

**The Löfstedt review of
health and safety regulation:
A critical evaluation**

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In March 2011, announcing the establishment of a further review of health and safety legislation, Employment Minister Chris Grayling stated,

‘Professor Löfstedt’s review will play a vital part in putting common sense back at the heart of Britain’s health and safety system and I look forward to receiving his findings. By rooting out needless bureaucracy we can encourage businesses to prosper and boost our economy.’ⁱ

Reclaiming health and safety for all: An independent review of health and safety legislation (hereinafter referred to as the Report), produced by Löfstedt’s review of health and safety legislationⁱⁱ was published in November 2011. In many respects, its conclusions and recommendations might be viewed with a sense of relief. The government statement had implied a thoroughgoing undermining of health and safety law as a bureaucratic brake on business activity. But the Report suggests no such thing. In fact, it largely endorses the current regulatory framework for health and safety and consequently does not appear to represent an explicit attempt to weaken its foundations.

Looked at more broadly, however, the Report can be seen to form an intimate part of a coalition government agenda aimed at undermining, rather than enhancing, regulatory protection in the name of employer interests – rendering somewhat ironic the Report’s claim to be ‘Reclaiming health and safety for all’. Indeed, this much has been acknowledged by Löfstedt himself, who has since expressed concern about the extent to which his Report is being ‘misused’ for political purposes. Löfstedt has emphasised that his Report did not call for significant changes to regulatory policy, or recognise the ‘compensation culture’ that government ministers regularly condemnⁱⁱⁱ, and which successive governments have used as a wedge with which to undermine protective law.

In what follows, these somewhat contradictory opening observations are supported, first, by considering in turn the origins, terms of reference and conduct of Löfstedt’s review and then, second, the main conclusions of the Report. We then focus upon the review’s curious use of the existing evidence base and discuss how its use of that evidence underpins two key problematic aspects of the Report: the focus on ‘low-risk’ workplaces, and the absence of any consideration of enforcement. We conclude by placing the work and conclusions of the review into a broader policy context. It is this broader policy context, we argue, that is crucial to understanding the potential impacts of the review in terms of further degrading the system of occupational health and safety protection and thus increasing the risks of death, injury and illness in the workplace.

Origins and Remit

An independent review of health and safety regulation to ‘identify opportunities to simplify health and safety laws was announced by Chris Grayling, Minister for Employment, in March 2011. At the same time, it was also announced that this review would be undertaken by Professor Ragnar Löfstedt, Director of the King’s Centre for Risk Management at King’s College London.

Following this announcement an advisory panel was appointed to work with Professor Löfstedt, comprising:

- Andrew Bridgen MP (Conservative)
- Andrew Millar MP (Labour)
- John Armitt (Chair, Olympic Delivery Authority)
- Sarah Veale (Trades Union Congress)
- Dr Adam Marshall (British Chambers of Commerce).^{iv}

The terms of reference for the review were to ‘consider the opportunities for reducing the burden of health and safety legislation on UK businesses while maintaining the progress made in improving health and safety outcomes. In particular, the scope for combining, simplifying or reducing the – approximately 200 – statutory instruments owned by HSE and local authorities and the associated Approved Codes of Practice which provide advice, with special legal status, on compliance with health and safety law’.^v

Subsequently, a call for evidence was issued that received over 250 responses and consultation undertaken with a range of interested stakeholders, including employer and employee groups, local authorities, the emergency services, academics and health and safety professionals. Consideration was also given to comments posted in the government’s Red Tape Challenge website.^{vi}

The Review’s Conclusions

As noted above, the review in essence concludes that the current framework of health and safety regulation is not in need of a fundamental overhaul. In reaching this position, it endorses the current qualification of duties under the Health and Safety at Work Act in terms of reasonable practicability, rejects the idea that regulatory requirements imposed on small firms should be reduced and also does not support the idea that ‘health and safety regulation should be tailored to the level of risk in the workplace’ and hence vary between different types of businesses.

More broadly, the Report concludes that where regulations place undue costs on business this arises less as a result of the duties laid down and more because of the way they are interpreted and applied. It further accepts that health and safety regulations have been an ‘important contributory factor’ in the significant reduction in injury rates since the introduction of the 1974 Act and notes that the costs of complying with them are considerably less than those incurred by individuals, employers and the state as a result of work-related injuries and ill health.

Against this backdrop, the review does, however, go on to put forward a range of recommendations for reform. Of these, the following are seen as ‘key’:

- Exempting from health and safety law those self-employed whose work activities pose no potential risk of harm to others;

- The undertaking by HSE of a review of all ACoPs, with the initial phase being completed by June 2012 so businesses have certainty about what is planned and when changes can be anticipated;
- The undertaking by HSE of a programme of sector-specific regulatory consolidations to be completed by April 2015, with it being envisaged that this programme extend to a consideration of regulations relating to mining, genetically modified organisms, biocides and petroleum;
- Legislative reform to give HSE the authority to direct all local authority health and safety inspection and enforcement activity, in order to ensure that it is consistent and targeted towards the most risky workplaces;
- The clarifying and restatement of the original intention of the pre-action protocol standard disclosure list that is used in civil actions for damages;
- A review, to be completed by June 2013, of regulatory provisions that impose strict liability with a view to either qualifying them by 'reasonably practicable' where such liability is not absolutely necessary or amending them to prevent civil liability from attaching to a breach of those provisions;

In addition to these key recommendations, the review identifies a number of duties that are considered to have resulted in unnecessary costs to business whilst offering little benefit and hence should be revoked, amended or clarified, subject to consultation. The recommendations here entailing:

- The revocation of The Notification of Tower Cranes Regulations 2010 and the Notification of Conventional Tower Cranes (Amendment) Regulations 2010; the Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations 1980 and the Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974 and The Construction (Head Protection) Regulations 1989;
- Amendment of the Health and Safety (First Aid) Regulations 1981 to remove the requirement for HSE to approve the training and qualifications of appointed first-aid personnel;
- Completion by April 2012 of the evaluation of the Construction (Design and Management) Regulations 2007 and the associated ACoP to ensure there is a clearer expression of duties, a reduction of bureaucracy and appropriate guidance for small projects.
- Amendment of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) and its associated guidance by the end of 2013 to provide clarity for businesses on how to comply with the requirements.
- Further clarification of the requirement under the Electricity at Work Regulations 1989 by April 2012 to stop over-compliance.
- A review by April 2013 of the Work at Height Regulations 2005 and the associated guidance to ensure that they do not lead to people going beyond what is either proportionate or what the legislation was originally intended to cover

It is further recommended that the proposals above relating to sector-specific consolidations and the HSE being given authority to direct local authority health and safety inspection and enforcement activity be supplemented by HSE:

- Commissioning research by January 2012 to help decide if the core set of (non-sector-specific) health and safety regulations applying to the majority of workplaces could be consolidated so as to provide clarity and savings for businesses;
- Redesigning 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;
- Continuing to help businesses 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;
- Becoming the Primary Authority for multi-site national organisations
- Working with all involved with the aim of commencing health and safety prosecutions within three years of an incident occurring.

Finally, in addition to putting forward several proposals aimed at enhancing societal understanding of risk, the review recommends that the Government work more closely with the European Commission, and others, to ensure that both new and existing EU health and safety legislation is risk-based and evidence-based, further proposing that:

- All proposed Directives and regulations (and amendments to them) that have a perceived cost to society of more than 100 million Euros should go through an automatic regulatory impact assessment;
- Those who are responsible for developing the Impact Assessments should be different from those who have drafted the Directives or regulations;
- A stronger peer review is introduced through a stronger, more independent EU Impact Assessment Board, or that a separate, independent, powerful regulatory oversight body is established, modelled on the US Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB);
- A European Parliamentary Committee is established to look at risk-based policy making that could assist EU regulators and policymakers to regulate on the basis of risk and scientific evidence;
- The UK Government works with the Commission to introduce greater clarity and raise awareness around social partner agreements, and to ensure that Impact Assessments are produced for agreements before they are adopted as a Directive.

In its formal response to the review's report, the Government accepted all of its recommendations. However, a close reading of the text suggests that this endorsement is qualified in respect of the proposals on the relationship between HSE and local authorities. It is further clear that the government envisages the process of regulatory consolidation going beyond the specific consolidations highlighted in the review. So while the review suggests that the consolidations specifically mentioned would reduce the number of regulations by 35%, the government's response states that 'Through implementing the recommendations of the Report and ongoing HSE plans, we will reduce the number of health and safety regulations by more than 50 per cent....'.

As to the more general significance of the recommendations with regard to their impact on worker protection, some of them, such as a number of the regulatory consolidations proposed, would seem unproblematic. Others, however, can be seen to be more questionable: for example, UCATT has expressed strong concerns about the proposed revocation of the regulations on Tower cranes and the proposal to review the Working at Height Regulations

A Curious Evidence Base

Löfstedt rightly made great play of his intention to make his review and the Report based upon it evidence-based, not least based upon academic evidence - as one would expect from a leading academic. He noted in the Report that:

“During the past six months I have sought views from a wide range of organisations, and have studied the available scientific literature to consider whether, on the basis of risk and evidence, health and safety regulations are appropriate or have gone too far... The evidence gathering process has been extensive and I am grateful to the wide range of groups who contributed, including academics, professional bodies, individual businesses and representative bodies, trade associations, trades unions, victim support groups, and a large number of informed individuals” (Löfstedt, 2011: 1).

That said, if one scrutinises the evidence gathered against the evidence used in the Report, the evidence-base of the latter looks a little more problematic. The Report certainly adopts an academic, evidence-based style, in that it is closely referenced. Indeed, there are 261 references listed which support the arguments and claims made in the document. It is worth, however, looking a little more closely at the profile of the evidence that is used.

Much of this evidence is in the form of reports and reviews from Government and parliament itself, as well as relevant international Governmental organisations; in addition, there are numerous references to HSE research reports. We say something of the latter, below. On the former, it should be noted that there are references to numerous publications from the BRE and BRTEF, BIS, DCA, the EU, HSE and DWP, LACORS, various Parliamentary Select Committee Reports, and the WHO. This is reasonable and to be expected for a report published by the Department of Work and Pensions. However, the weight of the material that is referred to which emanates from those organisations is sizeable, and indicates that the inquiry drew upon evidence from government sources more than other sources.

The inquiry also drew, to a varying degree, upon the work of interest groups and academics. It is noteworthy that, in terms of the former, the list of references to material used in the document contains not one single reference to trade union evidence or publications, or from pro-regulatory, worker-protection organisations such as the TUC and think tanks such as the IER. The one exception is one reference to a three page article which puts the ‘trade union perspective on regulatory reform’.^{vii}

By contrast, the document makes seven separate references to documents published by the British Chamber of Commerce, widely recognised as a key advocate of the regulation-as-burden argument. Similarly, it contains five separate references to the document *Reducing the Burden*, written by Policy Exchange, a right wing think tank committed to “free market and localist solutions to public policy questions”^{viii}, and is chaired by Danny Finkelstein, Chief Leader Writer for *The Times*. And there are four references to publications by Open Europe, another right wing think tank, the *raison d'être* of which is that the “EU must now embrace radical reform based on economic liberalisation”^{ix}, and which lists Lord Young - who had overseen the previous Coalition Government review of health and safety law, producing the inaccurately entitled report, *Common Sense, Common Safety* - as a supporter.^x

Other think tank evidence comes from a publication by the centrist Foreign Policy Centre, co-authored with the Federation of Small Business, another key UK source of anti-regulation rhetoric. Moreover, its title, *Burdened by Brussels or the UK? Improving the implementation of EU Directives*, indicates its *assumption* of over-regulation, so that the issue at hand is not the fact of over-regulation but its main source. The use of interest group and think tank evidence, then, hardly seems to be even handed in terms of a balance of pro-and anti-regulation views.

What of the use made by the Review panel of academic research? A large part of the academic research referred to is research commissioned and published by government regulators (in the main, the Health and Safety Executive and Commission). Of this, the Report contains one reference to a publication by Ball and Ball-King, two to a piece of work by Davis (C.), and one to a publication by Vickers and Wright (F), respectively. Of course, the Report did draw upon academic research more widely. Including the above (Ball and King, Davis, Vickers, Wright), there are twenty references to academic books and papers. The single most cited academic – five times, far more than any other academic – is Löfstedt himself.

Löfstedt lists eight separate written submissions received from eleven academics, namely Professor David Ball (Middlesex University) and Dr Laurence Ball-King, Dr Courtney Davis (University of Sussex), Dr Julian Etienne (London School of Economics and Political Science), Professor Bridget Hutter (London School of Economics and Political Science), Professor Steve Tombs and Dr David Whyte (The Institute of Employment Rights), Dr Ian Vickers (Middlesex University), Professor Andrew Watterson and Professor Rory O'Neill (University of Stirling), and Professor Frank Wright. Four of these also gave oral evidence to the review, as did Professor Phil James (Oxford Brookes University), and Dr Henry Rothstein (King's College London). This amounts to twelve contributions from fifteen academics. Curiously, when citing academic input directly, the written and oral submissions from all of these authors are notable by their absence.

There are very specific illustrations of the effects of this partial use of existing evidence, as well as a related tendency to replace evidence-based argumentation

with assertion. Two are particularly worth noting and arise in respect of the recommendations put forward with regard to the self-employed and use of strict liability provisions. The first would serve to significantly reduce the coverage of the current regulatory framework – by around one million people it is suggested. The second would act to reduce a number of long-standing regulatory duties and/or make it far more difficult for those suffering certain types of work-related harm to obtain compensation on the grounds of breach of statutory duty. Yet, notwithstanding the significance of these proposals, and despite the emphasis placed throughout the Report on a risk- and evidence-based approach to regulation, there is little sign of them proposals being underpinned by any such in-depth analysis.

In relation to the proposal on strict liability, for example, no consideration is given to whether such duties result in employers providing higher standards of protection and whether if this is the case, they are defensible on these grounds. Nor for that matter is any attention paid to their adverse impact on the ability of workers to obtain compensation. Instead, it is simply supported on the grounds that such provisions, by excluding from consideration whether employers had done all that was reasonably practicable, have the potential to stop employers ‘taking a common sense approach to health and safety’; even though the Report also states that ‘In some cases these duties may be necessary.....’.^{xii}

As regards the proposal for ‘exempting from health and safety law those self-employed whose work activities pose no potential risk to others’, this is defended on the grounds that ‘There is a case for following a similar approach to other countries...’.^{xiii} No evidence, however, is adduced to support ‘this case’, beyond a reference to the fact that a ‘number of respondents to my review have argued for the self-employed in low risk workplaces to be exempt from health and safety law’.^{xiii} Once again no explicit consideration is given as to whether or not such a change will have adverse implications for health and safety standards. We explore this point in more detail below.

In short, neither of these last two sets of recommendations, notwithstanding their significance, can be viewed as seriously evidence- or indeed risk-based. A generous interpretation of this might see it as a desire to produce a report that struck a balance between defending the existing regulatory regime and producing one more ‘acceptable’ in the context of its wider rationale. Indeed, it is hard to escape the impression that such recommendations are more the product of the deregulatory political and policy context within which the review was undertaken.

Such an interpretation receives support from the following observations made in the Report in relation to the ‘case for change’ in the current provisions relating to the self-employed:

‘The actual burden that the regulations currently place upon these self-employed may not be particularly significant due to existing exceptions in some regulations [a point that can be seen to make little sense given the general duty in section 3 of the Health and Safety at Work Act] and the

limited prospect of these being enforced but it will help reduce the perception that health and safety law is inappropriately applied'.

This text therefore suggests that key considerations underlying the proposal were beliefs that the change would 'not be particularly significant' and that it would 'reduce the perception that health and safety law is inappropriately applied'. With, amazingly, the first of them in part being based not on the grounds that such provisions are of little importance because they are unlikely to be enforced – a truly self-reinforcing deregulatory logic!

Other strands of analysis lend further support to the view that the proposal on self-employed is a product of political considerations. It is striking, for example, that the proposal relating to the self-employed fits well with a long-standing criticism that emerged during the period of Thatcher governments that the transpositions of European directives had been 'gold plated' via their extension to the self-employed. It is also striking that it was advanced even though, in rejecting the idea that 'health and safety regulation should be tailored to the level of risk in the workplace', the Report draws attention to the difficulties of defining 'low risk'. Furthermore, it is difficult to see how the proposal, given its contingent nature, fits with the general desire reflected in much of the Report to ensure that regulatory provisions embody as much clarity and certainty as possible.

'Low-risk' workplaces?

Since coming to office, this government has made it clear on several occasions that it intends to effectively remove what it calls 'low risk' workplaces from inspection regimes altogether. Such indications have featured regularly in public comments on health and safety regulation by both the Prime Minister David Cameron and the Employment Minister Chris Grayling.^{xiv} The removal of the burden of 'low-risk' workplaces also featured centrally in Lord Young's report on health and safety.^{xv}

The Löfstedt Report uses the phrase 'low-risk' in four senses: 'low-risk' work activities, 'low-risk' businesses, 'low-risk' sectors and 'low-risk' workplaces. Now, although the Report notes the difficulty of defining what constitutes 'low-risk'^{xvi} none of these concepts are actually defined in any useful sense – curious, given that Löfstedt is professor of Risk Management and Director of one of the UK's foremost University Centres of Risk Management.^{xvii} Unfortunately, such a lack of precision is highly useful for a government which wishes to use a vague, flexible concept of 'low-risk' to justify regulatory withdrawal. For example, before the Review was published, the DWP had applied a very wide-ranging use of the concept, to include low risk manufacturing (e.g. textiles, clothing, footwear, light engineering, electrical engineering), the transport sector (e.g. air, road haulage and docks), local authority administered education provision, electricity generation and the postal and courier services.^{xviii}

Indeed, the Report obliges somewhat in the application of the concept of 'low-risk' as a means of justifying regulatory withdrawal. Thus, the argument runs along the following lines. First, 'HSE is responsible for traditionally higher-risk

workplaces, whilst local authorities are responsible for less-risky premises'^{xix} Second, 'premises that are considered relatively low risk amongst the workplaces overseen by HSE (and which are therefore not inspected) may nevertheless be riskier than many of those under local authority control, resulting in too many inspections by local authorities of relatively low-risk workplaces.'^{xx} Third, the conclusion is therefore to 'recommend that legislation is changed to give HSE the authority to direct all local authority health and safety inspection and enforcement activity, in order to ensure that it is consistent and targeted towards the most risky workplaces.'^{xxi}

What is remarkable is that this argument is made without any indication of what those local authority workplaces that are deemed "low-risk" actually are.

We are currently facing a growing problem of asbestos in the greater part of the schools, universities and offices that millions of people work or learn in on a daily basis. The Department of Education estimates that over 75% of schools contain asbestos.^{xxii} It is likely that offices in Britain also have an equally high level of asbestos. This is a particular problem in the UK due to our very high rates of asbestos use in public buildings up until the late 1970s/early 80s. HSE estimates that the rate of mesothelioma in the UK is probably the highest in the world.^{xxiii}

In other words, perhaps the most significant health and safety problem that we face is in the type of workplaces that are enforced by local authorities, as well as HSE, and are likely to be defined as 'low-risk'. And, rather schizophrenically, this is a point that is acknowledged by the Report:

'although health and safety has traditionally focused on safety concerns in certain industries, evidence has been provided to show that occupational health conditions can occur in the kinds of workplaces that are traditionally considered less risky, such as offices and the service industry.'^{xxiv}

However, there is no further commentary on the relatively hidden occupational health problems that workers might encounter in offices or in the service industry. Nor is there any reference to the schools asbestos time-bomb.

Instead of opening up the debate on the relationship between the new economy and the new risks potentially faced by workers, the concept of 'low-risk' is used to close down the debate and support an argument for regulatory disengagement from particular sectors.

There is a high degree of political expediency at work here. For the use of this vague concept of 'low-risk' workplaces in the Report has a similar function to the way it is used by government ministers: it is used to square the circle of regulatory disengagement. This is a concept that has been used to justify the reduction in regulatory resources and the general withdrawal from regulatory scrutiny that has been occurring for at least the past 10 years (below). In fact, the Löfstedt Report quotes the Better Regulation Executive to show clearly that

the strategy of withdrawal from a growing range of sectors that are rather arbitrarily deemed 'low-risk' is purely about the allocation and targeting of resources. This is not hidden. And so we have here another circular logic similar to the one that justified regulatory disengagement from the self-employed: that low resources require that workplaces are defined 'low-risk' to enable regulators to manage low resources!

This logic is made more curious by the fact that since the publication of the Report, Löfstedt has subsequently raised concerns in public about the reduction in site inspections.^{xxv} Yet none of these concerns are raised in the Report. In fact, comments on inspections in the Report are instead made to justify squaring the circle of non-enforcement.

The Omission of Enforcement

A closely related aspect of the Report that is as curious as this side-stepping of the collapse of routine inspections, is the Report's consideration of regulation without some more general attempt to understand the extent to which health and safety laws are actually enforced – for such an understanding would seem necessarily to form a part of any judgement as to whether the law represents 'a burden'. It is true to say that issues of enforcement did not form any explicit part of Löfstedt's terms of reference. At the same time, we know that several of the written submissions to the Review dealt with the issue of enforcement in detail, particularly trends in HSE under-enforcement, as did many of the oral submissions given to the Review. Indeed, Löfstedt was moved to comment on this issue specifically:

'A large number of responses and comments I received related to the issue of enforcement of the regulations. A wide-ranging consideration of the extent and nature of enforcement activity is largely beyond the scope of this review, and has already been considered in some detail previously by Sir Philip Hampton.' ^{xxvi}

This is a curious logic. One might accept the argument that having regulations on the books which are anachronistic and thus will not be enforced is likely to lead to the impressions both of over-regulation and of health and safety law being in some ways antediluvian, and thus to parts of the regulatory framework lacking credibility. That said, by the same logic, equally undermining of the credibility and thus legitimacy of health and safety law is the fact that recent evidence clearly indicates that employers are less and less likely to face formal enforcement action^{xxvii} – so the level of and trends in *actual* enforcement is surely a vital consideration in any assessment of the fitness for purpose of any regulatory system. Otherwise the focus runs the serious risk of myopically, and misleadingly, concentrating on 'what the law says' rather than its 'operational reality' – particularly when account is further taken of evidence indicating that many employers simply don't know or understand their legal obligations.

Indeed, where enforcement did arise it was not in terms of under-enforcement nor the empirical evidence which clearly attests to this, but as a problem of

inconsistent enforcement – that is, between LAs as well as between LAs and HSE, especially as a ‘an artificial barrier to the most efficient targeting of enforcement activity across the board’.^{xxviii}

Thus, Löfstedt noted in his speech at the launch of the review that ‘businesses continue to be concerned about inconsistency of enforcement’, with ‘local authorities inspecting too many relatively low-risk workplaces.’^{xxix} Moreover, risk-based targeting of enforcement – the way in which both HSE and Government have sought to square the circle or rapidly declining enforcement activity, decreased resources and maintaining levels of protection – so that greater consistency of enforcement would have the effect of ‘re-directing enforcement activity towards businesses where there is the greatest risk of injury or ill health’.^{xxx}

Conclusions: the Löfstedt review in a wider policy context

Taken as a whole, it must be concluded that the Löfstedt review while containing some seriously problematic features, constitutes a relatively benign document in relation to the wider deregulatory agenda being pursued by the current government, of which the collapse in regulatory enforcement is only part. Indeed, in many respects it can be seen to provide a defence of the current regulatory framework for health and safety.

The fact remains, however, that it is fundamentally a product of this wider deregulatory agenda, as illustrated by the fact that its remit excluded from consideration regulatory actions that might be taken to enhance worker protection. There also seems little doubt, as argued above, that its deliberations have in part been shaped by this agenda. A view that is further supported by the recommendations and observations made in respect of European regulatory policy and the following comments made in relation to the apparent advocacy by some respondents of the Swedish system of roving safety representatives:

‘A pilot project testing the introduction of roving health and safety advisors in the UK in 2003 found evidence that it could benefit both employers and employees in small businesses. However, it also has the potential to introduce an additional layer of administration and advice in the regulatory structure that promotes excessive precaution, and is also likely to have significant cost implications. I have therefore decided that this is not an option that should be pursued’.

There is also no doubt that the scope of this wider deregulatory agenda is expanding and may well go beyond that pursued by the Thatcher governments during the 1980s.

The Löfstedt review comes on the back of an unremitting attack upon the resource base of the HSE. Shortly after coming to power, Coalition government commissioned Lord Young, a former Thatcherite ‘war horse’, to investigate ‘concerns over the application and perception of health and safety legislation, together with the rise of a compensation culture over the last decade’.^{xxxi} Within

5 months of the 2010 general election, the DWP announced that as part of the government's spending review, funding for HSE will fall 35% over four years.

After this, in March 2011 the government announced its 'next steps' to reform the health and safety system in Britain^{xxxii} that in addition to announcing the Löfstedt review encompassed calling on the HSE to reduce proactive inspections by around 11,000 a year, a cut of a third; instructing local authorities to similarly cut their number by at least 65,000; and proposing that in the case of the HSE this cut be achieved by focussing them on:

- areas where, in the government's view, proactive intervention is unlikely to be effective, such as agriculture, quarries, and health and social care; and
- lower risk areas (where proactive inspections will no longer take place), for example, electricity generation, transport, and 'low risk manufacturing', including textiles, footwear, and light engineering.

Cuts which it must be borne in mind are being introduced against a backcloth of a previous decade in which had already seen:

- a 69% fall in inspections of business premises by the HSE's Field Operations Division (FOD);
- a 63% decline in investigations of RIDDOR reported incidents;
- a 48% reduction in prosecutions; and
- a 29% fall in the number of enforcement notices issued.

A month after the Löfstedt review was published, HSE and Local Authority regulators produced their new 'Joint guidance for reduced proactive inspections', as response to the statement in *Good Health and Safety, Good for Everyone*, that low-risk workplaces should be exempt from proactive inspection. This new guidance notes how refining the intervention strategies for businesses by further improving the targeting of relevant and effective interventions and preserving inspection for higher risk premises and issues should lead to a reduced number of proactive inspections. It also observes that reducing the aggregate numbers of proactive inspections by a third across all local authorities will free up capacity for more effective outcome focussed interventions. ^{xxxiii}

To clarify this new 'targeting', in November 2011, HSE revised its guidance on the use of its four category 'risk-rating system', via which local authorities target their enforcement resources, where A – high risk; B1 and B2 - medium risk and C – low risk. The new protocol removes proactive inspections from three of these categories, namely 'those sectors where there remains a comparatively high risk but proactive inspection is not considered a useful component of future interventions .. [category B1 and B2 premises] .. and ... Those areas where proactive inspection is not justified in terms of outcomes (typically category C premises)'.^{xxxiv} This system will therefore introduce the beginnings of an administrative system that is more clearly designed to remove so-called 'low-risk' workplaces from scrutiny.

This does not exhaust the changes being made either directly or indirectly to the system of health and safety protection. The former would include changes to

RIDDOR reporting - likely, respectively, to further undermine HSE's evidence base - and proposals to introduce cost recovery for breaches of the law, which could change relations between HSE and the businesses it regulates irrevocably. Of the indirect changes which will affect the levels of protection offered to workers and members of the public under health and safety law, those affecting the Employment Tribunal system, time and facilities agreements for union reps in the public sector and the system for legal aid are all crucial. In other words, this is a veritable torrent of anti-regulatory initiatives, within which Löfstedt to some extent pales into less significance. But it is not at all insignificant. In claiming to be based upon evidence, in claiming to consult the research base, in claiming independence, Löfstedt's review is perhaps more dangerous than much of that which has come directly from Government. For at times it does little more than perpetuate many of the myths surrounding health and safety regulation that the TUC and the wider hazards movement have consistently sought to dispel. The Löfstedt Report therefore makes the efforts to dispel such myths perhaps more difficult, but all the more necessary.

Endnotes

ⁱ DWP (2011) *Press Release 20 April 2011, Scope of Löfstedt review into health and safety set out*, at <http://www.dwp.gov.uk/newsroom/press-releases/2011/apr-2011/dwp042-11.shtml>

ⁱⁱ <http://www.dwp.gov.uk/docs/lofstedt-report.pdf>

ⁱⁱⁱ Quoted in the *Law Gazette*, 18th January 2012: <http://www.lawgazette.co.uk/news/health-and-safety-guru-warns-political-misuse>

^{iv} The Liberal Democrats were unable to appoint a member. In composition, it is at least arguable that the Panel contained an inherent bias towards less (Conservative, BCC and ODA representation) rather than more (Labour and Trades Union representation) regulatory protection.

^v Löfstedt, R (2011) *Reclaiming health and safety for all: An independent review of health and safety legislation*, London: Department of Work and Pensions, Annex A.

^{vi} <http://www.redtapechallenge.cabinetoffice.gov.uk/about/>

^{vii} Veale S. (2011) Better Regulation Yes – De-regulation No”: A Trade Union’s perspective on the regulatory reform agenda in the UK, *European Journal of Risk Regulation*, 2 (2), 263-265. Sarah Veale was the TUC appointed member of the Review Panel.

^{viii} <http://www.policyexchange.org.uk/about/>

^{ix} <http://www.openeurope.org.uk/about-us/>

^x <http://www.openeurope.org.uk/about-us/supporters.aspx>

^{xi} Löfstedt, 2011, p92.

^{xii} Löfstedt, 2011, p.39.

^{xiii} Löfstedt, 2011, p.38

^{xiv} see, for example <http://www.dailymail.co.uk/news/article-1313432/David-Cameron-plans-tear-mad-health-safety-regulations.html>.

^{xv} Young, Lord (2010) *Common Sense, Common Safety*, London: Cabinet Office.

^{xvi} Löfstedt, 2011, p 36.

^{xvii} <http://www.kcl.ac.uk/sspp/departments/geography/people/academic/lofstedt/index.aspx>

^{xviii} DWP (2011a) *Good Health and Safety, Good for Everyone. The next steps in the Government's plans for reform of the health and safety system in Britain*, <http://www.dwp.gov.uk/docs/good-health-and-safety.pdf>, p9.

^{xix} Löfstedt, 2011, p 83.

^{xx} Löfstedt, 2011, p 9.

^{xxi} *Ibid.* p9.

^{xxii} The Asbestos in Schools Group (2011) *Asbestos in Schools: The Scale of the Problem and the Implications*, published online, and available at: <http://www.asbestosexposureschools.co.uk/>

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- xxviii Löfstedt, 2011, p.82.
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- xxx Löfstedt, 2011., p7.
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- xxxii <http://www.dwp.gov.uk/docs/good-health-and-safety.pdf>
- xxxiii HSE and Local Government Group, 2011: 1
- xxxiv Health and Safety Executive/Local Authorities Enforcement Liaison Committee (HELA) (2011) *Advice/Guidance to Local Authorities On Targeting Interventions*, <http://www.hse.gov.uk/lau/lacs/67-2.htm>; see also Health and Safety Executive (2011) *Advice/Guidance to Local Authorities On Targeting Interventions. LAC 67-2 rev3 - Annex B, Risk Rating System*, <http://www.hse.gov.uk/lau/lacs/67-2/annexe-b-risk-rating-system.pdf>