The Löfstedt Review: An independent review of health and safety legislation. Unite the Union's Response

This response is submitted by Unite the Union. Unite is Britain's largest trade union, with just under 1.5 million members. Unite members work in most industrial sectors including the most dangerous, such as agriculture and construction. Our members work in public services including the health sector, local government, education and the civil service; print, graphical and media, finance, IT and communications; the youth work, community and not for profit sector; docks, rail, ferries and waterways, aerospace and shipbuilding, passenger transport and road transport, energy and utilities, forestry, horticulture, food and drink manufacturing and distribution and supermarkets.

Unite welcomes a genuine review of the impact of health and safety legislation in the workplace, and particularly a review which considers the widespread failure of employers to conduct workplace risk assessments and to report incidents.

Unite wants a review which has the following outcomes:

1. Improves the enforcement of existing health and safety duties on employers, e.g. risk assessment, accident and incident investigation, inspections and reporting of injuries and dangerous occurrences.

2. Ensures that the HSE and local authorities are given adequate funding to enforce health and safety law.

3. Re-affirms that health and safety laws apply in all workplaces and to all workers, with no exemptions, and must be enforced accordingly.

4. Ensures that official health and safety statistics fully and properly reflect the incidence of occupational injuries and ill-health

5. Leads to the enforcement of union safety representatives' rights

6. Recognises and uses union safety representatives as a driving force behind the improvement of workplace health and safety

7. Legislates to place explicit health and safety duties on company directors and their equivalents

8. Ensures that health and safety standards are upheld throughout the supply chain and integrated into all procurement procedures and practice

9. Introduces new laws to require the early release of basic health and safety information after a death at work

10. Puts a stop to the trivialisation by the tabloid press and others of health and safety law and its enforcement and the so called “compensation culture”.

No cuts to health and safety enforcement activity

Unite wishes to put on record our **strong concern** about the draconian plans by ministers to slash health and safety workplace inspections by 11,000 a year. The decision to do so was taken without any consultation, and it does not recognise the value of enforcers undertaking proactive inspections. The plans hit some of our most dangerous workplaces such as docks, quarries, road haulage and agriculture. They also wrongly identify certain workplaces such as “low risk” (see further below). What workers need now, more than ever, is stronger regulation and enforcement.

These cuts are a direct assault on the working conditions of the 29 million people employed in the UK. This approach by government is reckless and immoral and ignores the reality of modern workplaces.

For many years I have been able to use the regulations and enforcement by the HSE to prevent further injury and possible fatalities to all at work, not just our members.

I have promoted health and safety at the workplace, gaining the support of some companies along the way, and helped the families that have lost loved ones due to accidents and deaths at work. Many of these were avoidable if Codes of Practice and Regulations had been followed.

If there were enough HSE officers enforcement could have taken place to assist prevention rather than investigations and possible prosecutions after a death or serious injury.

Should any cuts in the regulations or cuts in the HSE become a reality more of our fellow workers will lose their lives.

I have always sought a proactive approach at work and in the community.

I choose my words carefully, but if such cuts are allowed I for one will certainly be saying at future Workers’ Memorial Days that more injuries, ill health and deaths will result from cuts made by the Coalition government.

Unite Safety Rep

Why do we need regulations to protect workers?

> *If it were not for the Heath & Safety Act at Work etc 1974 & the 1977 Safety Reps & Committees Regulations we would be working in coal mine conditions*
>
> **Unite Safety Rep**

The 2010/11 figure for workplace deaths released last month showed a 16% increase on 2009/10 with a total of 171 sudden deaths at work – 171 people who went to work and did not come home again.

Furthermore, this figure in itself is misleading. It represents far less than even 1 per cent of the number of people whose life has been cut short as a result of their work.

Between 8,000 and 15,000 deaths are caused each year by occupational cancers. In addition there are around 4,000 deaths from other lung disorders such as chronic bronchitis and emphysema caused by breathing in fumes, chemicals and dusts.

More than 1,000 people are killed every year while driving on the roads as part of their work.

There are also all those who die as a result of cardiovascular disease caused by the nature of their work. This can either be stress (which can more than double your risk), or exposure to certain fumes and chemicals. The lowest estimates for this cause of death are 7,500 every year.

So, even using conservative estimates, at least 20,000 people die prematurely every year because of occupational injury or disease; the real figure could be closer to double this number.

Last year, according to HSE official statistics, 26,061 major injuries to workers were reported. A further 95,369 workers were reported as receiving an injury as a result of which they had to take at least three days off work.

These figures relate to cases where there was an injury in the workplace which led to at least three days off work. But this is a gross underestimate. HSE estimates that about 50% of injuries are not reported by the employer. Unwillingness to report is certainly our experience. Unite receives constant inquiries from safety representatives who are concerned that their employer is not reporting incidents which are in fact reportable under RIDDOR.

These figures do not include injuries which develop over a period of time or diseases that people get as a result of their work. The HSE estimates that there were 555,000 new cases of illness caused by work last year. Many people will recover quickly from of these illnesses but many others become long-term and often life long conditions. HSE statistics show that 2.1 million people suffer from ill-health which they believe was work-related.

These disturbing figures illustrate precisely why society needs health and safety regulations **and** effective and properly funded enforcement activity.

It cost many lives to get where we are today. Learn from history. Enough said.

Unite Safety Rep

Low risk workplaces?
Unite rejects the suggestion that offices, shops, schools and SMEs are "low risk", and HSE statistics support this view.

An example is the group categorised as "Public Administration". This group comprises almost exclusively office workers and has one of the highest rates of over three-day injury (although there are fewer fatal and very serious injuries).

Stress-related illnesses and RSI are more common in offices and account for over 70 per cent of all work-related illness. Unfortunately there is still a view that these illnesses are less worthy of sympathy or action than injuries caused by "accidents".

The sectors with the highest rates of fatalities are all ones where there is a large proportion of small enterprises or self-employed people – in particular construction, transport and agriculture. In the case of agriculture, the death rate in 2009/10 was 16 times the average, while, in construction, the rate was 4 times the average. These are also among the sectors with the highest non-fatal injury rates. Many small employers also have higher illness rates. Mesothelioma is highest among maintenance workers, an important group for Unite, who are more likely to work for a small employer or be self-employed.

What this shows is that it is wrong to claim that one type of workplace or sector is always going to be safer. Every workplace has its own risks and, by concentrating on immediate fatalities or traditional risks, and ignoring the dangers of diseases that develop over a long term, we may have contributed to the rise of the current occupational health epidemic, with 2,100,000 people suffering unnecessarily from ill-health caused by work.

The importance of regulation and enforcement
The effect of the Health and Safety at Work Act, the European Framework Directive, and the regulations made under them has been positive. There has been a big decrease in fatalities, and a reduction in injuries. In part that is due to structural changes in the workplace and developments in technology; however a significant part is due to regulation and its enforcement.

The decline in injuries has however reached a plateau, and this is, in part a result of a fall in enforcement activity. The number of prosecutions has fallen from 1,986 in 2001/2 to 1,090 in 2008/09. There has been a similar fall in local authority

enforcement. The number of improvement notices and prohibition notices has also fallen dramatically. It is also clear that the HSE rarely prosecute for offences that can lead to disease as opposed to immediate injury.

Prosecutions play a crucial role in changing workplace culture and may often allow the injured person or their family get a sense of justice, though successful prosecutions may not necessarily mean justice in terms of the penalties. The average fine for a health and safety offence is similar to that for “fly-tipping”. Last year the average fine was £14,614 for each offence in cases taken by the HSE and £5,607 in local authority cases.

Although evidence on the relationship between regulation and rates of injury and disease can be difficult to analyse the HSE did conduct some research in 2001 which showed that “The evidence in this review suggests that the key to improving occupational health and safety is to ensure maximum compliance with health and safety legislation in terms of implementation of effective control measures both in theory and in practice. The evidence further shows that compliance with the law is generally a bigger motivator for employers than achieving business benefits.”

There is wide support for regulation. Nearly two-thirds of people in Britain agree they benefit from regulation in their everyday lives and 70 per cent think the benefits of regulation outweigh the burdens, according to a recent report from the Department for Business (BIS). (*Better regulation, better benefits: Getting the balance right).* Research for the report found “70-85 per cent agreed ‘overall the benefits outweigh the burdens’ for environmental standards on air/water, food hygiene, health and safety and smoke free law. The report adds: “Regulations add value where they change behaviour. Changing behaviour means ensuring that organisations or individuals comply with these regulations. Academic experts agree that compliance cannot be predicted just by reading rules, but is strongly affected by the motivations of regulated businesses and the approaches to offering support to comply and to enforce them.”

I pointed out to my employer that they were in serious breach of the Noise at Work Regs. by doing nothing other than providing PPE & signs; they have now drawn up a noise reduction activity plan.

I have also used Reg. 3 of the Management Regs. to get them to carry out Risk Assessments and the Manual Handling Regs. to do ergonomic assessments, in fact I use the Regs. all the time to back up what I am saying to them. Without the Regs and ACOPs I would be ignored; it’s just a pity they are not enforced pro-actively enough by the HSE instead of being used reactively for prosecutions after someone’s been killed or injured …. If the Safety Representatives and Safety Committees Regulations were actively enforced the rest wouldn’t be ignored as much as they are and there would be fewer accidents and illnesses in the first place.

Unite Safety Rep

Health and safety regulation is not a "burden on business"

Unite strongly condemns the attitudes which suggest that employers' duties to maintain a safe workplace are a "burden on business". This attitude is not only insensitive, it is simply untrue.

> *I do not believe H&S is a burden on business. It is the foundation to keep all employees safe and, well; not only does it save lives it also helps prevent any possible accidents that may come about by bad management practices.*
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> *If all employers kept to the majority of H&S laws it would be just fine but they like to push and push to see what they can get away with. It's not just spending money but saving minutes on processes that cause accidents therefore someone has to govern them or they will run riot and do what they want.*
>
> **Unite Safety Rep**

If an employer is unable to operate without risking the lives and health of their workers, they should not be in business. It is only unscrupulous or incompetent employers who fear consistent and fair regulation of health and safety.

> *Where I work, and I'm sure this applies to a good many workplaces, we have an excellent policy document on health and safety. It looks good, but the reality is that this excellent document remains just that - a document. In practice unnecessary risks are taken every day by workers who are not sufficiently trained or made to comply with the aforementioned policy.*
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> *As long as the job gets done management get away with ignoring their responsibilities in this area. I am at present helping to formulate the difficult task of showing that a workmate has suffered long-term illness due to work-related stress. The company has never carried out a risk assessment on the subject and despite a promise from HR that one would be done with my co-operation, nothing has happened.*
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> *Health and Safety at work would not be 'burdensome' if it was done properly. The burden, from the employers' point of view is when they have to account for not complying with the law. We need greater powers for respected H & S reps to bring down both the cost of court actions and the number of avoidable accidents.*
> **Unite Safety Rep**

Good employers support both regulation and enforcement - and Unite is aware of many such employers - because it means that their competitors cannot take short cuts with people's safety and undercut them.

Unite is aware of an increasing tendency in the media and elsewhere to suggest that health and safety regulations have a negative effect on productivity.

There is no evidence that increased regulation reduces competitiveness and productivity.

The countries which are most successful within Europe are those with higher levels of worker protection and greater enforcement. This may be because improved security and safety at work leads to increased productivity and lower sickness rates. This is supported by the findings of a recent study by Deakin and Sarkar,[1] which examined the relationship between movements in indexes of labour regulation for four countries – Germany, France, the UK and the United States – and trends in productivity, employment and GDP growth over the period 1970-2006 .In the case of the UK, this study found there was no significant relationship between this index and the productivity growth rate, while for Germany a positive relationship was identified.

Current levels of regulation in the UK are not a "burden". According to research conducted by the government in 2005 - the "Administrative Burdens Measurement Exercise" - the average firm spends approximately 20 hours and just over £350 a year on the administrative costs of complying with the Management of Health and Safety at Work Regulations 1999 (mainly the risk assessment requirements). This figure includes a considerable number of very large firms, so it is clear that the normal cost for smaller companies will be considerably less.

There has not been an increase in the number or complexity of regulations
We now have 46 per cent fewer regulations since than in 1974 with the passing of the Health and Safety at Work etc Act. This is an ongoing process and there are 37 per cent fewer health and safety regulations now than just 15 years ago as a result of simplification and consolidation.

Bureacracy has been reduced already
Over the last four years the HSE has reduced the number of forms used for collecting information from business from 127 to 54. This 57.5 per cent reduction has been achieved with the support of employers, unions and safety professionals but the driving force has been a belief that regulation should be simple and effective.

Businesses are not "over-inspected".
There are about 700 inspectors in the HSE Field Operations Division, which deals with all sectors except specialist sectors such as nuclear, off-shore and chemicals and covers 884,000 premises. There are another 1,110 (full time equivalent) inspectors working for local authorities covering 1,108,000 premises.

In 2008/09 the number of recorded inspections made by the HSE was 23,004. Based on the current level of inspection the average premises could expect a visit by an HSE inspector once every 38 years. On the other hand premises that handle food are visited at least once a year, though the number of deaths caused by food hygiene failings is far lower than the number of deaths caused by workplace

[1] Deakin, S. and Sarkar, P. (2008) "Assessing the long-run economic impact of labour law systems: a theoretical reappraisal and analysis of new time series data." *Industrial Relations Journal*, 39(6): 453-487 (DOI: 10.1111/j.1468-2338.2008.00501.x)

hazards.

Inspectors play a positive role in ensuring that employers understand and fulfil their duties, often giving advice and support to help them do so. Nearly 90 per cent of all employers who have had contact with the HSE have seen it as a 'helpful' organisation.

The voluntary approach

One alternative to regulation which is often suggested is either a voluntary approach or self-regulation. The experience in public safety areas is that the voluntary approach is generally ineffective and that only a statutory duty, backed up by enforcement where necessary, will ensure compliance. Codes of practice on smoking in pubs and clubs had almost no effect and only a strict legal prohibition worked. Likewise campaigns to encourage seatbelt or crash helmet use had limited impact until legislation was introduced requiring their use.

No evidence has been presented that self-enforcement is in any way an effective alternative to enforcement in the field of health and safety and where a voluntary approach has been attempted, as it was in Ireland and the USA, it has failed. Both countries have now reversed initiatives which replaced regulation and enforcement with self-regulation.

The Government's regulatory agenda

The current government has said that it will not introduce any new regulations on health and safety unless other regulations are removed ("one in, one out"). This is not "good regulation", but simply political posturing. The regulatory agenda should not be driven by a belief that there should be either more or less regulation, but, instead, that we should have the level of regulation that is proportionate and effective.

The Government has also indicated that, when introducing new regulation, or reviewing existing regulation which has its origins in Europe, no "gold-plating" should be introduced. The definition of gold-plating laid out in the BIS document "Transposition Guidance: How to implement European Directives effectively" is extremely wide ranging and includes retaining pre-existing UK standards where they are higher than those required by the Directive.

This means that existing levels of protection can be reduced simply to ensure that the UK is at the bottom of the regulatory heap. European Directives are intended to provide a minimum standard below which no country can fall. Not to replace existing standards, or to remove the ability of national regulators and legislators to set those standards they feel are appropriate.

The Government's approach removes the "common-sense" approach that regulation should be introduced where it is required to prevent death, injury or illness and that the benefits to health outweighed the cost to society to one that sees regulation simply in terms of the cost to business. The government is also seeking to reduce the level of enforcement of regulation. It has instructed the HSE to reduce the level of proactive inspections by a third and announced that a considerable number of businesses will not be inspected proactively at all.

There is also a clear link between prosecution activity and preventing injury and ill-health. If employers know that there is very little chance of them being inspected, they will be far less likely to ensure they are complying with the regulations on health and safety. The government's approach also sees inspections as being a negative thing. This is not the view of Unite, or necessarily of employers. Nearly 90 per cent of all employers who have had contact with the HSE have seen it as a 'helpful' organisation.

A recent TUC survey of safety representatives provides further evidence of this. The results suggest that the 61% of employers have made an attempt to make improvements to health and safety ("a little", "somewhat" or "a lot") because of the possibility of an inspection.

An end to consensus?
The regulation-setting process in the UK has been built on consensus between employers and employees. That means that, where a new regulation is recommended to ministers, it has the support of all sides of industry.

Unite does not support regulation for the sake of it. We believe that, to be effective it must be simple, clear and proportionate. Unnecessary regulation is of no help to anyone, including safety representatives. That is why we have consistently worked with the HSE to reduce and complex or ineffectual regulations, while, at the same time maintaining or improving worker protection.

As a result, a considerable number of regulations have been removed or simplified, with the support of both trade unions and employer's organisations. It has however been driven by a desire to ensure that we have a regulatory framework that meets the needs of employers and employees.

What we now see is a review of regulation which is being driven by ideology rather than any wish to improve its effectiveness. That will destroy the consensus that has existed around regulation on health and safety for the past 37 years.

Review Questions

Question 1
Are there any particular health and safety regulations (or ACOPs) that have significantly improved health and safety and should not be changed?
Unite strongly believes that health and safety regulations have had a major impact on making improvements in workplace health and safety as they motivate many employers (who do of course have the primary duty) to take action. We would not wish to select some in favour of others as we believe that all the health and safety regulations play a crucial role in helping to prevent accidents and ill-health at work. It is however crucial that health and safety legislation keeps pace with new technology and developing hazards as a failure to do so could put workers at risk of injury. And there is still a long way to go, as we have already indicated.

Question 2
Are there any particular health and safety regulations (or ACOPs) which need to be simplified?

We do not agree with the concept of "simplification". This sends the wrong message. Making it easier for employers to understand what they have to do in practical terms to prevent occupational injury and ill-health is more appropriate terminology. This includes providing practical examples of good practice. It is therefore absolutely crucial to this process that employers (and employees) continue to have access to the authoritative and practical advice provided by ACOPs and guidance.

An example of making it easier for employers to understand what to do would be to clarify the regulations and guidance on a maximum workplace temperature. At present the Workplace (Health, Safety and Welfare) Regulations are silent on this issue, saying only that indoor workplace temperature should be "reasonable". In spite of useful guidance produced by the HSE on the subject this issue continues to present problems of interpretation.

A practical way of making regulations more accessible would be to publish them in their fully amended and updated form on the HSE website (in the same way that the Health and Safety at Work etc Act 1974 is kept up to date by the HSE). This would mean that users wanting to consult the regulations directly would only need to look at one document. Another suggestion from our safety reps is the production of a definitive document which lists all the HSE Regulations and ACOPS etc along with hyperlinks documents.

We suggest that some of the ACOPS may need updating (but not with a view to relaxing the requirements) to take account of changes in regulations.

Question 3
Are there any particular health and safety regulations (or ACoPs) which it would help to merge and why?
Not that we are aware of.

Question 4
Are there any particular health and safety regulations (or ACoPs) that could be abolished without any negative effect on the health and safety of individuals?
Not that we are aware of.

Question 5
Are there any particular health and safety regulations that have created significant additional burdens on business but have had limited impact on health and safety
It is not appropriate to describe health and safety regulations as a "burden on business". They are there to protect workers from occupational injuries and ill-health. The consequences of employers not complying with regulations may well result in them having to meet costs. In any event, we are not aware of any such regulations.

Question 6
To what extent does the concept of "reasonably practicable" help manage the burden of health and safety regulation.
Health and safety regulations are not a burden on business. "Reasonably practicable" can be helpful in many situations, but it is all too often used by employers to justify not making health and safety improvements on the grounds of cost. Unite believes that stronger and clearer guidance needs to be issued to remind employers that the concept of "reasonably practicable" does not mean they can evade their legal obligations in any respect.

Question 7
Are there any examples where health and safety regulations have led to unreasonable outcomes, or to inappropriate litigation and compensation?
Unite is not aware of any examples. We do not think it is appropriate to link health and safety regulations with compensation issues. Civil and criminal law are completely separate regimes and require different standards of proof.

Question 8
Are there any lessons that can be learned from the way other EU countries have approached the regulation of health and safety, in terms of (a) their overall approach and (b) regulating for particular risks or hazards?
Even though some countries implement EU Directives by transposing them directly into their legislation, this does not in any way diminish the legal requirements. However simple transposition does not provide guidance on the practical aspects of prevention. The UK system is better in this respect because it sets out not only to implement EU directives but to explain the practicalities of doing so.

We mention roving safety representatives elsewhere in this response. One particularly good example of European Union action is the Swedish system of regional safety representatives who work with trade unions and employers, often in small businesses such as agricultural enterprises, to ensure that they have good health and safety systems, and provide help and support. Unite has participated in several successful pilot projects involving roving safety representatives in agriculture and we commend this model to the panel.

Question 9
Can you provide evidence that the requirements of EU directives have or have not been unnecessarily enhanced ('gold-plated') when incorporated into UK health and safety legislation?
Unite supports health and safety legislation going beyond the EU directive to ensure improved protection for workers, and the Government is of course at liberty to do this.

We are not aware of any "gold platting" taking place; rather the Government has not in fact fully implemented some directive directives. For example, Article 14 (3) of the framework directive **Council Directive 89/391/EC** states that

Health surveillance may be provided as part of a national health system.

No steps have been taken to implement this provision.

We are also aware that unfortunately the Government has not properly implemented the **Council Directive 2009/148/EC** in relation to the protection of workers from asbestos, and the Government is be required to amend the Control of Asbestos Regulations 2006 to rectify the situation.

Question 10
Does health and safety law suitably place responsibility in an appropriate way on those who create risk? If not what changes would be required?
Unite believes that the Health and Safety at Work etc Act 1974 works very well, and is clearly expressed in relation to the respective responsibilities of employers and employees. In particular the Act recognises that the primary duty is that of the employer;   therefore an employee who has not been properly trained, equipped or supervised should not be held responsible if an incident occurs.

HSE has estimated that 70% of serious incidents are caused by management failures. The law needs to be strengthened to hold company directors and senior managers individually accountable under health and safety legislation.

Question 11
Any other comments/evidence?
Given the level of injury and ill health caused by poor health and safety practice, particularly in small and medium sized enterprises, this situation is urgent.

Unite believes that there are a number of areas where regulation can be extended and/or strengthened with a view not only to improve prevention, but also to improve the accuracy of health and safety statistics.

We say this in particular in relation to RIDDOR-reportable incidents involving non employees of the occupier, such as agency workers or contractors. As it is the employer's duty to report incidents, this will very often mean that the HSE or other enforcement authority will not receive sufficient information about an incident to link it to a particular site.   We also believe that all work-related road accidents should be reportable under RIDDOR.

We therefore make the following suggestions:

Extension of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995

to require the reporting of work-related road accidents.

to impose a joint duty to report an incident on both the occupier and the employer when a contractor, or non employee of the occupier – for example an agency worker - has an reportable accident on the occupier's site.

Tighten up the law on the standards and testing for trailers
The agricultural sector is Britain's most dangerous industry with the highest rate for deaths per 100,000 workers.   We want to see an extension of the standards for trailers and for the testing of trailers to cover both small and large trailers. One of the

particular issues of concern is that the requirements for small trailers are not so stringent, for example with regard to the tests for braking and for annual testing.

Extend the health and safety regulations on consulting safety representatives to enable the appointment of roving safety representatives who can cover a group of small workplaces (such as voluntary sector organisations or farms) or the workers of contractors or agencies who are sharing the same workplace.

Extend the Workplace (Health, Safety and Welfare) Regulations 1992 (as amended)
So that they apply to vehicles.

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