RCN Response to the Lofstedt Review

Independent review of health and safety legislation - call for evidence

Introduction

With a membership of over 400,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

As a professional union we are committed to improving the working environment and health and safety of our members and the RCN welcomes the opportunity to respond to this call for evidence and hopefully put some balance to the argument that compliance with health and safety regulation is a burden for business. Nursing is a physically and psychologically demanding job and nurses and health care assistants face a number of occupational hazards which can impact on their health, safety and wellbeing. Nurses and other healthcare workers deserve the protection that is afforded to them by the Health and Safety at Work etc Act 1974 and associated European legislation.

We have an overarching concern that the ongoing review of health and safety regulation focuses too much on ‘safety’ and not enough on the growing issue of work related ill health. Prevention of major incidents and fatal accidents to workers and the public is obviously very important but there is a risk of ignoring the insidious rise in mental ill health caused or made worse by work, work related musculoskeletal disorders, the impact of work on the ageing population and emerging diseases with medium to long latency periods.

We also share the concern of the Work and Pensions Committee’s 2007-2008 review that public misconceptions of health and safety, often fuelled by the media, can obscure the importance of sensible measure to protect workers and secure public safety.¹

Specific Questions

1. Are there any particular health and safety regulations (or ACoPs) that have significantly improved health and safety and should not be changed?

There is a lack of peer reviewed evidence on the effectiveness of health and safety regulations. However, the research that exists is generally positive. Research commissioned by the Health and Safety Executive (HSE) on the implementation of the Manual Handling Operations Regulations and the Provision and Use of Work Equipment Regulations found evidence of effectiveness.\(^2\)\(^3\) There is also a strong body of evidence on the effectiveness of regulations requiring employers to consult with employees, such as the requirement to set up a health and safety committee under the Safety Representatives and Safety Committee Regulations 1977. A study by Reilly et al (1995) found organisations with a health and safety committee had half the injury rate than those without.\(^4\)

Within the health sector the Manual Handling Operations Regulations have had a positive impact on the health of our members working as nurses and health care assistants. In NHS acute hospitals effective implementation of risk assessments has put an end to the dangerous practice of manually lifting patients in all but extreme circumstances. Lifting equipment, training and policies are now common place within the health sector. The driver for this was regulation with many of our members reporting that “things changed overnight” following the introduction of the regulations.

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

There is evidence to suggest that employers, particularly small and medium sized businesses, like prescriptive advice rather than goal setting.\(^5\) ACoPs play an important role in providing such employers with advice on how they can best meet the requirements of goal setting regulations.

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\(^3\) HSE (2003) Evaluation of the implementation of the use of work equipment directive and the amending directive to the use of work equipment in the UK. HSE Books Sudbury


\(^5\) HSE (2003) Cultural influences on health and safety attitudes and behaviour in small businesses. HSE Books Sudbury
3. Are there any particular health and safety regulations (or ACoPs) which it would be helpful to merge together and why?

Where regulations cover a similar topic it may be beneficial to the enforcer, employer, safety professionals and safety representatives to merge the regulations. We cannot give any examples of particular regulations within the health care sector.

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?

The RCN is not aware of any current regulations that could be abolished. We have already expressed significant concerns about the negative impact on safety culture that proposed the changes to the reporting limits of the RIDDOR regulations would have.

5. Are there any particular health and safety regulations that have created significant additional burdens on business but that have had limited impact on health and safety?

We understand that before being introduced regulations are subject to a cost benefit analysis so any disproportionate costs would be picked up during this process.

The introduction of health and safety regulations will in many cases involve upfront investment e.g. purchasing safety equipment and training staff. In the majority of cases, as the HSE’s Good Health is Good Business campaign illustrated, there will be a return on this investment in terms of reduced litigation costs, reduced sickness absence and retaining experienced staff. However costs resulting from a failure to implement regulations are often not born by the original employer particularly in cases of ill health where occupational diseases have long latency periods or where repeated exposures causes chronic damage. In these cases the State bares the costs incurred from NHS treatment and disability allowance when the worker has long since retired on ill health grounds or being dismissed on capability grounds.

This review of health and safety regulations needs to be mindful of other Government initiatives such as the work of Dame Carol Black and the accepted view that good work is beneficial to health and the need to keep people in work and reduce sickness absence. The RCN believes that health and safety regulation plays an important role in creating good working environments by making employers take action to reduce the harm to health that work can create. This is particularly important in the NHS where the Boorman Review reported high levels of absence due to musculoskeletal disorders and mental health problems.6 Whilst not all these conditions will be primarily work related, it is no doubt that physically and emotionally demanding jobs cause or contribute to this type of absence. When implemented effectively and where

necessary enforced, regulations on moving and handling and the requirements to risk assessor work place stressors play an important part in reducing the risks.

The RCN does empathise with small businesses which do not always have the expertise in house to deal with employment and health and safety law. As the law has become more generic and less prescriptive coupled with the perceived fear of litigation it is often easier to avoid the risk altogether. However rather than deregulate lower risk areas we would suggest looking at ways to make interpretation and implementation of the law easier. HSE’s efforts to make information readily available and free is a good starting point as is their model risk assessments on common procedures. Improving worker involvement and engagement through initiatives such as the HSE’s Worker Safety Advisor project is also a good way to support small business. We are concerned about the reported discontinuation of the HSE Info Line which provides invaluable advice to those who do not have easy internet access at work, who cannot find what they are looking for on the HSE website (or need further clarity) or who need to report a dangerous or unsafe working condition.

6. To what extent does the concept of ‘reasonably practicable’ help manage the burden of health and safety regulation?

We are concerned that reasonably practicable is often misinterpreted by employers as meaning affordable as opposed to proportionate action to eliminate or reduce a risk.

7. Are there any examples where health and safety regulations have led to unreasonable outcomes, or to inappropriate litigation and compensation?

No

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 particular risks or hazards?

At a European level, the RCN recently took a major role in negotiating a framework agreement between European health care trade unions (EPSU) and European healthcare employers (HOSPEEM) on the prevention of sharps injuries to healthcare workers. The social partners agreed that the framework agreement should become implemented by a Directive. This is a good example of employers and trade unions working in partnership to create a workable legislative solution to a recognised workplace hazard which if not managed correctly has a financial impact on the
employer and the State as well as causing significant distress and life threatening disease to staff.\(^7\)

A number of European countries have been more explicit in their requirements for occupational health service provision within the Framework Directive. They have recognised the important role that occupational health services can make towards the prevention, management and surveillance of occupationally acquired disease. In her report, *Working for a Healthier Tomorrow*, Dame Carol Black expresses concern that many employers have failed to provide access to adequate occupational health services. While Dame Carol recommends a Government funded initiative rather than a regulatory approach to this problem, the latter (along with development of the occupational health workforce) may be the only sustainable way to get long term commitment from employers.\(^8\)

Further to the aforementioned research supporting worker involvement and safety representatives, we also feel that there is value in extending the regulations on worker involvement in health and safety (safety representatives and safety committee regulations) by allowing trade union safety representatives to ‘rove’ and access members working in small workplaces where there are no accredited safety representatives. Such a model is used in Sweden and can provide benefits and support for both the workers and smaller employers by helping to create a positive safety culture.

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 regulation?**

The example given in relation to occupational health services within the Framework Directive alongside the UK decision to retain the opt out of the Working Time Directive illustrates that we do not ‘gold-plate’ regulation.

10. **Does health and safety law suitably place responsibility in an appropriate way on those that create risk? If not what changes would be required?**

Primary control of the workplace and work activities lie with the employer so it is correct that the health and safety at work act and other legislation places primary duty on the employer. Current regulations also place proportionate duties on others including building owners, contractors and equipment manufactures and designers. While there are responsibilities on the employee under section 7 of the health and

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\(^7\) EC Directive 2010/32/EU Implementing the Framework Agreement on prevention from sharps injuries in the hospital and healthcare sector concluded by HOSPEEM and EPSU. Luxemburg: EC.

safety at work act, research into human factors and reports from major accident investigations regularly find management practices lacking and systemic failures. In his seminal work ‘Human Factors’ Reason makes this point:9

“Rather than being the main instigators of an accident, operators tend to be the inheritors of system defects created by poor design, incorrect installation, faulty maintenance and bad management decisions.”

If changes were to be made we would like to see more specific duties on company directors.

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