

# Löfstedt review: one year on

IOSH submission to the 'Reclaiming health and safety for all' implementation review for the Department for Work and Pensions



Submission

18.12.12



## Introduction

The Institution of Occupational Safety and Health (IOSH) is the Chartered body for health and safety professionals, a registered charity and an international NGO.

We are pleased to provide comment to this important review of the implementation of Professor Löfstedt's report, one year on, having also submitted evidence to the original 2011 review.

We note that the terms of reference are:

“To report to the Minister for Employment, by the end of January 2013, on how well the recommendations in 'Reclaiming health and safety for all: an independent review of health and safety legislation' have been implemented so far and how those still to be delivered are progressing, one year on from the publication of the original report.

The review will not revisit the questions originally considered by Professor Löfstedt or make recommendations for new areas of work.”

In the submission that follows, we provide a summary; our three categories of concern; references; and information about IOSH.

## Summary

1. IOSH has some serious concerns about the handling of the Löfstedt implementation process thus far and also about some negative effects that may result for occupational health and safety (OSH) and the economy. In particular, we would like to focus on what we believe to be conceptual flaws; negative portrayal and over-implementation; and undue speed and scale of change. In brief:
  - a) Conceptual flaws: we do not believe the case has been made for a number of the government proposals post-Löfstedt and are concerned they could introduce risks that cost lives.
  - b) Negative portrayal and over-implementation: we are disappointed that our country's health and safety system, which is respected across the world and has been praised by several independent reviews, is being wrongly presented in the media as in need of urgent reform.
  - c) Undue speed and scale of change: we are concerned that the speed and scale of implementation are unnecessary and damaging, potentially causing poor decision-making, additional cost and general confusion.
2. Though there are some improvements that can and should be made to the OSH system in Britain, they will not reduce the time duty holders need to spend on real health and safety. All the duties will remain and indeed in some areas, should be strengthened. The areas of major change that need to be urgently tackled are improvements to risk guidance and education and curbing of aggressive marketing by claims management companies, which we believe helps fuel fear and risk aversion. There is also scope to improve consistency in enforcement.
3. IOSH therefore believes that implementation of the Löfstedt recommendations and government proposals should be critically reconsidered. Specifically, we believe a number of them (and in particular those discussed in this evidence submission) to be flawed – offering no real benefit, while introducing significant risk of harm. Rushing the process is unhelpful and stakeholders and those developing impact assessments should be given sufficient opportunity and time to contribute comment and provide analysis. Any announcements or public communication related to the Professor Löfstedt and Lord Young of Graffham reports and their implementation should be more accurate, balanced and measured. Government and others should explain the necessity for and benefits of good health and safety regulation, rather than repeatedly and incorrectly referring to it as a burden. They should also do more to promote the business case for good health and safety.
4. The areas that IOSH supports:
  - a) Consolidation and 'tidying of the statute book' (removal of redundant instruments)
  - b) Trialling of an agreed national enforcement code to help achieve consistency
  - c) Continuation of the 'myth-buster challenge panel' for debunking media stories and misguided decisions
  - d) Improvements to guidance and clarity of regulations – but no lowering of standards
  - e) Better public communications and risk education.

## Conceptual flaws

5. IOSH believes a number of the Löfstedt recommendations to be conceptually flawed i.e. we believe that where there are misperceptions, it is these that need to change and not the law. We also contend that evidence for certain proposed changes is weak and supported by poor impact assessments. In the section that follows, we will outline our specific concerns regarding revocation of the Construction (Head Protection) Regulations<sup>1</sup> and the Notification of Conventional Tower Cranes Regulations;<sup>2</sup> the loss of three important Approved Codes of Practice (ACoPs);<sup>3</sup> cuts to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations;<sup>4</sup> exemption of certain self-employed;<sup>5</sup> and removal of the requirement for first-aider training to be approved.<sup>6</sup>

### Head protection

6. IOSH does not agree with the proposal to revoke the Construction (Head Protection) Regulations 1989, because we believe this could send the wrong message and increase the risk that head protection will not be worn, leading to serious head injuries and deaths. We take the view that this revocation would achieve no real benefit, but bring significant failure risks. In addition to the unnecessary human suffering and toll for those harmed and their families; there would be a substantial cost from such failures to the businesses concerned, the wider economy and society as a whole. Such a cost could equate to millions of pounds and dwarf the theoretic savings. Our concerns include:
  - a) The current Construction (Head Protection) Regulations 1989 (CHP) are not onerous, work well and help prevent injury and death; their revocation would bring risk with it no discernible benefit.
  - b) The proposed cited 'benefits' do not seem real to us, as we do not believe that new businesses spend time reading the CHP regulations as suggested in the proposal.
  - c) There are many one-person operations and micro and small businesses in construction. We know that small firms can struggle with risk assessment and prefer a prescriptive approach, which is what CHP gives them now and the Personal Protective Equipment Regulations (PPE) do not.
  - d) This change could cause confusion, not least because media coverage is likely to use headlines such as 'Hard-hat regs scrapped', potentially leading to reduction in essential head protection for workers, particularly in small firms and small projects. An unknown element of the 'new' businesses in construction will be what is termed the 'bogus self-employed', who may be vulnerable in securing adequate safety protection.
  - e) If these changes are implemented, we disagree that there should be no post-implementation review process, other than waiting to see "...if numbers were to suddenly start changing, we would carry out a detailed analysis of what caused it, to determine if the revocation of the CHP had an effect".<sup>7</sup> This seems a purely reactive and inadequate approach.

## Tower cranes

7. IOSH does not agree with revoking the Notification of Conventional Tower Cranes Regulations 2010 and the Notification of Conventional Tower Cranes (Amendment) Regulations 2010, because we believe potential benefits will be lost and public confidence eroded. The introduction of these regulations was in response to serious public concerns over fatal accidents and followed some careful deliberation. This included consideration by the Work and Pensions Select Committee Inquiry (2008);<sup>8</sup> a short trial of a voluntary register; and a public consultation into the introduction of a statutory register, including the production of an Impact Assessment (IA).<sup>7</sup> Professor Löfstedt suggested that because the IA was not able to quantify any benefits ahead of implementation, this could indicate the statutory requirement is not needed.<sup>9</sup> However, this inability to quantify projected benefits did not mean that public assurance; indirect health and safety benefits; and useful information for regulators could not be anticipated or achieved by a statutory register. Our concerns about the loss of the 'register' are outlined in the following two paragraphs:
  8. Though the consultation states that there is no evidence that the intended effects are being realised in any significant way and that the costs to duty holders and Health and Safety Executive (HSE) have been higher than originally estimated (Annex 2, para 2.17),<sup>7</sup> we disagree with both these assertions, as follows:
    - a) Benefits – we believe that the requirement to 'register' a tower crane may have helped focus the minds of duty holders on good management (referred to in IA, Appendix B, para 61).<sup>7</sup> In addition, that the display of 'safe crane' posters is likely to have reassured local residents and so may have obviated their need to phone about the register, reflected by the low number of calls. We also feel that these posters may have been welcomed by duty holders as an inexpensive means of providing public reassurance and enhancing their reputation as a responsible operator. Though the IA suggests that most of the 'register' information is already available to HSE via Lifting Operations and Lifting Equipment Regulations (IA, Appendix B, para 14), this is not accurate, as HSE only receive this information if a serious defect is identified during the 'thorough examination' and subsequently notified by the competent person (CD221, para 20).<sup>10</sup> And the consultation document reports that the 'register' enabled HSE to identify cranes of a relevant make / model and the sites where they were located and although this would have been available from suppliers, the register was useful in verifying crane details (IA, Appendix B, para 66).
    - b) Costs – unfortunately, the information provided on the predicted and actual costings is unclear. However, we understand that the evaluation survey has established that the registration time for industry proved consistent with the IA (i.e. 30 minutes) and that the £20 fee charged was consistent with that suggested in the original consultation. In our view, an estimated amount for fees should have been included in the original IA; however, its omission does not mean the scheme proved more expensive than could have been anticipated. We note the costs to HSE for 'register' development and communication in the original IA (for

option 2) is given as £178,900; whereas, the actual costs were £145,000, so these costs proved lower and not higher (IA, Appendix B, para 48). In addition, the new IA concludes that the original IA “probably over-estimated the one-off cost of familiarisation”, again suggesting the cost was less and not more than expected (IA, Appendix B, para 37).

9. The ‘register’ set-up costs were due to be recouped by HSE over a 20 year period. Premature discontinuation of the ‘register’ will remove the benefits achieved so far and also represent a waste of time and money. We note that HSE will lose a net amount of £8,000 a year, as well as useful data on tower cranes in use.
  
10. We note from the evidence to the Work and Pensions Select Committee Inquiry into the role of HSC/E (2008)<sup>8</sup> that there is experience of national plant registration in Australia and a system in France that requires a ‘state inspector’ to be present whenever a crane comes onto site. We believe HSE could usefully draw on this experience, but do not seem to have done so as far as we know.

### Approved Codes of Practice (ACoPs)

11. As outlined in our 2011 evidence to Professor Löfstedt’s review of health and safety legislation, we support simplification and streamlining of regulations and guidance, providing there is no lowering of standards.<sup>11</sup> IOSH believes ACoPs have a unique place in our legal system, given their quasi-legal status and the degree of certainty that they provide to duty holders, which is particularly valuable for small firms. While we support improvements and updating, we are against loss of important guidance or weakening of legal status. This is because we are concerned it could lead to more work-related accidents, injury, illness and death. In brief:
  - a) ACoPs are a unique and important part of our legal system
  - b) Research shows that the status of codes and guidance is important, particularly in cases of dispute or disagreement
  - c) ACoPs give small- and medium-sized enterprises (and others) the certainty they require that they are doing enough to comply
  - d) ACoPs allow large firms (and others) the flexibility to also achieve control by other methods, provided equivalent or better standards are met
  - e) ACoPs provide regulators and health and safety professionals with a useful reference point when providing advice or training

We are opposed to the removal of ACoPs because we believe the downsides could include:

- a) Duty holders being less clear about the legal requirements, leading to less compliance and more accidents and ill health

- b) Duty holders needing to spend more time and resources to find guidance no longer available in the ACoP
  - c) Enforcement becoming more time / resource / cost consuming for all parties, including the courts, as there could be less clarity
12. Additionally, removal of the ACoPs will lead to cost for government, stakeholders and conscientious duty holders in amending associated documentation, guides and training materials.
13. IOSH strongly opposes the proposed withdrawal of the 'Management of health and safety at work' MHSWR ACoP (L21), 'Preventing accidents to children in agriculture' ACoP (L116), and also the 'Design, construction and installation of gas service pipes' ACoP (L81). Findings from a 2009 study<sup>12</sup> support the importance of the legal status of guidance, with some users finding it helpful for resolving disputes; their removal could mean that such situations remain unresolved and that there are more of them. We feel that removing ACoPs could wrongly suggest to duty holders that these topics are now considered to be less important by regulators. In addition, the withdrawal of ACoPs could lead less well-informed duty holders to mistakenly believe that the regulations themselves have been withdrawn, contributing to non-compliance and work-related accidents, injury, illness and death. Specific points include:
- a) L21: IOSH believes the MHSWR is one of the most important Statutory Instruments we have, given the fundamental importance of risk management for health and safety at work and the requirement to implement the European Framework Directive (89/391/EEC) and should be supported by an ACoP.<sup>13</sup> IOSH believes it is particularly important to retain the stated MHSWR ACoP requirement to adequately investigate the causes of accidents to ensure lessons are learned, given that currently this is not an explicitly stated requirement within the regulations.
  - b) L116: farms are hazardous working environments and those children who may be present, e.g. as family members, workers, visitors or trespassers, need protection from serious harm. Every year children are killed during agricultural work activities – 43 children under the age of 18 have been killed in the last 10 years. During the same period, many children have suffered injuries such as leg amputations and serious burns.<sup>14</sup> The ACoP and its status should be retained to help signal the importance of prevention.
  - c) L81: there is a major infrastructure project across the country to replace domestic gas main pipelines and we think it is important that L81 remains in order to provide succinct approved guidance to those involved in delivering this project. We believe that removing L81 would be a loss and that it should instead have its alignment to the requirements of the Pipeline Safety Regulations improved, as appropriate.
14. We think that the information in some ACoPs could be presented in a more helpful way and also link to relevant on-line guidance, case study examples and video clips. We agree that this and other HSE guidance on these topics should be reviewed, updated and simplified, as appropriate.

We have made suggestions for improvements in our responses to HSE and are pleased to assist further in this important process.

## Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR)

15. IOSH is against the proposed changes to RIDDOR, which we believe give the wrong message and would weaken the regulation, monitoring and management of health and safety. IOSH believes there should be strengthening of reporting requirements under RIDDOR to include more major injuries and prescribed diseases, together with serious work-related road traffic accidents. We also advocate system improvements to address the long-standing under-reporting problem, particularly of diseases. IOSH has suggested a number of improvements to RIDDOR over the years<sup>4, 15</sup> and present them again here, together with some new proposals.

16. In brief, our 10-point plan for action on RIDDOR is:

- a) A continued requirement for employers / self-employed to report occupational diseases and dangerous occurrences in all sectors (avoiding duplication); together with incapacitating injuries and major injuries, using an extended list
- b) Removal of the requirement for 'an accident' to have occurred before a work-related injury / death is reportable
- c) A review and clarification of the reporting of non-fatal accidents to members of the public (non-employees), to consider a change to reporting listed major injuries only
- d) Improved reporting of occupational diseases through RIDDOR, with:
  - GPs required to indicate on medical certificates whether they believe the injury or illness could be work-related
  - Improvements to guidance and to the reportable diseases list
  - Removal of the need to be currently engaged in 'listed work' for a long-latency occupational disease to be reportable
- e) More action to tackle under-reporting, including reinstatement of the full phone-in reporting facility
- f) A reminder on 'fit notes' for employers to report serious work-related accidents
- g) A suitable national enforcement code so that HSE and LAs enforce consistently and there is less 'undue fear' of reporting by certain duty holders
- h) A government database for sharing anonymised health and safety lessons from a range of accidents
- i) An explicit general legal requirement for duty holders to investigate reportable accidents
- j) A requirement for serious injuries and deaths from work-related road traffic accidents to be reportable under RIDDOR and improved guidance and inter-agency information sharing as appropriate

## Self-employed

17. IOSH has long-advocated more government support for business and the development of a more 'risk intelligent society',<sup>11</sup> through improved education and promotion of the business case for good health and safety. We provide many free tools for small businesses and start-ups,<sup>16</sup> to help support awareness-raising, skill-building and legal compliance.
18. We are against exempting certain self-employed from health and safety law, which we believe is unnecessary, unhelpful and unwise.<sup>17</sup> In our response<sup>5</sup> to the consultation, we highlighted our view that the concept of reliably identifying those 'who pose no potential risk' to others is flawed and unworkable and that the current requirements for the self-employed are not onerous and make good business sense. Exemption would give the wrong message and may encourage the unscrupulous to gamble with people's safety and health. Such a backward step could lead to needless human, social and economic toll. There are a number of particular areas where we believe the arguments to be ill-founded and incorrect, outlined below:
- a) Missing rationale – there is no data provided in the consultation document (CD242)<sup>18</sup> on how much time / resources the self-employed spend on health and safety; but the evidence they do have, suggests compliance is very low and that Local Authorities do not tend to proactively-enforce in lower risk situations, unless they receive a complaint. It should also be remembered that self-employed people who employ fewer than 5 workers do not need written health and safety policies or risk assessments anyway. So, it is difficult to understand how this exemption proposal has reached the consultation stage at all. Indeed, HSE are not sure the responsible self-employed will stop doing health and safety, even if they are exempted, because it is good risk management and good for business. However, our concern is that those self-employed who are less well-informed, less motivated and less responsible will take risks with health and safety and that accidents, injury, illness and death will increase.
  - b) Misperception – Professor Löfstedt's report<sup>9</sup> said that "The actual burden that the regulations currently place upon these self-employed may not be particularly significant due to existing exceptions in some regulations and the limited prospect of these being enforced but it will help reduce the perception that health and safety law is inappropriately applied." This indicates that the proposals are about misperceptions and not about reality. The solution cannot therefore be to change a perfectly good legal framework; but rather, to change the conditions that cause the misperceptions. IOSH has called for more government support, stronger leadership and better risk education. We also provide many free tools and guides for small firms.<sup>16</sup>
  - c) Flawed concept / options – the concept of "pose no potential risk to others" is a flawed one. Potential risks will exist and if inadequately controlled, harm can result. The options proposed in the consultation and their supporting flowcharts wrongly present a static situation; whereas, self-employed people may vary their activities, sometimes employing others and sometimes working in a 'prescribed sector' (high risk). In addition, many small firms will drive on company business.

- d) Confusion – exempting certain self-employed from health and safety law is likely to cause confusion, with some people wrongly believing that all self-employed are exempt. Under the proposals, the self-employed will need to assess their own ‘risk-causing potential’ in order to determine whether or not they are exempt; and paradoxically, this is the same risk assessment the proposals are seeking exemption from. We are concerned that some self-employed may not assess their risks and will just take it that they are probably exempt. Indeed, the Forum for Private Business survey<sup>19</sup> suggests such an exemption could be used by some businesses as an excuse not to do health and safety at all.
- e) Other negative impacts – proposals that exempt those self-employed who do not employ people could act as a deterrent to employment, which is particularly unhelpful in a recession. We would also be concerned if this exemption caused a growth in bogus self-employment and poor health and safety standards, a problem highlighted in construction by Rita Donaghy in her 2009 report.<sup>20</sup>

### Approved training for first-aiders

- 19. IOSH does not agree with the removal of the requirement for the HSE to approve first-aid training and qualifications or the removal of the requirement for first-aid training to be approved.<sup>6</sup> We think such approval is important for maintaining quality assurance and standards. We believe the current system works well and is well-known and used by employers. We recommend that any confusion about the current requirements should be addressed by better communication and not by deregulation. We do not believe that the proposed changes would provide benefit, but that they would create considerable risk.
- 20. Given the potentially life-saving nature of first-aid provision, high quality training and good uptake is essential. We are concerned that this proposal could cause standards of provision and levels of uptake to fall. Also, that duty holders will need to spend more time and effort understanding the new system and verifying the accreditation of their first-aid training providers, as well as having to meet additional costs.
- 21. However, if this ill-advised change is implemented, IOSH believes there must be sufficient ‘checks and balances’ and that any revised system should be as robust and workable as possible. We have made recommendations to retain the requirement for training and qualifications to be ‘approved’ and to help clarify and improve the associated guidance, including retaining the ACoP text and its important quasi-legal status.

Our key points include:

- a) There should be an accreditation (approval) requirement and system for first-aid training and qualifications
- b) HSE should continue to provide a core syllabus and framework for first-aid training
- c) Communication should be improved so that duty holders understand the real requirements
- d) The 'appointed person' role should be clarified and consideration given to alternative terminology
- e) HSE should provide a range of case studies, including on 'needs assessment' and defibrillator use
- f) HSE should provide guidance to duty holders on the need for and means to identify competent training provision
- g) The ACoP text and its quasi-legal status in L74 should be retained
- h) We do not support exempting the self-employed from health and safety law and believe they should continue to be required to provide adequate first-aid arrangements for their employees
- i) The self-employed should also be strongly encouraged to make basic first-aid provision available where they provide services to others (e.g. members of the public or clients)

## Negative portrayal

22. We believe government and media are unfortunately misrepresenting some of the Löfstedt-related changes, announcing them as major and necessary reforms to relieve burdens on business, which they are not. We have been repeatedly disappointed and concerned by the negative media coverage and public statements that have been made surrounding Löfstedt implementation. We believe it is an essential priority for government and others to ensure the findings of the review and the proposed changes are presented in an accurate and non-sensationalised way. This would mean explaining that many of the changes are non-urgent 'nice-to-haves' (tidying up of the Statute Book), with removal of redundant legislation making no difference at all to duty holders' responsibilities. However, unfortunately, the opposite has happened. High-profile examples of unhelpful portrayal have included the Prime Minister's infamous "health and safety monster" speech in which he described health and safety as "...an albatross around the neck of British businesses" and vowed that the government would "...kill off the health and safety culture for good."<sup>21</sup> Another was the recent Business Secretary's progress report on deregulation, which attracted negative headlines such as "Thousands of small firms exempt from health and safety rules in 'red tape blitz'." This article went on to say "More than 3,000 regulations will be scrapped or overhauled, so that shops, offices, pubs and clubs will no longer face "burdensome" health and safety inspections."<sup>22</sup>

23. Though Britain's safety record compares well with other countries in Europe, our health and safety system is still failing too many people. The provisional figures for 2011-12 are that 1.1 million

working people suffered from a work-related illness; 173 people were killed at work; and there were 212,000 serious injuries. This resulted in 27 million working days lost and a cost to society of £13.4 billion, excluding the cost of property damage and the double-figure billions for work-related cancer deaths.<sup>23</sup> Britain suffers around 12,000 deaths a year due to occupational diseases and hundreds of work-related road deaths.

24. So we think it is really important that government and others explain the necessity for and benefits of good regulation – rather than repeatedly and incorrectly referring to it as a burden. And we note that a recent ‘business perceptions’ report concludes that increased perception of regulatory burden since 2007 (a fixed cost) may equally be due to the effect of squeezed profit margins and falling revenues; though this is not a point we see made by those supporting deregulation. Other countries (such as Denmark) are reported as taking a more balanced approach, referring instead to ‘irritation burdens’ and sensibly signalling “...that some regulatory burdens are necessary and should be expected.”<sup>24</sup>
25. We know that positive feelings about work have been linked with higher productivity, profitability and worker and customer loyalty.<sup>25</sup> There are numerous examples of compliant organisations that have saved money through good health and safety management, which is the theme of the IOSH Li£e Savings campaign.<sup>26</sup> Far from being a burden, good health and safety is a benefit to individuals, employers and society – clearly demonstrated recently by the example of the fantastic success of the Olympic build.<sup>27</sup> And, as indicated above, it is actually failure to manage health and safety that causes a ‘burden’ in terms of its human, economic and social toll.

## Over-implementation

26. We believe that the government is going further than the Löfstedt report either recommended or intended, under a broad-brush label of ‘implementation’. We are concerned that the various key provisos, qualifying statements and ‘notes of caution’ from the report have been simply disregarded. Examples of such nuanced Löfstedt text<sup>9</sup> (which often includes words such as ‘seems’ or ‘appears’) outline some of the checks, balances and criteria he identified as important when considering change:
- a) “My review has set out a number of risk-based and evidence-based recommendations that will reduce requirements where they do not lead to improved health and safety outcomes...” (p.8)
  - b) “I have identified some duties that appear to have resulted in unnecessary costs to business...” (p.9)
  - c) “This requirement seems to have little justification provided the training meets a certain standard.” (p.9)
  - d) “...(RIDDOR) and its associated guidance should be amended by the end of 2013 to provide clarity for businesses on how to comply with the requirements.” (p.9)

- e) "Whilst it is important to ensure regulations are still relevant for the modern workplace, changes should not be undertaken lightly and consideration must be given to the potential unintended consequences. For example, regulation may still be needed to control risks that may arise in a different context or which may re-emerge if the controls are removed." (p.18)
- f) "I am also mindful that the costs of having to keep up-to-date with and adjust to constant changes to the regulations are a source of considerable burden to business (as much as any of the regulations themselves)." (p.18)
- g) "Where I have identified there is a valid concern but a lack of sufficient evidence...I have recommended further careful review." (p.24)
- h) "The actual burden...may not be particularly significant...but it [exemption for certain self-employed] will help reduce the perception that health and safety law is inappropriately applied." (p.39)

27. The impression given from the government responses is that they are not concerned about establishing sufficient evidence-base, but have simply accepted suggestions of possible problems as 'evidence' in itself. They are not seeking to confirm whether or not the 'theoretic' difficulties cited in the report actually exist; or quantifying them if they do. They also seem to believe that 'misperceptions' should be addressed by changing the law – instead of by tackling the misperception itself.<sup>28</sup> IOSH has serious specific concerns that include:

- a) Instead of improving the ACoPs on management of health and safety at work regulations; preventing accidents to children on farms; and gas pipelines, HSE are proposing to withdraw them, losing quasi-legal status guidance in these important areas.
- b) The Construction (Head Protection) Regulations and the Notification of Conventional Tower Cranes Regulations are both to be unhelpfully revoked.
- c) There are unworkable and potentially dangerous proposals to exempt certain self-employed from health and safety law.
- d) RIDDOR under-reporting is apparently to be addressed by reducing reporting requirements even further.
- e) HSE-approval of first-aid training which has worked well for many years, is to be removed; together with the requirement for such training to be approved at all, thereby threatening standards.

28. We do not recognise any real benefits to any of these proposals, but massive downside risks. HSE are intending to attempt to 'mitigate' the negative effects and confusion anticipated by implementation through a major communications initiative (or several of them). Clearly, with HSE already facing 35% budget cuts and tough prioritisation choices, meeting this additional cost will be a challenge they will find difficult to meet.<sup>29</sup> It will also be hard to justify necessitating such a resource-demand in the first place. Sadly, the confusion seems to have already had some negative impact. The Lord Young proposed abolition of the adventure licensing regime is believed to have contributed to the first-ever drop in registrations. We understand that this proposal is now

'on hold'<sup>30</sup> and would urge that the licensing scheme, which has worked well for many years, is retained and any unhelpful uncertainty removed.

29. Overall, IOSH believes it would undoubtedly be far better for government to pause and reconsider the best way forward. IOSH is always ready to help and as one example, has recently submitted an alternative 10-point action plan to improve RIDDOR.

## Undue speed and scale of change

30. In addition to the conceptual flaws, negative portrayal and over-implementation, IOSH is concerned at the undue speed and scale of the proposed changes. We think rushing this process could cause mistakes, confusion and poor outcomes. We believe it is important to emphasise that the Löfstedt report found the health and safety system 'broadly fit for purpose' and that there was "...no case for radically altering current health and safety legislation".<sup>9</sup> This had also been the finding of the Lord Young of Graffham review in 2010 and Select Committee Inquiries into the work of the Health and Safety Executive (HSE). There is clearly no case for urgent ill-considered action and there should be a more proportionate and measured approach to analysis and implementation.

31. A recent 'business perceptions' report highlighted the difficulties that speed on these matters can create for businesses, finding "Increasing the pace of change associated with reform of regulation can be a source of regulatory burden." The same report also found "Large deregulatory exercises can have the unintended consequence of increasing awareness of regulatory burden and therefore increasing perception of burden." And concluded that "...there is scope for improving the consultation process and how expectations regarding reduction in regulatory burden are managed."<sup>24</sup>

32. As previously indicated in our submission to the Löfstedt review, IOSH supports the streamlining of regulations and simplifying of guidance, but that there must be no erosion of standards. We believe that the problem is not health and safety law as such, but rather with its misinterpretation and misapplication. So, we are concerned by the unnecessary haste to implement post-Löfstedt and by the incongruity between the report and the government's response to it. For example, Löfstedt indicated a reduction in regulations of 35 per cent, with consolidations completed by 2015; whereas the government proposed a reduction of 50 per cent, completing consolidations by 2014.<sup>28</sup> The New Year of 2012 began with the Prime Minister talking publicly about accelerating implementation, saying "...and from this month, the Health and Safety Executive begins the task of abolishing or consolidating up to half of existing regulations. I have also asked that the timetable be accelerated, so most of our changes to Britain's health and safety regime will be completed this year."<sup>21</sup> This was then followed by a budget statement in March 2012, which includes under

'Reducing burdens on business' the commitment that the government "will scrap or improve 84% of health and safety regulation."<sup>31</sup>

33. IOSH believes that the current consultation programme associated with the Löfstedt recommendations is too 'concertinaed' and that the number of concurrent consultations does not allow full deliberation by stakeholders, including the regulator. We are concerned that this will adversely affect the quality of the outputs and outcomes, potentially leading to more work-related accidents, illness injury and death. Though the Löfstedt report was largely positive about the current system, it has led to numerous consultations including some 'multiple' ones. For example: one on revoking 7 statutory instruments; one on removing 14 legislative measures; and one on changes to 30 Approved Codes of Practice (ACoPs). Indeed, since January 2012, IOSH has provided member-responses to a total of 65 different consultations, the majority of these being Löfstedt-related. And we have now also been asked to comment on another extensive and wide-ranging one on EU OSH law covering 21 Directives by 31 December 2012.<sup>32</sup>
34. IOSH is aware that other stakeholders share our concerns that the post-Löfstedt change process is being unduly and unwisely rushed. The HSE Board paper on the initial analysis on the ACoP consultation<sup>33</sup> reports that "A number of respondents, including some large organisations representing employers, employees or health and safety professionals raised concerns about the timescale for the review. They suggested that the pace of the review would not allow for sufficient engagement on the content of any revised ACoPs and guidance and would also present too much change for business over too short a timescale."
35. Another example of time-pressure was evident during the recent first-aid regulations consultation; HSE acknowledged that they were "moving forward at pace" to make changes to the first-aid regulations. Speed is also highlighted again in the impact assessment, which reads "Further urgency was placed on delivery of these changes following the announcement in the 2012 Budget Statement that these changes would be made by October 2012".<sup>34</sup> IOSH believes this pressure is unhelpful for avoiding harm and ensuring the best results in this important and potentially life-saving area. Once again, there is neither the rationale for speed nor the case for urgent change.
36. A further concerning development is the new government approach of shortened consultation periods announced in July 2012. IOSH has voiced concerns this could be harmful for health and safety and damage the consultation process and outcomes, including those relating to the Löfstedt review. In our recent evidence to the Secondary Legislation Scrutiny Committee,<sup>32</sup> we emphasised that relevant professional experience and expertise, as well as information from 'grassroots'; are all vital to effective policy- and law-making on health and safety matters. Adequate consultation is particularly pertinent given that the Löfstedt recommendation on impact assessments found "...a case for strengthening the role of both Impact Assessments and the Impact Assessment Board to ensure that recommendations are based on sound science and are risk-based." And the Regulatory Policy Committee, in their recent report<sup>35</sup> on 'assessing regulation' for the first eight

months of this year, highlighted speed as one of the risks. This report says “Whilst it is desirable that deregulatory measures may be implemented more quickly, there is a risk that these measures may be implemented without a robust assessment of the full range of issues and impacts on society.” It also found that almost one in five impact assessments were “not fit for purpose” and gave them a ‘red opinion’. The negative effects of insufficient time are found in the recent HSE impact assessment<sup>36</sup> on ‘strict liability’ and the proposed changes to Section 47 of the Health and Safety at Work etc Act (civil liability). This states in two different places that elements of the analysis were “...not feasible in the time available...”

37. The solution, in IOSH’s view, is for those who can provide relevant supporting data and evidence – such as health and safety professionals – to be given sufficient time and opportunity to do so. The range of stakeholders for OSH is wide and varied and includes employers, workers, OSH professionals, HR personnel, engineers, planners, regulators, insurers, standards bodies, local authorities, central government departments and others. And clearly those producing work on behalf of the HSE, such as impact assessments or regulatory reviews, must be given sufficient time to do so. In this context we are aware that the Löfstedt review itself suffered from time constraints with the author explaining in his section on Europe “I did not have the time or resource to carry out the analysis that would be necessary to expand upon the studies previously done.”

## Conclusion

38. Though there are some improvements that can and should be made to the OSH system in Britain, they will not reduce the time duty holders need to spend on real health and safety. All the duties will remain and indeed in some areas, should be strengthened. The areas of major change that need to be urgently tackled are improvements to risk guidance and education and curbing of aggressive marketing by claims management companies, which we believe helps fuel fear and risk aversion. There is also scope to improve the consistency of enforcement.
39. IOSH does not think it can be considered good use of scarce regulator resource to embark on this compacted major consultation and review programme where there is unlikely to be gain; but a real risk of loss and the prospect of ongoing demands on the regulator to compensate for the resulting poor policy and confusion.
40. We therefore believe that implementation of the Löfstedt recommendations and government proposals should be critically reconsidered. Specifically, we believe a number of them (and in particular those discussed in this evidence submission) to be flawed – offering no real benefit, while introducing significant risk of harm. Rushing the process is unhelpful and stakeholders and those developing impact assessments should be given sufficient opportunity and time to contribute comment and provide analysis. Any announcements or public communication related to the Professor Löfstedt and Lord Young of Graffham reports and their implementation should be more accurate, balanced and measured. Government and others should explain the necessity for and benefits of good health and safety regulation, rather than repeatedly and incorrectly referring to it as a burden. They should also do more to promote the business case for good health and safety.
41. The areas that IOSH supports:
- a) Consolidation and ‘tidying of the statute book’ (removal of redundant instruments)
  - b) Trialling of an agreed national enforcement code to help achieve consistency
  - c) Continuation of the ‘myth-buster challenge panel’ for debunking media stories and misguided decisions
  - d) Improvements to guidance and clarity of regulations – but no lowering of standards
  - e) Better public communications and risk education.

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## About IOSH

Founded in 1945, the Institution of Occupational Safety and Health (IOSH) is the largest body for health and safety professionals in the world, with around 41,500 members in over 85 countries, including over 13,000 Chartered Safety and Health Practitioners. Incorporated by Royal Charter, IOSH is a registered charity, and an ILO international NGO and CIS collaborating centre. The IOSH vision is:

**“A world of work which is safe, healthy and sustainable”**

The Institution steers the profession, providing impartial, authoritative, free guidance. Regularly consulted by government and other bodies, IOSH is the founding member to UK, European and International professional body networks. IOSH has an active [research and development](#) fund and programme, helping develop the evidence-base for health and safety policy and practice. Summary and full reports are freely accessible from our website. IOSH publishes an international peer-reviewed journal of academic papers twice a year titled *Policy and practice in health and safety*. We have also developed a unique UK resource providing free access to a health and safety research database, as well other free on-line tools and guides, including websites for business start-ups and young people; an occupational health toolkit; and a risk management tool for small firms.

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For more about IOSH, our members and our work please visit our website at [www.iosh.co.uk](http://www.iosh.co.uk)

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