

The Lofstedt Report – Response by Gerard Forlin

Barbour is pleased to provide our subscribers with an exclusive response on the Lofstedt Report from industry expert and Barrister, Gerard Forlin.

Gerard Forlin QC is an expert in Health and Safety Law and is ranked in Chambers and Partners 2012 as the leading Silk in Health and Safety. He was also invited to debate Lord Young's report when it was released, making him perfectly placed to comment on Lofstedt's review. His responses to the report are below:



This proposes to exempt approximately half a million self-employed people [in so called low risk occupations] from the Health and Safety legislation.

At first blush, this would appear to be a sensible idea but does not appear to take into account various potential difficulties, such as self-employed people working occasionally for employed personnel and, for instance, potential risks in an office scenario. In my view, this recommendation will require some further consultation.

That the HSE will review all of its approved codes of practice so that businesses have certainty and that the initial phase of the Review will be applied by June 2012.

Although this is laudable, given the financial constraints put on the HSE and the recent round of announcements of redundancies, this deadline may seem to be extremely ambitious, if not impossible.

That the HSE undertake a programme of sector-specific consultations to be completed by April 2015.

This would appear to me to be an excellent idea and the time period allowed is a realistic one. One possible issue may be where sectors cross over more than one area.

That legislation is changed to give [the] HSE 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.

I foresee problems in this recommendation, given the already over-stretched HSE, together with the fact that for many years Local Authorities have built up a relatively high level of local knowledge. Further, I note the recent comments of Sir Merrick Cockell, Chairman of the Local Government Association, who recently stated that "although he was looking forward to working closely with the HSE to develop an approach which delivered national priorities in a consistent way", he also added "that in light of the invaluable accountability, transparency and flexibility of local understanding that the work of Councils must be maintained." Further, this will mean that with the advent of HSE imposing charges for their work, more people would have to pay these if the enforcement work was taken away from the Local Authorities. In some businesses this may be a problem especially given the recent economic constraints and environment.

That the proposed changes to regulatory provisions that impose strict liability be reviewed by June 2013.

Although this seems to be an eminently sensible idea, given the enormous recent changes in corporate governance I envisage that it will be extremely difficult to unravel all this by June 2013. In my view this attempt to streamline matters, may very well end up creating more legal uncertainty, especially in light of the recent cases of Porter, Charget and Veolia have reached a degree of legal certainty. This project could destabilise this position and create more future legal uncertainty.

In terms of the further recommendations in this report, these seem to be a good and thought through series of recommendations which should be welcomed by business generally.

In conclusion, there are some good ideas but the number one priority must be that the UK retains its position as being one of the safest places in the world in which to work. History tells us that removing the rules and regulations should only be done when we know why they were put there in the first place.

We will all wait in anticipation and should do our best to assist in any consultation process so that we can assure that this Review is as successful as possible. This is a duty for us all.

Gerard Forlin
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