

EPILOGUE TO 5 MYTHICAL YEARS: 'ELF AN' SAFETY GONE MAD!

1 In March 2015 the Health and Safety Executive (HSE) considered their final report¹ on the health and safety 'reforms' of the Condem Government. In the background note the HSE point out that all the health and safety reviews were part of:

'wider initiatives by Government to reduce the burden of regulation on business and aid economic growth.'

2 The HSE was congratulated by the Permanent Secretary of the Department of Work and Pensions – the Government Department sponsoring the HSE – for its efforts in making savings for business. He then went on to state that 'this is just the beginning' and that the Small Business, Enterprise and Employment Bill contains 'provisions to embed these changes [more deregulation], including the creation of a statutory requirement for each Government to set and report against a deregulation target.'

3 Perhaps now that the HSE has 'revoked consolidated and improved 84%' of health and safety regulations, it can revoke, consolidate and improve the remaining 16% into one set of regulations, such as the 'Be All and End All Health and Safety Regulations 2015'! Such is the logic of this bizarre episode in HSE history.

4 The DWP itself published a final report² on their health and safety reforms. While Lord Freud congratulates the Government for 'helping business to flourish whilst maintaining a healthy, productive workforce' the report doesn't actually identify anything of much significance to justify such a statement. [Apparently Lord Freud in unaware that the UK has one of the worst³ productivity records of the Western nations.]

5 Lord Freud also appears to not recognise the burden associated with hundreds of workers being directly killed by work each year; 10,000s of workers dying each year from work related diseases; over one million being made ill by work and the HSE estimated £14 billion this costs Britain each year. Nor does he appear to recognise the grief, pain, suffering and despair that is associated for the family, friends and work mates of those killed or directly suffer ill-health from work activities.

6 The HSE estimate that around 80% of injuries are 'attributable' to failures in managerial control. In other words, employers create the conditions in which the majority of workers these statistics represent are hurt.

7 In this summary note, all of the actions the Government identified in its final report are commented upon here to identify the alleged 'burden' and how it has been reduced.

8 The ConDem government pressurised the HSE to set up the independent Occupational Safety and Health Consultant's Register (OSHCR) to list out competent consultants from 'rogue' consultants. This was set up in 2013. The Government had no idea how many 'rogue' consultants existed before the register was established, so have no benchmark by which to judge success; since the register was set up, the Government has done nothing of any significance to promote it; it remains voluntary; and the HSE got shot of it as quickly as they could.

9 According to David Young - who recommended the register - anyone could set up as a health and safety consultant and he blamed incompetent consultants for causing their clients to 'over comply' with health and safety legislation. Yet the vast majority of 'elf n. safety' complaints relate to organisations being advised by health and safety advisors, not consultants. Yet the Government have now gone silent on ensuring the competency standards for **all** health and safety professionals.

10 Part of the ConDem Government's reform was the publication of 'Health and Safety Made Simple'. In their final progress report, the aim was stated to have:

'..... easy to use guidance for small and medium sized employers in low risk businesses, making it easier for employers to do the right thing.'

11 This guidance was published on the 11th March 2011. In June 2013 – over two years later – a 4 year old child was killed in a Hugo Boss shop. This was exactly the 'low risk' premises on which such guidance was targeted. Hugo Boss was fined £1.25 million on the 3rd September 2015 when it pleaded guilty to breaches of health and safety law.

12 The Government are particularly proud of their success in cutting proactive workplace inspections of the workplace. They highlight the major changes to the enforcement regime for health and safety by:

'... refocusing both HSE and local authority inspection activity on higher risk areas away from lower risk businesses who manage their responsibilities effectively.'

13 As a direct result of Government diktat, proactive HSE inspections were cut from 33,000 in 2010/11 to 22,000 in 2014/15, a 33% reduction: thus reducing the opportunities for the HSE to assist employers before something goes wrong. In Local Authorities – who enforce supposedly 'lower risk premises' like the Hugo Boss shop where the 4 year old child was killed – proactive inspections have been decimated. Since 2009/10 the number of proactive inspections have been slashed by 95%.

14 If the 'logic' of the Government's reforms are applied then they will now demand the HSE makes its 'Health and Safety Made Simple' even simpler for employers to understand. And outlaw *any* proactive inspections by Local Authorities.

15 The report also identifies that what action the Government took in relation to all of the recommendations in the Löfstedt Report:

- Exempting self-employed people 'whose work activities pose no harm to others' from health and safety law. This is a classic Government solution in search of a problem. The HSE and Local Authorities could find no evidence – at all – that self-employed people in 'low risk' work knew of their legal requirements: the enforcing authorities never enforced it, as they never found a need to do so; and no 'burden' could be identified in the first place. The resulting mess about how this exemption will be clarified has resulted in a list of 'risky' work. If you are self-employed and not doing work identified in the HSE lists, you then make an assessment of whether your work activity is a risk to you or others affected by your work activities and if you don't present a risk you are now except from the Health and Safety at Work Act 1974 as it applies to self-employed. **No burden identified: negligible savings benefit for employers: expense for the HSE.**
- Old legislation that few – if any – employers knew anything about has been revoked. **No burden identified: no savings benefit to employers: expense for the HSE.**
- HSE amended the Health and Safety (First Aid) Regulations 1981: revokes Approved Code of Practice: clarifies guidance in the hope employers comply with the law. **Slight burden to HSE identified: No savings benefit to employers.**
- Construction (Design and Management) Regulations 2007 were replaced by new regulations in April 2015. HSE grudgingly agreed to have a slim Approved Code of Practice due to respondent's backlash but are in no hurry to draft it. No date given for when it will be available.

HSE claims that the 'One In, Two Out' principal of deregulation related to the new CDM regulations saved⁴⁷ business £19.6m. A key target was small construction companies. The new CDM Regs require all construction projects to have a construction phase plan. In the previous CDM regs, this requirement was limited to notifiable projects. Also the CDM recognises domestic clients – who used to be exempt – but puts their duties onto either a Principal Designer or construction contractors.

Bear in mind the Government are - allegedly – endeavouring tirelessly to reduce 'red tape', particularly for small businesses. They are doing it by increasing the amount of paperwork small construction companies are required to comply with!! **Increased paperwork costs for small businesses: no savings benefit for many construction employers.**

- The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations were amended in October 2013. Overall, over 3 day injuries extended to over 7 day, with an estimated reduction in reports of related accidents of nearly 30%: a reduction of 27,000 reports. Also a reduction in the number of occupational diseases reportable to the HSE at a time when various organisations are stressing the need to take occupational health issues more seriously. This disruption to the national health and safety database is estimated by the HSE to save employers⁴ £220,000 per year due to reducing accident reporting from. They are estimated to save a further £30,000 a year⁵ through the changes to definitions in RIDDOR 2013. In other words, employers in Britain will save a few pence per year, on average.

Nothing proposed by Government or HSE about the significant under-reporting of occupational injuries and diseases. **No significant burden identified: negligible savings to business: dislocation to national database.**

- Consultation with stakeholders by HSE found no need to change the Electricity at Work Regulations 1989. Updated guidance in relation to Portable Appliance Testing. This was in response to alleged 'over compliance' by some employers who thought such appliances needed to be tested every year. HSE estimated that £30 million could be saved if employers didn't do such tests in low-risk environments.

However when the HSE did an evaluation of the requirement, 58% of businesses were unaware of the new guidance. In addition, many of the 42% of employers who were aware of the new guidance chose to continue with annual testing as they felt this 'gave an assurance that their appliances were safe.' So as most employers who knew of the new guidance preferred to keep testing, it is highly unlikely that anything like £30 million would be saved. **No burden identified: negligible saving to employers.**

- The Work at Height (WAH) Regulations 2005 were reviewed to see if the regulations may be 'misinterpreted' leading 'some businesses to go beyond what is required. According to the HSE Impact Assessment when the WAH Regs were being drafted, the costs associated with workers being killed, maimed and being injured from work at height activities was £458 million a year. Since it is over 10 years then, presumably, the 'burden' has been approximately £4.58 billion. While the Government identify that more people visited the HSE website to view the new guidance, they do not identify what has been done to prevent this £4.58 billion loss over the last 10 years. **Huge cost burden - £4.58 billion in 10 years – on society: unknown impact of some employers reading new guidance.**

- HSE should 'continue to help business 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.' The Government refers the reader to 'See Good Health and Safety Good for Everyone pages – Making Health and Safety Simpler.' And the best of British luck in trying to figure out what this means!!
- In accordance with the 'reforms' the Government confirm that HSE continued to review all Approved Codes of Practice and that by the end of 2014 19 had been reviewed: 8 withdrawn completely and 9 consolidated into three revised ACoPs. As no regulations changed and guidance is available, there was a negligible burden to employers and a major disruption to the HSE's work, as their resources were cut by 33% over 4 years. **Negligible burden on employers: documentation easier to read: negligible savings to employers: significant increase in HSE administrative work.**
- In 'Engaging with the EU' the Government identified their successes, which included:
 - blocking a proposal agreed by the social partners – employers and trade unions – to improve health and safety in the hairdressing profession. [70% of hairdressers are likely to suffer from dermatitis at some point in the careers, due to exposure to chemicals.]
 - an EU proposal to follow the UK approach of revising and consolidating regulations related to manual handling – an Ergonomics Directive – was successfully blocked by the UK.

Despite 5 years of non-stop health and safety reform by the Government, they oppose this at an EU and forced the European Commission to withdraw the proposals. [According to the HSE Statistics for 2013/14 musculoskeletal disorders affected 525,000 UK workers, one of the biggest causes of worker's ill-health in the UK: it's also one of the biggest causes of occupational ill-health in EU workers.]

So the Government's 'modernisation' programme stops when there is a real prospect of improving workers' health and safety standards. The irony is that when measures are introduced to improve the ergonomics of equipment and work processes, productivity tends to improve as well!!

The Government conclude by stating that HSE officials 'have met their counterparts in several member states to explore how we can work better together to ensure more proportionate and risk-based EU legislation.' Given that the UK has blocked legislative measures to address one of the most frequent current - and historic - causes of ill-health in Europe, how 'proportionate' has death and maiming to be before the UK stops blocking new legislation. **Blocking new legislation at EU level introduces no burden on employers other than encouraging inefficiency, poor management practices and losing opportunistic benefits of more efficient work.**

- The HSE has revoked unnecessary or redundant legislation. 84% of health and safety regulations have been either removed or improved. Apparently this has reduced the overall stock of legislation by 50%, 'without compromising or diluting health and safety protections for workers.' The Government do not indicate how they concluded the changes have not reduced protection for workers. However given that these regulations were surplus to requirements, they could not

constitute a 'burden' on employers in the first place! **No burden identified: no savings to employers.**

- The Government identify a number of sector specific consolidations that make it easier for employers to read documents. **Negligible burden on employers who are not illiterate: negligible savings for employers.**
- The Government demanded that the HSE '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'. As a result the HSE has updated its website to assist business identify health and safety legislation that is applicable to them and to 'watch out for changes in the law.' **Negligible burden on employers who are not illiterate: negligible savings for employers.**
- It was proposed that the core set of health and safety regulations be brought together 'to provide clarity and savings for business.' The HSE commissioned a legal review to see if this was possible. In December 2012 Richard Mathews QC⁶ reviewed whether health and safety regulations could be consolidated. He concluded that trying to do so would probably make it more difficult for employers to understand the regulations. **Negligible burden on employers: no savings for employers.**
- A recommendation for the HSE to direct Local Authorities in their approach to health and safety inspections and enforcement activity was rejected in favour of a closer co-operation between the organisations. The HSE published a National Local Authority Enforcement Code in May 2013. The HSE used their risk based approach to inspection and enforcement. [The HSE investigates about 3.5% of injuries reported to them and over a four year period cut proactive inspections by 33%.]

Over a similar period Local Authorities were able to nearly eradicate all proactive inspections in reducing them by 95%. Many businesses now left to their own devices. Many Local Authorities can only now simply react to breaches in health and safety regulation.

At least now, the documentation should be much simpler to read. **Reduced 'burden' of inspection on some employers: less protection available to workers.**

- The Government report that the HSE have improved liaison with other organisations involved in fatal incidents to make investigations quicker. The Government indicate they would like health and safety prosecutions to start within three years of an incident occurring. The HSE indicate that 'outputs shows improvement'. **Employers in breach of health and safety laws where a fatality occurs may be prosecuted quicker: no burden or savings for other employers.**
- Where 'strict liability' on employers automatically became a breach of civil law the Government forced through a change to disconnect the link. Now employees whose injury was constituted a breach of health and safety regulation must *prove* the employer was negligent. This should make it easier for employers to breach health and safety regulations, yet potentially evade civil liability where the employee cannot prove negligence. There is one exception: pregnant workers still maintain the right courtesy of 'the particular wording of the EU Directive.' It isn't clear what practical effect this will have.

It is worth noting that since the Government has tried to curtail the mythical 'compensation culture', the number of new claims has increased!! New claims registered with the Cost Recovery Unit under Employer Liability reduced from 98,478 in 2006/07 to 78,744 in 2009/10, a 20% reduction. The ConDem Government were elected in May 2010, from which time the respective number of new claims went from 81,470 in 2010/11 to 105,291 in 2013/14 a major increase of 23%.

When asked if the increase was a sign of success of the Government policy or an indication that health and safety standards had dropped, Anna Bliss, DWP Steward for HSE stated in personal correspondence:

'... a series of actions were taken between 2010 and 2015 to simplify the health and safety rules for business and tackle the fear of being sued, which drives businesses to do more than they really need to. These reforms were not about reducing the number of claims for compensation.'

This is puzzling. According to their website, 'HSE aims to reduce work-related death, injury and ill health'. According to the Government, 'reforms' would simplify 'red tape' thus make it easier for employers to understand their legal duties: employers would then find it easier to apply HSE advice and guidance to their work processes: thus armed with this knowledge they would then be able to apply suitable risk control measures, starting with the legal requirement to avoid risks altogether. [As defined by the general principles of prevention in Schedule 1 of the Management of Health and Safety at Work Regulations 1999.] Hence this should automatically lead to less compensation claims as employers enthusiastically seek to comply with health and safety regulation. Yet claims are increasing substantially.

While addressing the 'mythical' fear of being sued, the Government action appears to have created the situation where an actual year on year increase in claims has resulted. Mr Cameron has managed to turn perception into reality!! **No estimate of the so called 'burden' on employers who 'fear' being sued by workers available: year on year actual increase in compensation claims since David Cameron became Prime Minister.**

- The recommendation that the House of Lords be invited to discuss how to engage society on risk was put to them. Apparently the House of Lords Liaison Committee rejected a proposal⁷ to set up an ad hoc Select Committee on how best to 'engage society in a discussion about risk.' While the Committee did recommend setting up a number of committees, communicating risk in society was not considered important enough to warrant any attention. **No burden on employers: no savings for employers.**
- With the Government keen to ensure employers know how to complain about perceived 'unjust' decisions by the HSE, an Independent Regulatory Challenge Panel was established, thus creating an additional level of bureaucracy for the regulator. This was established in January 2013. In the following 29 months since, only one case was submitted to the Panel.

On the other hand the HSE also established the Myth Busters Challenge Panel to review advice from non-regulators using the term 'health and safety' as an excuse for banning something or taking action that has little or nothing to do with health and safety. The Panel is chaired by HSE Chair Judith Hackitt who is 'supported by a pool of independent members who represent a wide range of interests.' Over 300 cases have been reviewed. To give a flavour of the issues this august body

has to grapple with and devote resources to, consider one of the latest cases at the time of writing this report.

‘Case Number 368: A local charity shop refused the enquirers donation of a plastic baby bath because ‘health and safety’ meant that the new purchaser could sue if their baby were injured after slipping in it. Panel opinion: There are no health and safety rules which would restrict charity shops from accepting items like baby baths for resale. It’s also hard to imagine circumstances in which their fear of litigation might manifest itself. They are of course at liberty to set their own policies on what goods they will or will not accept but they can’t wash their hands like this and simply point to non-existent “health and safety” rules.’

Readers might consider the over 100 workers who are killed directly at work each year; the tens of thousands of workers who die from ill-health caused by their work each year; the over one million workers who take time off due to the ill-health because of their work each year: and the £14 billion this costs Britain and ponder as to whether the various people on the Panel are making the most effective use of their time tangling with the pros and cons of plastic baths in charity shops and 367 other such frivolities. **No burden on employers: HSE resources diverted onto trivial issues.**

- Apparently the Government thought it worth mentioning that INDG420 ‘Getting specialist help with health and safety was amended and the revised edition was published on the HSE web site in January 2012. **Negligible burden on employers who are not illiterate: negligible savings for employers.**

Reflections

16 The following is quoted from the only report in the Government’s ‘burden’ review that was based on evidence and conducted⁸ by a respected expert in risk management, Professor Löfstedt:

‘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.’

17 One would have thought that the eminent professor would make some recommendations on how the Government could help improve worker involvement, given the ‘potential’ for ‘significant improvement’. There were no such recommendations anywhere in the report. Positive ways to improve health and safety standards were not in the remit of either Professor Löfstedt’s review or any of the various reviews done under the Government ‘Health and Safety Burden’ reviews.

18 So the five years of Condem Government produced nothing of much significance to improve the health and safety performance of employers. They did, however, significantly increase the work of the HSE over this period and – at the same time – cut their resources by 33%.

19 I would like to see the evidence on which Lord Freud bases his statement that the ‘Health and Safety Burden’ reviews were ‘helping business to flourish whilst maintaining a healthy, productive workforce’. Given the Government have no evidence to support this opinionated statement, I never will.

Note: For a comprehensive scrutiny of the all the reviews completed under the 'Red Tape Challenge' I have made the report 'Red Tape Fallacy' available on the 'Publications' part of my website: www.workerinvolvement.co.uk

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20th November 2015

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