

## **Health and Safety Gone Mad?**

### **an Institute of Employment Rights Briefing**

**Steve Tombs and David Whyte, July 2010**

This is a dangerous time for workplace safety. In popular and political debate, a virtual consensus has been created that businesses are over-regulated, over-burdened and completely tied up in red tape – health and safety, in short, has ‘gone mad’. But a review of the evidence on safety law enforcement shows this new ‘common-sense’ to be entirely ill-informed – the reality, in fact, as this briefing demonstrates, is quite the opposite.

Never letting the facts get in the way of knee-jerk prejudice, the government is committed to two reviews of regulation as this briefing is being written. The first is being run by the Department for Business, Innovation and Skills, under the stewardship of Vince Cable. This review began with the announcement that a ‘Reducing Regulation Committee’ would be set up in the Cabinet Office to review regulation with a view to abolishing red tape, government Departments would be barred from introducing new regulations unless they had abolished one, and social and environmental goals would be met by encouraging corporate social responsibility rather than regulating. Cable noted on launching the review: The deluge of new regulations have been choking off enterprise for too long. We must move away from the view that they only way to solve problems is to regulate.” (*DBIS Press Release, 2<sup>nd</sup> June 2010*) The second is led by Margaret Thatcher’s former Trade and Industry Secretary Lord Young. The Young review is charged with investigating “concerns over the application and perception of health and safety legislation, together with the rise of compensation culture over the last decade.” (*Number 10 Press Release, 17<sup>th</sup> June, 2010*).

It is in this context that this briefing explores the available evidence on the extent to which businesses are subject to over-regulation in respect of health and safety. This evidence points unequivocally to the opposite conclusion: in fact, the previous government’s desire to reduce the ‘burdens’ on businesses has emasculated the regulatory system designed to prevent death and injury at work.

This situation is reflected in the following trends over the past decade:

- a 69% fall in the numbers of inspections made of business premises;
- a 63% decline in investigations of safety incidents at work; and
- a 48% reduction in prosecutions

This collapse in inspection, investigation and enforcement has dramatically reduced the chances of businesses being detected and prosecuted for committing safety offences. This is hardly the deluge of red tape or the burden of regulation that permeates public debates about health and safety at work.

### **Regulating for Business**

New Labour swept to office in May 1997 determined to break cleanly from its past. Committed to freeing business of its burdens, following its second election victory, New Labour established the Hampton Review in 2004. The Review was to prove a key vehicle for New Labour in rolling out its ‘better regulation’ agenda, with its central aim of reducing ‘burdens on business’.

Having been charged with considering ‘the scope for reducing administrative burdens on business by promoting more efficient approaches to regulatory inspection and enforcement without reducing regulatory outcomes’, Hampton’s report – published a year later and tellingly entitled *Reducing Administrative Burdens: Effective Inspection and Enforcement* – called for more focused inspections, greater emphasis on advice and education and, in general, for removing the ‘burden’ of inspection from most premises. The principles underpinning the Hampton Review can be summarised as follows:

- No inspection should take place without a reason.
- Regulators should provide more authoritative and accessible advice
- Regulators should target a smaller number of businesses for intervention.
- The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions
- Regulators should recognise that a key element of their activity will be to allow, or
- even encourage, economic progress.
- The size and scope of regulators was to be further limited by ensuring that no new authority should be created where an existing one can do the work.

Most fundamentally, inspections were to be cut by a third across the board, equating to one million fewer inspections. Regulators were to make much more ‘use of advice’ to business.

Hampton’s proposals were implemented in the Legislative and Regulatory Reform Act, which passed into law in November 2006. The stated aim of the law was to ‘enable delivery of swift and efficient regulatory reform to cut red tape’. Chapter 1 of the Act creates a remarkable new power for a Minister of the Crown to make an order that removes from government a “regulatory burden”, defined in the Act as a “financial cost”, an “administrative inconvenience” or “an obstacle to efficiency, productivity or profitability”.

### **The Dimensions and Scale of HSE’s ‘Regulatory Surrender’**

How have these demands affected the work of the Health & Safety Executive (HSE)? Some may interpret the data we present below as simply the regulator being cowed into submission by its political masters, implementing the Hampton. But in fact what the data indicates is that HSE anticipated and helped to develop the Hampton agenda.

For one thing, HSE had already achieved Hampton’s target *before* the publication of the report, cutting the number of inspections by a third in the three years leading up to the Hampton Review. The regulator, charged with the duty of protecting the workforce, had in fact anticipated and embraced many of the changes that leave it virtually unable to do the job with which it is charged. It has colluded in a policy process that now leaves it incapable of adequately enforcing safety law.

Despite the mounting evidence of the failures of its new enforcement approach, HSE/C - at senior management level - saw no contradiction between the government’s ‘burdens on business’ strategy and their role as regulator. Perhaps most bizarrely of all, senior figures at HSE failed to admit to what almost all others saw – namely, the detrimental effects on the organisation and its capacities of the constraints created by the level of resource available to it.

The scale of this regulatory surrender is clear if we look at data relating to the various formal enforcement activities of HSE over the past decade.<sup>1</sup> Of course the precise data for each indicator varies – but what is remarkable is that if we take inspections, investigations, enforcement notices and prosecutions, we find that each of these have declined, most dramatically, over the past ten years – the symmetry of the trends in the decline of each of these activities is so striking as to leave it unquestioned that there have been marked changes in HSE’s enforcement practices, away from the use of formal measures towards the less tangible forms of advice, education and encouragement – that is, directly in line with the Hampton agenda, even if these changes in HSE practice begun before the Hampton review formally kicked in.

### *FOD Inspections*

FOD is the arm of HSE which undertakes the vast majority of workplace inspections. Between 1999/00 and 2008/09 there was a drop of 69% in FOD Inspection Records.

Now, HSE note that the method of undertaking and recording inspections changed from 2004/05 – after this point, inspections became “longer and deeper” - so that data before and after this change are not strictly compatible. A HSE put it, the streamlining of the recording system has produced a reduction in the number of inspection records created since 2005/06. However, if we break the period at 2005/06 when the method of recording changed, we still find that:

- between 1999/00 and 04/05, inspection records fell by 39%
- between 05/06 and 2008/09 inspection records fell by 26%

In other words, whatever method of recording, whatever the nature of the inspection, the downward trend has continued apace throughout the decade.

### *HSE Investigations*

If we now turn to look at those RIDDOR reported incidents that are investigated by HSE, we find a decline of a similar order to that in the numbers of inspections, so that:

- between 1999/00 to 2008/09, there was a 63% decline in numbers of HSE investigations
- between 1999/00 to 2008/09, the *proportion* of incidents reported to HSE that were investigated fell by 54%

If we look more closely at the decade under examination, we find that:

- investigations peaked in 2000/01 (ie. prior to Hampton), and since then have fallen by 69%

This decline in investigation has occurred across every category of RIDDOR reportable incidents which HSE might be expected to respond to – that is, dangerous occurrences, injuries to members of the public, over 3-day injuries, and major injuries.

So, between 1999/2000-2008/09, investigations of

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<sup>1</sup> All data is taken from a series of FOI requests supplied by HSE to the authors between February and July 2010. We focus upon data here since 1999/2000 – while data back to 1997/98 was requested, this was not available for all of the indicators discussed here.

- major injuries fell by 49%
- over 3-day injuries fell by 85%
- dangerous occurrences fell by 35%
- injuries to members of the public fell by 75%

By 2008/09, less than one per cent of over 3-day injuries that were reported to HSE were actually investigated. Less than one in ten - 8% - of reported major injuries were actually investigated.

Currently HSE do *not* investigate the following:

- 66% of amputations
- 84% of major fractures
- 96% of major dislocations
- 84% of major concussions & internal injuries
- 90% of major lacerations and open wounds
- 83% of major contusions
- 75% of major burns
- 66% of major poisonings and gassings

Moreover, as Table 1 shows, the proportion of some very serious injuries – already low in 1999/2000 - has declined significantly during this period.

Table 1: HSE Investigations of Major Injury by Type

Injury Type	1990/00	2008/09p	% Fall
Amputations	42.9	33.6	22
Major Fractures	10.5	6.2	41
Major Dislocations	4.9	4.4	10
Major Concussions & Internal Injuries	15	16.1	(+7)
Major Lacerations and Open Wounds	21.9	9.9	55
Major Contusions	23.3	17.4	25
Major Burns	34.6	25.4	27
Major Poisonings and Gassings	47.4	33.7	29

#### *HSE Enforcement Notices*

Beyond inspection and investigation, if we move to formal enforcement action in terms of notices imposed in response to breaches, we again find a decline during the decade under examination. So, the data indicates that between 1999/00 and 2008/09, we find:

- a 29% fall in the number of all types of enforcement notice issued over the past decade

- a 30% fall in improvement notices
- a 26% fall in prohibition notices

And, again, if we examine the data a little more carefully, we can see the most dramatic following a point which *preceded* Hampton, so:

- from their peak during this period, in 2002/03, improvement notices fell by 40% to 2008/09
- from their peak during this period, in 2002/03, prohibition notices fell by 37% to 2008/09

#### *HSE Prosecutions*

If there are fewer inspections, investigations and notices during the period we are examining, we might also expect there to have been fewer prosecutions. And that is indeed the case. Thus we find that:

- between 1999/2000 and 2008/09, HSE prosecutions fell by 48%

This decline also applies to those incidents which we might expect are most likely to result in prosecution – fatal injuries to workers. Again, if we examine the data, we find that:

- between 1999/00 and 2006/07 the number of worker deaths that resulted in prosecution by HSE fell by 39% (from 129 to 79).

#### **HSE, Workers and the Regulation of Safety: what now?**

In short, the data above points clearly to one unequivocal conclusion: that HSE's regulatory approach has been repositioned to accommodate neo-liberal, business-friendly values to the point that it is now unable to maintain a credible threat of enforcement. This leaves workers more vulnerable - the changing regulatory role of the order illustrated here will have the effect of weakening the ability of workers to represent their concerns to management. In the absence of routine inspections, and without a credible threat of prosecution, managements are far less likely to respond to workers' demands to comply with the law. Why, indeed, would they?

There could be no worse time for safety enforcement to have reached this parlous state. Whatever the findings of the Cable and Young Reviews, it is at least certain these will not result in the bolstering of safety enforcement – most likely, of course, quite the opposite. And regulation in general will come under further attack: in a political and popular climate in which the idea of health and safety gone mad' predominates, HSE will be a prime target for budget cuts, which will no doubt impact further upon its ability to fulfil its role. And none of this is to mention the prospects for local authority enforcement, upon which this briefing has not even touched.

This is a crisis to which the trade unions must respond, for in weakening the position of workers to work for the improvement of safety, it also undermines the ability of workers to organise effectively. Trade union members might also legitimately question the purpose of TUC representation on the board of the HSE during this period, a period in which the interests of their members have been consistently undermined. It is time to rethink how workers can be organised to most effectively fight for health and safety rights.

*A full analysis of the issues raised in this briefing can be found in Regulatory Surrender by Steve Tombs and David Whyte, published by the Institute of Employment Rights in July 2010.*

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