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It will not have escaped the attention of many that the election of the new government brought with it a renewed focus on health and safety law, and on the regulators themselves. The Prime Minister said, "All too often, good health and safety legislation designed to protect people from major hazards has been extended inappropriately to cover every walk of life, no matter how low risk." In January 2012, Mr Cameron again spoke of the UK's safety culture as an "albatross."

Webbed feet aside, drilling down into the government's reviews reveals a distinction, albeit blurred in the political message, between compensation claims in the civil courts on the one hand and criminal regulation on the other. So what is the current state of play, and what may the future hold?

Common Sense, Common Safety

In October 2010, Lord Young reported that "compensation culture driven by litigation is at the heart of the problems that so beset health and safety today." Whilst recognising that the Health and Safety at Work etc Act 1974 provided an effective framework which brought results in the UK, he found that the public's perception of health and safety has never been lower.

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His recommendations included reform in civil litigation, using the civil litigation costs review as a conduit. He suggested simplification or exemption of risk assessment requirements in low hazard workplaces, partly through tackling the insurance industry to ensure that low hazard workplaces and worthwhile activities are not tied up in red tape. And he proposed consolidation of the "current raft of health and safety regulations."

Reclaiming health and safety for all

Taking the last of these objectives, Professor Ragnar Löfstedt of King's College London was asked by the Minister for Employment to conduct an independent review of health and safety regulations with a view to their simplification.

In his November 2011 report, "Reclaiming health and safety for all," Professor Löfstedt concluded that there was no case for a radical overhaul of current health and safety legislation. He said, "The regulations place responsibilities primarily on those who create the risks, recognising that they are best placed to decide how to control them and allowing them to do so in a proportionate manner."

However, he went on to identify some factors which drive businesses beyond what is required by the law and what is proportionate, and, in doing so, made a number of recommendations, including some targeted at reducing the burden on no-risk work activities, improving guidance and engaging with the European Commission in its planned review of legislation in 2013.

One of the key issues which he addressed was clarification of what may be "reasonably practicable" for those seeking to comply with the law. On the face of it, to facilitate the way in which the law may be complied with, Professor Löfstedt suggested introducing the "reasonably practicable" qualification to some regulations which currently carry strict liability.

So far as compensation claims are concerned, the report suggests that the aims of pre-action protocols in civil cases be restated, i.e. that they are intended to encourage early resolution of claims.

Regulatory reform?

Whilst there is an apparent tension associated with the public's perception of health and safety, the British health and safety law regime is nonetheless extremely effective. Our rate of work related deaths was, in 2007, the lowest in Europe, and more of our workers felt "very well informed" about health and safety than anywhere else in the EU.

Although simplification is to be commended in principle, there are few health and safety regulations which are redundant or serve no useful purpose. Approved Codes of Practice also play an important role. Their removal would lead to greater uncertainty as to what the related regulations require, and what may be "reasonably practicable." The concept of "reasonable practicability"

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itself means that relevant duties are not absolute, introducing flexibility and proportionality into the ways in which duties can be complied with.

And Professor Löfstedt recognises all of those positives in his report.

The government's response to the report is pretty upbeat, suggesting that the UK has a lot to offer the EU during its review, that the European approach to health and safety must be both risk and evidence based, and that this country will exert a great degree of influence over our European counterparts to achieve our government's aims. Given that Professor Löfstedt's conclusion that no radical overhaul is needed, it is surprising perhaps that the government's proposals for change are still so far reaching.

What about compensation culture?

A relatively modest 1,300 health and safety offences (not offenders) are prosecuted annually in the criminal courts. That is a drop in the ocean compared with the overall number of personal injury claims pursued each year.

The Health and Safety at Work etc Act 1974 cannot technically be used to mount a compensation claim, but some health and safety regulations can. And, aside from criminal penalties (which cannot be insured against), it is therefore extremely common for businesses to manage risk by taking out a policy. Insurance is therefore an important fact of business life, and insurers' concerns in terms of health and safety are therefore entirely legitimate, but equally it may be that change may need to embraced by the insurance industry before the government's wider aims are fulfilled.

Rather than adopting Professor Löfstedt's suggestion that the "reasonably practicable" qualification should attach to more regulations than at present, the government appears to favour at this early stage preventing civil liability from attaching at all. But is a mis-match between the steps needed to avoid liability to pay compensation and to avoid committing a criminal offence going to cure the problem of the burden on those taking those steps? Probably not.

In civil litigation, cost reforms are likely to take effect sometime in early 2013. Changes in the amount of costs which may be recovered and the effect of settlement offers made will impact upon the number of compensation claims which may be brought, and the speed with which disputes are resolved. Whether the public's perception of claim following blame will improve, only time will tell.

In conclusion, it may be thought that, even in the absence of a complete rework of the current legislative regime, the proposed changes are nonetheless relatively wholesale. Professor Löfstedt himself expressed concern in January this year that his report may be hijacked for political purposes. Let us hope that the policy makers are not distracted by political spin or pressure to implement changes fast, but focus on the evidence and the risks.

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