. We think that prescribing work activities is likely to have unintended consequences. Lists of prescribed activities can never be fully inclusive or the*

*definitions sufficiently precise. It will inevitably mean that some self-employed whose work activities pose a risk to others become exempt. This is not a desirable outcome."*

### **Recipe for confusion**

The Bill states that the proposals are being done "for the reduction of burdens resulting from legislation for businesses or other organisations or for individuals". In fact it does the opposite as it does not actually change the situation for those who genuinely do not pose a risk to others and only creates complete confusion for all the other self-employed.

Self-employed people will be unsure if they are covered, or presume that they are not especially if they are not on the prescribed list of occupations or sectors (presuming they know about it). Even many people that clearly do pose a danger will think that they now have nothing to worry about so will believe that there is no need for any safety precautions.

Worse still people who control the workplace where self-employed people work (often bogus-self-employed) will wrongly think that they do not have any duty of care to them. Self-employed people who employ others may interpret it as meaning that they are exempt from the law. Given that the most dangerous industries all have a high proportion of self-employed people in them (agriculture, construction etc.) anything that confuses the situation is a recipe for disaster.

Rather than reduce burdens or simplify things for the self-employed, this Bill is a recipe for confusion and the only people who will benefit will be the consultants and lawyers that the self-employed will now need to explain their legal position.

### **Summary**

This proposal will remove the principle, enshrined in the Health and Safety at Work Act for 40 years that everyone should be covered by the provisions of the Act. It was introduced with no consultation, and, rather than reduce bureaucracy will actually increase it.

More importantly it will create considerable confusion while at the same time exposing many thousands of self employed workers, those they work alongside, and the public, to risk. The Government's amendment confuses the situation even further.

The TUC strongly urges you to oppose the Clause and the Government amendment and support any amendments that seek to reduce the damage that this Clause will cause.