

Submission to Lofstedt Review: some preliminary notes

1) *General principles for the review*

- Need to adopt a suitably holistic, rigorous and evidence based approach.
- Need to consider history of evolution of the regulatory framework in the context of UK H&S history.
- Need to consider approaches to and outcomes of previous reviews of regulation.
- Need for robust evidence of costs and benefits of health and safety regulation, including scope for prevention, the costs of accidents and ill health and benefits, including costs of injuries, ill-health cases and incidents averted.

2) *The scope for consolidating, simplifying or abolishing regulations*

- Review of the extent of duplicatory requirements.
- Review of significant gaps in key risk management requirements and/or the address of key categories of hazard.
- Balance between general duties, regulations and guidance from different stakeholder standpoints.
- The need to consider the effect of Section 1 (2) of the HSW Act on the extent of any recommendations made.

3) *Whether the requirements of EU Directives are being unnecessarily enhanced ('gold-plated') on translation into UK law*

- The need to revisit UK briefs used during negotiations to establish UK starting points.
- Consideration of the results of HSC/E public consultation on proposals for transposition.
- Review of any relevant correspondence with the EC.
- Review of any accompanying CBAs to check assumptions/conclusions in the light of experience.
- Consideration of SFAIRP standards that would have applied in the absence of EC law.

4) *If lessons can be learned from comparison with health and safety regimes in other countries*

- A comparative review of law and enforcement to include not only EC member states but the USA, Canada, Australia, New Zealand and Japan besides emerging legislative trends in India, Brazil etc.

- Review to consider in each case the roles of key bodies in law and standards making, awareness raising, education, training and enforcement with reference to KPIs for health as well as safety.

5) *Whether there is a clear link between regulation and positive health and safety outcomes*

- A review of existing literature on H&S regulatory regimes but taking full account of confounding variables.
- Full consideration of methodological challenges here.

6) *If there is evidence of inappropriate litigation and compensation arising from health and safety legislation*

- Full review of the extent of claiming and under-claiming for fault based work-related injury and health damage.
- Analysis of the main categories of claim.
- Analysis of the main legal bases of claim.
- Explanation of the evolution of case law.
- Review of criteria used for apportionment of liability.

7) *Whether changes to legislation are needed to clarify the legal position of employers in cases where employees act in an irresponsible manner.*

- Full exposition of causal factors in accidents, including job, person, and organisational factors
- Full review of human factors doctrines, including taxonomy of errors.
- Review of original HM Factory Inspectorate and APAU research findings on balance of fault in accidents.
- Review of prosecution trends data around Section 7 of HSW Act etc
- Consideration of EPS criteria in this context