

# **TOXIC, CORROSIVE AND HAZARDOUS**

## THE GOVERNMENT'S RECORD ON HEALTH AND SAFETY





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## INTRODUCTION

In May 2010, after a general election that resulted in no party having an overall majority, the Conservatives and Liberal Democrats formed a coalition government. The programme for the new government was laid out in a coalition document agreed between the two parties. This document made only one reference to health and safety, and that was to make an unspecified change in relation to policing.

Health and safety had only a brief mention in the Conservative manifesto: the party said it would "amend the health and safety laws that stand in the way of common sense policing", and this was reflected in the Coalition Agreement. There was no mention of health and safety in the Liberal Democrat manifesto.

Since then there has been enormous government attention on health and safety, and almost all of it has been negative. There have been significant cuts in funding, forced cuts in the levels of inspections, a major round of deregulation, and several reviews. All of these have proved very disruptive to the work of the Health and Safety Executive (HSE).

As a result, the consensus on health and safety that has existed almost unbroken since the 1937 Factories Act has begun to break down. Rather than seeing health and safety legislation as a necessary protection for workers, we have a government that claims it is a "burden on business".

This report looks at what has happened to our health and safety system in the past four years and the likely effect it will have on people at work.

It shows that since the election the government has:

- ▶ cut state funding of the HSE by over 40 per cent
- ▶ set up three reviews to look at the 'burden' of health and safety regulation and another to look at the function of the HSE; these have led to considerable disruption and reductions in protection for workers
- ▶ drastically cut HSE and local authority inspections
- ▶ blocked any new regulations and removed a number of existing protections
- ▶ ditched important Codes of Practice
- ▶ cut the level of support and guidance available to employers and health and safety representatives
- ▶ changed what employers have to report, undermining the amount of knowledge that we have on levels of injury and illness
- ▶ drastically cut the HSE's work on occupational health issues
- ▶ blocked new initiatives from Europe and attempted to reduce existing protection
- ▶ made it much harder for workers to claim compensation after they are injured or made ill
- ▶ undermined the independence of the HSE.

The report also shows that these are having, and will continue to have, a significant effect on the health of workers.



## THE HSE: ITS ROLE AND RESPONSIBILITIES

The HSE is the body responsible for overseeing the protection of people from injury or illness caused by work. It is primarily a regulator. The responsibility for protecting workers and the public lies mainly with the employer, but the HSE recommends regulations to government, produces guidance, inspects workplaces, investigates incidents and prosecutes when necessary. It is often seen as the 'watchdog' of health and safety.

The HSE was created by the Health and Safety at Work etc. Act 1974, and it is sponsored by the Department for Work and

Pensions. It has a chief executive, and also a board, which includes a part-time chair and between nine and twelve board members appointed by the government. Of those, at least six should come from employee or employer bodies, three from each.

In the past, the HSE has generally been highly respected by government, unions and employers, all of whom have been supportive of the organisation and its work. It is also highly regarded internationally as one of the premier health and safety organisations in the world. Certainly its staff are considered first class, including those in the Health and Safety Laboratories, which it runs.

However, 40 years since its creation, despite all the good work that has been done, Britain still has a huge health and safety problem.

**"There have been significant cuts in funding, forced cuts in the levels of inspections, a major round of deregulation, and several reviews. All of these have proved very disruptive to the work of the Health and Safety Executive (HSE)."**

**"At least 20,000 people die prematurely every year because of occupational injury or disease, but the real figure could be even higher."**

### The scale of the problem

The government has claimed that Britain is one of the safest places to work in the world. In fact, workplaces can be dangerous, but this danger is often downplayed by the selective use of statistics. The figure that is often given as an indicator of how safe Britain's workplaces are is the number of workplace fatalities that occur as a result of an injury at work. This is published by the HSE every year and in 2012/13 that number was 148 – one of the lowest ever.

That, however, is far less than even one per cent of the number of people whose lives have been cut short as a result of their work.

If you include those who die from occupational cancers, other lung disorders and cardiovascular disease caused by work and people killed on the roads while working, at least 20,000 people die prematurely every year because of occupational injury or disease, but the real figure could be even higher.

The death toll that work takes is only a part of the picture. Last year, 175,000 workers received an injury that meant they had to take at least seven days off work. Worryingly this figure seems to have been increasing since the election.



This is the number of cases where there was an actual injury in the workplace that led to at least seven days off work. It does not include injuries that develop over time or diseases that people get as a result of their work. The HSE estimates that in total, 1.8 million people are suffering from an illness that was caused or made worse by work.

### Cuts to the HSE

In 2010 the government announced that by 2014 the HSE would have had to reduce its budget by approximately £80–85m a year. This was a cut of around 35 per cent in the state contribution. However further cuts announced since then mean that the total reduction in the amount of government money will be in excess of 40 per cent.

## Taking the 'health' out of 'health and safety'

Far more people die as a result of a disease that they get from work than are killed in an 'accident'. They are also far more likely to be made ill than injured. Over 70 per cent of sickness absence caused by work is due to either stress or musculoskeletal disorders such as back pain or RSI. All these are preventable.

Following pressure from trades unions and safety campaigners, the HSE began addressing these issues and developed targets to reduce the levels of illness caused by them. They funded research into occupational cancer, banned the use of asbestos, developed standards on stress and produced a number of useful tools on manual handling. Much of this was done in partnership with unions and during the 10-year

period before the election the number of days lost through sickness absence fell by 20 per cent. Given that in 2010 the CBI claimed that work-related ill health was costing employers £3.7bn a year, this fall is saving employers almost a billion pounds every year.

Since the election, much of this work has been abandoned. The government's policy document for health and safety, *Good Health and Safety, Good for Everyone*, published in 2011, did not even mention occupational illness or disease. Nor did the Young Review (see below).

The Temple Review of 2014 recognised the problem after it was raised in much of the evidence and highlighted the lack of work to tackle work-related ill health, but without resources and government commitment there is unlikely to be any change.

To counter this, the HSE has attempted to increase external income fees and charges. If the HSE were to meet its target for external income, the reduction in overall budget from 2010 will be 13 per cent by 2014/15. Its last annual report (2012/13) shows that it is falling short of that by £6m, meaning that the overall reduction is likely to be greater.

One reason for the shortfall is the money received from a charging scheme called Fee for Intervention (FFI). In an attempt to make up some of the money, the HSE introduced a scheme that meant employers could be charged a fee for the HSE's work in helping them sort out a problem where an inspector found a 'material breach' of

the law. Although many people were against the principle of funding, they accepted the introduction of FFI as the lesser of two evils, given that it was anticipated that FFI would bring in around £17m in 2013/14 and £23m in 2014/15. Unfortunately, half way through its first year it had brought in well under half of the projected income.

This is clearly affecting the service that it provides, but it has also meant considerable staffing reductions. In April 2010, just before the election, the HSE employed 3,702 people: by December 2013 it had fallen to 2,769.



The HSE has itself admitted that funding cuts will lead to an increase in injury and ill health. In a consultation on FFI it stated that if it did not receive the increased money "the expected 'lower level of enforcement' would mean a consequent decrease in health and safety standards throughout Great Britain, with ensuing costs to society".

There already appears to be an increase in injuries. Normally during a recession the rate of injuries decreases, but in both of the last two years there has been an increase in the number of non-fatal injuries that have lead to an absence of over seven days.

Increases in occupational diseases often take far longer to show up in statistics because the effects can take some time to show. However, the last government showed that, by tackling issues such as

stress and musculoskeletal diseases, the levels can be reduced. In 2000 it set targets for reducing fatalities, injury and ill health over the next 10 years.

By 2010, fatalities had fallen by 22 per cent, the incidence of work-related ill health had fallen by 15 per cent and the number of days lost through work-related ill health had fallen by 20 per cent.

These gains are now in danger of being reversed as a result of the failure of the government to address health and safety issues, in particular occupational illnesses such as musculoskeletal disorders and stress.

### **Local authorities' cuts**

Local authorities have also been hit hard by the cuts. Local councils are joint regulators of workplace health and safety along with the HSE, and also conduct health and safety inspections.

Central government has reduced funding for local authorities in England by 40 per cent. Although various councils have been hit differently as the level of cut will depend on the proportion of central government grant, local authorities in the most deprived areas of England are facing cuts averaging 25.3 per cent between the financial years 2010/11 to 2015/16. Often these councils, predominantly in inner-city areas, were those who did the most health and safety work.

Because it is up to each local authority how much it spends on this area of work, the cut in health and safety budgets has also been unequal; but overall local authorities have reduced their inspections by a massive 93

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per cent since 2009/10. However, most of this has been a result of pressure from the government to reduce inspections rather than just because of the financial cuts imposed on councils. Nevertheless, the number of inspectors employed by local authorities has fallen from 1,050 full-time equivalents in 2009/10 to 854 in 2013/14.

While the cuts are having a considerable effect on the ability of the HSE and local authorities to operate effectively, the main concerns over health and safety in the past four years have not only been over the cuts to funding, but also the strategic direction and deregulation that this government has forced through during the past four years and which are changing the whole landscape of health and safety.

## HSE independence

The HSE is run by a chief executive overseen by a board of people called non-executive directors and a chair. These are appointed by the Secretary of State. The law says that in the case of three board members these appointments must be made after consultations with organisations representing workers, and another three should be made after consultation with employer organisations. This was because, when the Health and Safety at Work Act

was introduced in 1974, the principle behind it was that health and safety was a workplace issue that was best dealt with jointly between workers and employers. Hence a commission was set up with six people representing workers and employers. This has served the HSE well. In 2008, the commission was replaced by a board, but the principle of worker and employer representation was retained.

This meant that the HSE board retained links with the workplace and had an element of independence from government. However, the final say on regulation was with the Secretary of State, who could instruct the board.

That is now under threat. In 2013, without consulting the TUC, the government appointed a person to represent 'workers' interests'. The TUC had nominated a high-profile trade unionist who had years of experience in safety. Instead it appointed someone who was retired and had no current links with the unions or the workplace. At present, almost all the members of the HSE board are retired or now working as a consultant, with only the two remaining TUC nominations being still strongly connected to the world of work and able to represent the interests of those affected by health and safety regulation.

In 2014, the Temple Review into the HSE stressed the importance of tripartitism (workers, employers and government working together) and recommended that there be no change in the current structure. It did, however, recommend a 'skills review'. The government, however, did not accept this part of the report and may make its own proposals. Meanwhile a skills audit is taking place.

The HSE has a respected and effective chair, but it also needs a strong, independent board made up of people who know the world of work and are able and willing to defend health and safety in the workplace.

In addition, the HSE needs leadership from a chief executive. In August 2013, the chief executive retired and the process of replacing him started that same summer. In December, the post having been advertised and interviews taken place, the government seemed to stop the process. Instead the post is to be re-advertised, with more emphasis on commercialisation and business experience. As a result of the interference by government in the process at the final stages the HSE remains without a chief executive.

few major recommendations on legislation beyond proposals on reporting of injuries. Most of the recommendations were around food safety, consultants and compensation. Not one single proposal to improve health and safety was contained in the report. It did, however, reject the proposal in the Coalition Agreement to exempt the police from health and safety regulation.

That was quickly followed by a further review by Professor Löfstedt of King's College London. Like the Young Review, it was limited to looking at the "burden" of regulation. The terms of reference were: "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."

It was published in November 2011 and, also like the Young Review, it found that the current framework was fit for purpose and there was no evidence of excessive regulation, or of a compensation culture. Again it made a number of recommendations on compensation, the self-employed and consolidating regulations, but was generally positive about the need for regulation and a strong health and safety culture.

At the same time as the Löfstedt Review was being conducted, the government ran the Red Tape Challenge, which involved asking businesses (but not unions) what health and safety regulations could be removed. This was a lengthy exercise but the overall result was that the vast majority of respondents, rather than saying that regulations could be removed, were either supportive of the existing regulations or suggested improvements. This was a major embarrassment for the government.

## DEATH BY A THOUSAND REVIEWS

One of the first things the government did was to set up a review into our health and safety system – or, as it called it, the "burden" of our health and safety system. This was done by Lord Young and it started as a Conservative Party policy review, but after election became a government review. By then evidence had been taken and the report partly written and organisations given under three weeks to prepare and present evidence. When it was published, in October 2010, very few of the conclusions were based on evidence and the report admitted that much of the problem was "perceptions". However, it accepted that the basic health and safety system was sound and made

Virtually the only thing that came out of it was a recommendation that electrical equipment did not have to be automatically tested every year. In actual fact there had never been such a requirement.

Finally, in 2013, the government asked the head of the Engineering Employers' Federation, Martin Temple, to review the HSE to see whether it was fit for purpose. Like Young and Löfstedt, Temple found no major problems with the health and safety system and presented a glowing report of the work of the HSE and the need for strong health and safety regulation and enforcement.

Clearly this was not what the government wanted to hear, so it said it would be going further than the report recommended in a number of areas.

None of these reviewers was asked to look at what could be done to improve health and safety; that was not even on the agenda. But what these reviews all show is that the government is hell-bent on trying to reduce health and safety protection – and if it does not like the answers it is given, it just sets up another review.

While all the reviews have been generally supportive, each has eaten away a little at the regulations we have. At the same time the HSE and the health and safety community have suffered from review overload as a result of the changes and uncertainties. These have had a major effect on the work of the HSE, as well as the view of industry towards the HSE and health and safety in general.

## INSPECTION ACTIVITY

For health and safety laws to be effective, employers must know that if they do not obey the law they could face prosecution.

In the past, the HSE and local authorities used a mix of proactive inspections (these are routine and often unannounced), and reactive inspections (after an incident is reported). The HSE used a ratio of 60 per cent proactive to 40 per cent reactive. Those workplaces that were most likely to have problems were visited more often and occasionally there would be a 'blitz' of a certain industry such as construction to try to improve standards. Overall, proactive inspections aimed to target where they would have most benefit, but no workplace was free from the possibility of an unannounced inspection. This was generally accepted as being the most effective way of ensuring that employers complied with the law and at the same time bringing those who broke the law to justice.

The concern from unions and many safety campaigners was simply that there were not enough inspections; but since the coalition government came to power the situation has become even worse.

In March 2011 the government issued instructions to the HSE to stop all proactive inspections in a wide range of industries including postal services, transport (including docks), education, electricity, light engineering, textiles, health and social care. They say that this will reduce the number of inspections by 11,000 a year. The reason that they give, in most cases, is that the premises are 'low risk'. In fact many of the

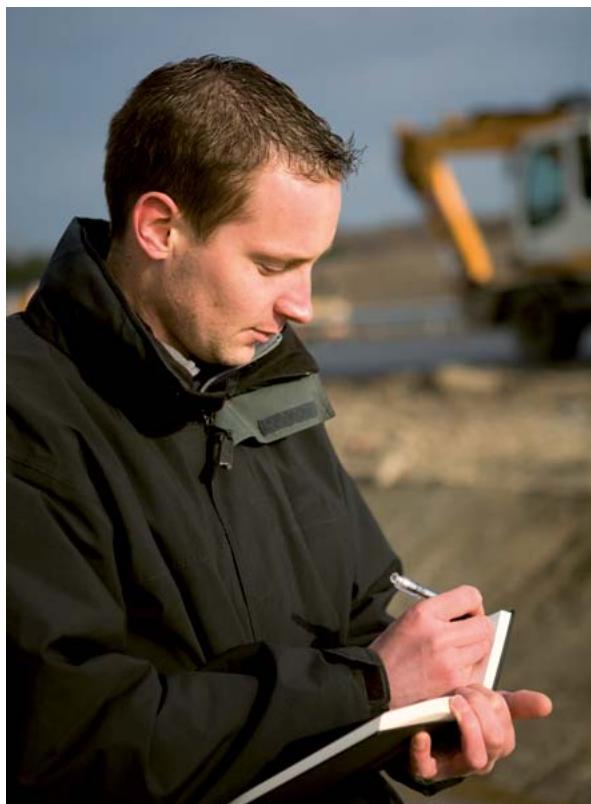
sectors identified have much higher levels of ill health caused by work than those that are still allowed to be inspected. In addition, an analysis in January 2013 by Hazards magazine of the HSE's official fatality figures showed that 53 per cent of deaths occurred in those workplaces no longer subject to unannounced preventive inspections.

The government has also told local authorities to stop most of their proactive inspections. Local authorities undertook approximately 8,000 proactive inspections in 2013/14, which is a massive 93 per cent reduction since 2009/10. In fact 36 per cent report that in the first six months of 2013 they carried out no proactive inspections in any risk category. And it is not only proactive inspections that have been cut: accident investigation visits are also down 42 per cent since 2009/10.

The number of proactive inspections will fall even further as a result of instruction to this effect in a National Local Authority Enforcement Code published in May 2013.

HSE inspections in high-risk workplaces have also fallen. The highest-risk firms, those covered by the HSE's Hazardous Installations Directorate, fell from 3,622 inspection records in 2010/11 to 2,219 in 2011/12.

Figures also reveal fewer complaints being followed up by the HSE. The HSE received 11,975 complaints from workers and members of the public in 2010/11, which fell to 10,420 in 2011/12. The organisation 'followed up' 10,000 cases in 2012/13, showing a steady decline throughout the years. Investigations of reported injuries also fell from 4,267 in 2010/11 to 3,200 in 2012/13.



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One new thing that the HSE did do was to set up an Independent Regulatory Challenge Panel to consider complaints against decisions made by HSE or local authority inspectors. To date, only one complaint has been received.

What this means is that those sectors with the highest levels of occupational illnesses such as back pain, RSI, asthma, dermatitis and stress are almost all ones that the regulators are no longer allowed to inspect proactively. Because most of these illnesses are never reported to the HSE there is no longer any incentive on employers to take action to reduce them.

Injuries will certainly go up in those sectors where proactive inspections are being banned. After all, if employers face an inspection only if they report an injury or fatality, it is not likely to act as a deterrent as most employers think 'it will never happen to me'. It may, however, mean that when it does happen it is less likely to be reported.

The reason for the government's demands that regulators cut inspections is nothing to do with the cuts, nor is it based on any kind of evidence about effectiveness. Requests made under the Freedom of Information Act for the evidence that was considered before the decision was made have shown that there is none.

The decision to stop proactive inspections is because the government believes that inspections are a 'burden' on business. This is nonsense. Only employers who are breaking the law have anything to fear from an inspection. The vast majority of inspections do not lead to a prosecution, but to the employer being given advice and support on improving health and safety. In fact 89 per cent of employers who are visited by the HSE say it is a positive experience. Additionally, a CBI survey of business views of the HSE, conducted before the government stopped proactive inspections, found that "business regards fair enforcement as the principal focus of

the HSE and is generally satisfied with the quality of service provided by the HSE".

Inspections also help produce a 'level playing field'. Employers who invest in health and safety often complain that their competitors get away with cutting corners. Having regular inspections ensures that this does not happen.

## REGULATION UNDER THREAT

The TUC has always supported strong, simple regulations, properly enforced. There is no need for complex detailed regulations that neither employers nor health and safety representatives can understand, which is why, prior to 2010, the TUC was working closely with the HSE to try to simplify and consolidate regulations, and update or remove any that were no longer relevant.

This process was done in a way that both employers and unions were supportive of, and resulted in a 37 per cent fall in the number of regulations. There were no cases where it was seen as a reduction in regulation and in many cases the driving force was improving protection through providing greater clarity or relevance.

The Löfstedt Review recommended a number of proposed repeals of regulation. Most of these had already been identified, and trade unions had agreed that they were no longer relevant and that there would be no adverse safety concerns. Since then, however, the government has become obsessed with regulation and wants to get rid of as much as possible.

It has insisted that there will be no new health and safety regulation unless it comes from Europe, and if there is any further regulation then there must be no 'gold plating'. This is the government's phrase for anything that is over and above the minimum required in the European directive. In fact these directives are minimum standards and it is good practice to incorporate new directives into the existing regulations and, where there is evidence for doing so, retain or introduce standards that offer added protection to workers. This is the practice in most European countries.

They have introduced a policy of 'one in two out'. This means that for every new regulation introduced the government intends to remove at least two of similar cost. This illustrates more than anything else the government's obsession with deregulation. It sees regulation in terms of numbers, not the value or effect.

Any new regulation must have a 'sunset' clause, which means that it ceases to be a regulation after a set period of time unless specifically re-approved. This is a nightmare for regulators, employers and health and safety representatives, who will have to keep track of which regulations still apply.

The HSE can propose no new 'burdens' on small businesses (fewer than 10 employees) for three years. Of course this requirement did not apply to the government's own tax-raising regulations, which are exempt from this requirement.

At the same time, the government has tried to push alternatives to regulation. One way of doing this has been to develop 'responsibility pledges'. These developed out of an American idea that, to change behaviour, you just have to 'nudge' people in the right direction. The government asks

employers to sign up to a range of 'pledges' about issues such as stress and health checks or recording sickness absence. There is no research as to whether these are having any effect in the workplace and very few have any link to prevention, but are more about promoting well-being.

One of the pledges is about smoking and it asks employers to encourage smokers to stop. Smoking is also one of the clearest examples of how strong regulation worked when in 2007 (2006 in Scotland) the government brought in a workplace smoking ban that was simple and effective, and has probably already saved hundreds of lives. Despite this, the coalition government seems unable to understand that part of its role is to protect the weak from the strong, and that health and safety is not about nudging employers (and workers) in the right direction, but instead is about setting legal minimums that no one can fall below.

## **Loss of protection for some self-employed people**

At present self-employed people are covered by the Health and Safety at Work Act. This is to protect both themselves and others. It is pretty straightforward and clearly there is a need for this as self-employed people are more than twice as likely to be killed at work than other workers.

The government is currently trying to change the law to exempt large numbers of self-employed workers by exempting everyone not on a specific narrow list. The changes proposed by the government are completely unnecessary as the only time the Health and Safety at Work Act can be used is in circumstances whereby the self-employed person does put another person at risk.



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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.

### **Changes to reporting regulations**

The changes however will remove all liability under the Act for any self-employed person who is not on the list. The HSE will be unable to prosecute them or even stop them doing things that are risking injury to other people.

The proposal will also be a recipe for confusion and complacency. Self-employed people will be unsure if they are covered, or presume that they are not, especially if they are not on the proscribed 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.

The government has also twice changed the reporting regulations. These are called the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR), and the statistics based on them are extremely important in determining priorities for the HSE, local authorities, unions and employers, as well as determining inspection priorities and for preparing annual statistics. They also allow historical comparisons to be made. This is dealt with in more detail in the section on reporting and statistics. Previously employers had to record and report injuries that led to more than three days away from a person's normal duties.

Following the Young Review the HSE changed the reporting (but not the recording) requirement from over three days to over seven days. This change meant greater confusion for employers as, rather than having to record and report injuries that lead to an absence from normal work of more than three days, they now have to record them after three days but only report after seven days.

The change also means that the HSE is deprived of important information about an employer's safety record. If there are a large number of four- or five-day injuries then clearly that employer has a problem that could lead to something far more serious. There are also major implications for HSE statistics as explained in a later section.

Among other changes, the government repealed legislation on tower cranes. These were introduced following a number of high-profile collapses that lead to the deaths of operators or the public. At the same time, it withdrew specific regulations on hard hats in construction sites despite concerns by unions about the message this would send.

What all of these changes have in common is that at no time has the government ever attempted to claim that a measure will improve health and safety. In some cases it is clear that it will have the opposite effect. They are simply an attempt to increase the number of regulations that have been repealed or 'burdens' that have been removed.



## CODES OF PRACTICE AND GUIDANCE

### Approved Codes of Practice (ACoPs)

ACoPs have a specific legal status and represent what an employer should do to comply with their legal requirements. They can be used in court and safety professionals and trade unions have found them to be extremely important in helping ensure that employers comply with the law.

Health and safety representatives have found that employers are far more likely to comply with an ACoP than guidance.

Unfortunately, as a result of instructions by the government to review all ACoPs, a number of extremely useful ones have been abolished despite objections from both unions and safety professionals. The main one was the ACoP to the Management Regulations. These regulations are vitally important as they impose the requirement

to conduct a risk assessment, and to manage the risks identified. The Approved Code of Practice imposed a number of requirements, including consulting with health and safety representatives on risk assessment. The HSE removed these, despite considerable opposition, saying that the guidance was suitable.

A number of other Codes of Practice have been withdrawn despite opposition by a majority of those who responded to a consultation, although some important ones such as those relating to safety in docks have been retained as a result of pressure from unions.

## Guidance

While regulation and Codes of Practice are important ways of ensuring legal standards, employers, workers, safety professionals and health and safety representatives also need to know how to apply it.

The HSE has produced some of the highest-quality advice available anywhere in the world and its website has been seen as exemplary both in the UK and abroad, where it is used by many other regulators.

Since the election the HSE has been told to review all its guidance. Reviewing guidance is nothing new, and is a continuation of the normal HSE process that it has been doing since it was set up 40 years ago. Where unions are involved this has generally continued to be about making guidance as simple and clear as possible: however, on other occasions it has been seen as reducing effectiveness by stripping out 'good practice'. On occasions the HSE has said that guidance should not go beyond

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the legal requirements, which is clearly nonsense, as the purpose of guidance is not simply to repeat what is in regulation but to improve standards and practices.

Sometimes the process of 'simplifying' guidance has been criticised as 'dumbing down'. This is particularly the case with some of the risk assessment tools that have been developed, some of which omitted hazards such as asbestos.

Concerns have been raised over the decision to make most of the material available online only where it is aimed at groups that are far less likely to have internet access at work such as construction or agricultural workers.

Unions and employers have also had problems where guidance has been produced jointly by them and the HSE, with the HSE often refusing to publish such guidance or to put their name to it. This is a break from past practice and has caused problems in a number of industries.

However, guidance goes further than producing booklets and the HSE has traditionally run campaigns to ensure that employers know their legal rights or that



workers know about risks. Many of these have been very successful, such as the Hidden Killers campaign aimed at changing the behaviour of contractors likely to be exposed to asbestos. This campaign material was reported to have been seen by 85 per cent of the target group, and 76 per cent said they would or planned to take precautions to prevent exposure when working. Immediately after the election the HSE was instructed to stop all such campaigns and since then the trade unions, asbestos campaigners and even politicians have been trying to get this campaign reinstated.

In addition the HSE used to run a free telephone advice service called info-line. This was extremely popular, especially with small employers, but was also used by health and safety representatives. Each year around a quarter of a million people called for advice or information but in September 2011 the service was closed with no consultation beforehand. Instead employers have to try to find the information elsewhere or hire a consultant.

## STATISTICS

Traditionally HSE statistics have been seen as being world class. In addition the HSE employs extremely well-regarded statisticians and has funded research that has been of significant importance in identifying trends in injuries or illnesses as well as new problems. This has allowed the HSE, and employers and unions, to ensure that any campaigns or guidance are aimed at where the real problems are.

The statistics have come from a number of sources, including the Labour Force Survey, reports from doctors and, of course, reports from employers under the RIDDOR requirements where employers have to report injuries, fatalities and some occupational diseases.

The changes to reporting have meant that it is much harder to make comparisons with previous years. The HSE has carried out self-reported work-related illness (SWI) surveys since 1990. These are of people who have conditions that they think have been caused or made worse by their current or past work. From 2003/04 these

## **"Last year the HSE announced that reporting levels of non-fatal injuries had now fallen to below 50 per cent."**

were done every year but in 2011/12 this was changed to once every two years, so work-related ill health data was not collected in 2012/13. This is a major loss and makes a big dent in the statistics.

However, the biggest loss was caused by the changes to RIDDOR (see page 18). Now only injuries that lead to more than seven days' absence from full duties (previously three days) are reportable, and the criteria have changed. This means it is impossible to make accurate comparisons. This is shown by the latest HSE report, which claims that workplace major injuries hit an all-time low for 2012/13, yet the statistics show that the number of days lost through workplace injury is up from 4.3 million to 5.2 million, implying that the number of people injured is actually going up. So which is correct?

The Labour Force Survey, which is done by asking people about whether they have had any injuries, shows that in the past two years injuries that incapacitate for a week or more ('over-seven-day injuries') have gone up each year.

The changes also seem to have impacted on the level of reporting, as last year the HSE announced that reporting levels of non-fatal injuries had now fallen to below 50 per cent. This may be because employers are confused over what to report and inspectors are less likely to be visiting

workplaces to check compliance. In addition, the introduction of Fee for Intervention may mean that employers are less likely to report injuries for fear of getting an inspection and then being charged for it.

Funding of surveillance schemes run by academics has also been cut, with some schemes (such as the one that obtained data from occupational physicians) abandoned all together. Again this means that we have gaps in our knowledge that cannot be filled.

What that means is that it is almost impossible to prove what we all suspect, which is that the government's policies over the past three years have driven up the number of injuries (occupational diseases take longer to show). The changes to inspections, coupled with some of the deregulation measures and removal of guidance, are bound to have an effect on what employers do. However, because the government has also changed the way that injuries are reported we will never be able to show exactly what the effect is.

Despite that there is strong evidence that it is going in the wrong direction.

## **EUROPE**

The coalition government has had a significant influence on health and safety, not only in Britain but also in Europe. It announced early on that it would not support any further regulation on health and safety from Europe and even wanted to reduce the regulations we already had.

Much of Britain's health and safety regulation is underpinned by a significant European regulation of 1989 called the Framework Directive. In order to comply with this directive, Britain brought in new regulations about issues such as risk assessment, manual handling, work equipment, visual display units, personal protective equipment and welfare. These regulations aimed to apply common minimum standards across Europe and were widely seen as being simple and progressive. Since then there have been a number of other European directives covering areas such as construction, asbestos and chemicals.

These regulations have helped drive up safety standards in Britain and across Europe, and most British health and safety law in the past 20 years has been a result of European directives.

This year, under pressure from Britain, the European Commission embarked on its own version of deregulation under a policy it calls REFIT. The Commission President announced that this Commission will not be bringing in any more regulations on workplace safety. Everything to do with safety at work that was in the pipeline has been blocked, including proposed directives on musculoskeletal disorders and carcinogens, which are two of the biggest health issues in Europe. This is despite strong evidence for the need for new regulation from its own officials and advisers. It has also refused to bring forward proposals to turn into law agreements reached between employers and workers in other areas, such as hairdressing and fisheries. So even when employers agree to proposals they are not going to be progressed. Furthermore, at Britain's request, the Commission

is considering proposals to remove the protection of workers in small businesses.

The government also worked hard to oppose any new EU strategy on health and safety after the current one ends this year. Despite a commitment by the Commission to have a new five-year strategy, earlier this year it was announced that would not happen, despite originally having been supported by most countries and the Commission itself. Now, because of the intervention of the British, the European Commission will have absolutely no strategy on how to deal with the prevention of injury and illness caused by work.

## COMPENSATION

Probably the area where workers' rights have been hardest hit is compensation. The government has claimed that compensation claims were out of control and need to be reined in. This is rubbish. In fact compensation claims by workers have been falling for over 15 years and are usually considered to be lower than in most other industrialised countries. A TUC report showed that only about one in eight workers who is likely to be liable for compensation actually claimed.

Also, compensation claims help drive improvements to safety. If employers and insurers are forced to pay out after an injury or illness they are more likely to try to prevent it happening again. In fact, given the collapse of health and safety inspections under this government, compensation claims and unions are virtually the only drivers of health and safety in this country.



However, since the election the government has removed the legal system that allowed workers to pursue claims and receive all their damages. Now they may have to pay up to 25 per cent of their damages in costs.

It also changed 150 years of law whereby a worker can claim compensation if they are injured because the employer has broken the law. Since 2013 a worker has to show negligence. The government claims that it has changed the law because it was recommended by the Löfstedt Review, despite the fact that Professor Löfstedt has made it clear that this is not what he recommended.

The government also slashed payments under the Criminal Injuries Compensation Scheme. It removed around 17,000 victims of violent crime every year from the scheme, including those with injuries like a smashed hand or an injury to the

knee that is serious enough to require surgery. This affected thousands of workers who were injured because of criminal acts at work, such as shopworkers or security guards who were assaulted.

Finally, it watered down a proposal by the last government to pay those who developed occupational diseases where the employer's insurer could not be traced. It restricted payments to one disease only, mesothelioma, and agreed to pay only 75 per cent of what the person would be entitled to. This followed strong lobbying from the insurance industry.

It is too early to know how many people will now be denied compensation as a result of these changes, or what the effect on workplace safety will be, but what is clear is that the changes are a deliberate attempt to move the cost of employers' negligence from the employer and insurer to the worker, who has already suffered through being made ill or injured.

## CONCLUSIONS

The coalition government's policies on health and safety are based on an pro-business, anti-regulation ideology. Although the funding cuts have hit the HSE and local authorities hard, most of the changes the government has forced through in terms of reduced inspections and removing protection have had nothing to do with the cuts.

This government sees regulations on health and safety as a 'burden'. This is despite strong evidence that those organisations with a strong health and safety culture perform better generally.

**"After four years, the HSE is still managing to do a good job, despite the cuts. It remains a respected and effective organisation that has the support of both employers' bodies and trade unions."**

It also believes that Britain can be successful only if it tries to compete with countries like Indonesia and China where workers' rights are much lower. That is why the attack on health and safety protection for workers is a part of a wider weakening of worker protection to employment rights, maternity rights, rights to compensation etc. The truth is, of course, that those countries with the strongest regulations and worker protection (like Germany) generally survived the recession better than the UK and have stronger economies.

However, the government is also 'grandstanding' by trying to appeal to populist misconceptions about health and safety, fuelled by numerous stories in the press about "elf and safety gone mad". Most of these stories are distortions, but almost all relate to public safety, such as at village fêtes and playgrounds or the activities of local councils. Very few are anything to do with health and safety in the workplace.

That has not stopped the Prime Minister saying he will "kill off the health and safety culture for good".

Yet, despite four years of constant undermining of our health and safety

system, the underlying principles have been retained. In part this is because the government's plans for greater deregulation have been stymied by the evidence thrown up by the various reviews, and partly because European regulation makes it impossible for it to go much further in deregulation.

In addition, the reality is that employers have no appetite for a reduction in health and safety protection. Most employers want a strong health and safety regime that stops their competitors undercutting them. That is why there has been little enthusiasm from responsible employers for cuts in inspection and enforcement. In the world of work, health and safety is still usually respected and valued by workers and employers alike – despite the best efforts of the media and politicians.

After four years, the HSE is still managing to do a good job, despite the cuts. It remains a respected and effective organisation that has the support of both employers' bodies and trade unions.

The question is whether the HSE, and our health and safety system, can survive a further period of cuts, deregulation and political neglect or abuse. There must be a real concern that we are close to losing the workplace culture and consensus on safety that has existed in Britain for so many decades, and the results of that loss could be disastrous.

There is, however, an alternative. The TUC wants a government that is committed to protecting workers. There must be a sea-change in our attitude to health and safety if we are going to stop this massive health problem that costs the state billions of pounds but which claims the lives of far too many workers.

## TUC MANIFESTO

Trade unions have developed a list of 10 simple measures that they want to see from a future government. If implemented they would have a huge impact on reducing the toll of death, injury and illness that is still an everyday part of working life for so many people.

These are:

- ▶ All workplaces should be inspected regularly by the enforcing authority.
- ▶ There should be revised regulations on safety representatives and safety committees to increase coverage and effectiveness.
- ▶ Occupational health should have the same priority as injury prevention.
- ▶ There should be a new, legally binding dust standard.

- ▶ Exposure to carcinogens in the workplace must be removed.
- ▶ There should be a law governing a maximum temperature in the workplace.
- ▶ There should be increased protection for vulnerable and atypical workers.
- ▶ There should be a legal duty on directors.
- ▶ Health and safety to be a significant factor in all public sector procurement.
- ▶ The UK government should adopt, and comply with, all health and safety conventions from the International Labour Organization.

For more detail on these proposals visit: [www.tuc.org.uk/sites/default/files/tucfiles/TUC\\_Health\\_and\\_Safety\\_Manifesto\\_Time\\_for\\_Change.pdf](http://www.tuc.org.uk/sites/default/files/tucfiles/TUC_Health_and_Safety_Manifesto_Time_for_Change.pdf)

## Timeline

**May 2010** – Coalition government formed. Coalition document published. The only mention of health and safety relates to the police.

**October 2010** – Young Review Common Sense, Common Safety published. First of a series of reviews into the ‘burden’ of health and safety.

**March 2011** – Government publishes its plans for further reforms in Good Health and Safety, Good for Everyone. This proposed a major reduction in inspection activity.

**July 2011** – First ‘Red Tape Challenge’, which looked at health and safety, closed.

**November 2011** – Löfstedt Review of health and safety law. Generally positive but led to reduction in protection for the self-employed among other things.

**October 2012** – Fee for Intervention introduced.

**May 2013** – Publication of National Local Authority Enforcement Code, which instructs local authorities to reduce their inspection activity further.

**January 2014** – Temple Triennial Review of the HSE published. Very positive report on the HSE, but ministers said they would go further than the recommendations.



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