

Common sense, common safety – progress report

Government departments' progress on health and safety reforms

October 2011

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Introduction/Background

On 15 October 2010 the Rt Hon Lord Young of Graffham submitted his report, “Common Sense Common Safety”, to the Prime Minister following a Whitehall-wide review of the operation of health and safety laws and the growth of the compensation culture:

<http://www.cabinetoffice.gov.uk/resource-library/common-sense-common-safety>

The Prime Minister and the Cabinet accepted Lord Young’s report and recommendations in full.

The Department for Work and Pensions (DWP)’s Minister for Employment, the Rt Hon Chris Grayling MP, has now assumed overall responsibility for the implementation of Lord Young’s recommendations. DWP has therefore developed this progress report on the recommendations, for the benefit of all those interested in how they are being taken forward.

The progress report lists all the recommendations – according to the Government body which is responsible for implementing them – and will be regularly updated on the DWP website. We hope you find it helpful.

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Health and Safety Executive

Proposal

1. Simplify the risk assessment procedure for low hazard workplaces such as offices, classrooms and shops. The Health and Safety Executive (HSE) should create simpler interactive risk assessments for low hazard workplaces for downloading from their website **(in DWP Business Plan, early 2011)**.

Progress

HSE created four risk assessment tools for low hazard premises (offices, classrooms, shops and charity shops) by the end of 2010. A refreshed office risk assessment tool was launched in June 2011. Final versions of the shops and charity shops assessment tools were launched in August 2011. All of the tools can be found at <http://www.hse.gov.uk/risk/assessment.htm>. Over 12,900 assessments have been completed using the office risk assessment tool.

Proposal

2. The HSE should create periodic checklists that enable businesses operating in low hazard environments to check and record their compliance with regulations as well as online video demonstrations of best practice on form completion **(in DWP Business Plan, early 2011)**.

Progress

The risk assessment tools outlined above help businesses operating in low hazard environments to comply with their legal obligations. In addition HSE has published revised guidance (see 8 below).

Proposal

3. The HSE should develop similar checklists for use by voluntary organisations **(in DWP Business Plan, March 2011)**.

Progress

An interactive risk assessment tool for charity shops is now available for use and can be found at <http://www.hse.gov.uk/risk/charity-shop.htm>. Simple advice for voluntary organisations and a checklist for village halls were published on 31 March 2011, and are available on HSE's new "Voluntary Organisations – managing low risk" web pages at www.hse.gov.uk/voluntary.

Proposal

4. Exempt employers from risk assessments for employees working from home in a low hazard environment.

Progress

HSE published simplified guidance for employers on low risk homeworking as planned during August 2011. The guidance is available as a free download at: www.hse.gov.uk/pubns/indg226.pdf.

Proposal

5. Exempt self-employed people in low hazard businesses from risk assessments.

Progress

HSE continue to deliver the “Common Sense Common Safety” recommendations to simplify the risk assessment process. Guidance underlines this and demonstrates how simple the process for a self-employed person in a low hazard workplace is. The HSE has developed online risk assessment tools for example for offices and shops and has developed guidance such as “Health and Safety Made Simple” which sets out clearly what the basic health and safety requirements are. This includes making clear that those who employ fewer than five do not have to record their risk assessments.

Proposal

6. Professionalise health and safety consultants with a qualification requirement that all should be accredited to professional bodies. Initially the HSE could take the lead in establishing the validation body for qualifications working with the relevant sector and professional bodies. However, this function should be run by the professional bodies as soon as possible **(in DWP Business Plan, from January 2011)**.

and

Proposal

7. Establish a web based directory of accredited health and safety consultants **(in DWP Business Plan, January 2011)**.

Progress

The Occupational Safety and Health Consultants Register (OSHCR) was formally launched on 21 March 2011. There are now over 2,640 consultants on the register. HSE has supported a number of participating professional bodies in establishing OSHCR as a not-for-profit company. The OSHCR can be accessed at www.oshcr.org

Proposal

8. The HSE should produce clear separate guidance under the “Management of Health and Safety at Work Regulations Approved Code of Practice” focussed on small and medium businesses engaged in lower risk activities **(in DWP Business Plan, June 2011)**.

Progress

HSE addressed this recommendation through the publication of “Health and Safety Made Simple” on 21 March 2011, online tools, and revision of existing guidance. “Health and Safety Made Simple” is available on the HSE website at www.hse.gov.uk/simple-health-safety/. There have been over 192,500 visitors to the site.

Proposal

9. The current raft of health and safety regulations should be consolidated into a single set of accessible regulations **(in DWP Business Plan, consultation July 2011)**.

Progress

HSE has undertaken initial consultation with stakeholders on this proposal. It will now be considered as part of the Independent Review of Health and Safety Legislation being undertaken by Professor Ragnar Löfstedt, announced by the Government on 21 March 2011.

Proposal

10. The UK should take the lead in co-operating with other members states to ensure that EU health and safety rules for low risk businesses are not overly prescriptive, are proportionate and do not attempt to achieve the elimination of all risk.

Progress

The European Commission (EC) is analysing a recommendation from its High Level Group of Independent Stakeholders on Administrative Burdens that low risk small firms be exempted from certain risk assessment requirements. EC action will be informed by the Advisory Committee on Safety and Health at Work, on which the UK Government is represented by HSE. Impact assessment work is ongoing.

The UK is arguing for a sensible and proportionate approach in negotiations on a proposal for a directive on the risks from electromagnetic fields that began in July 2011.

Proposal

11. Amend the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR), through which businesses record workplace accidents and send returns to a centralised body, extending the period before an injury or accident needs to be reported to seven days **(in DWP Business Plan, consultation April 2011)**.

and

Proposal

12. The HSE should also re-examine the operation of RIDDOR to determine whether this is the best approach to providing an accurate national picture of workplace accidents.

Progress

A consultation document was published on the HSE website on 31 January 2011. The consultation has now closed and the HSE Board has recommended to the Minister that the change be made along with other consequential amendments and the Minister has accepted this.

The earliest the change can become law is the 6 April 2012 common commencement date.

Once the first amendment to RIDDOR has become law and has been evaluated, HSE will take forward the second proposal to re-examine the operation of RIDDOR as a whole.

Proposal

13. Undertake a consultation with the intention of having an improved system with an enhanced role for the HSE in place for a large multi-site retail business as soon as practicable.

Progress

BIS launched a consultation, "The future of the Local Better Regulation Office (LBRO) and the extension of the Primary Authority Scheme", which set out the Government's proposals for better co-ordinated inspection of multi-site businesses. HSE will be working with LBRO and Local Authorities to develop a sector intervention strategy for health and safety to inform inspection plans developed as part of this proposal.

The consultation closed on 15 September 2011, responses are being evaluated and will be reported on later in the year.

Proposal

14. Police officers and fire fighters should not be at risk of investigation or prosecution under health and safety legislation when engaged in the course of their duties if they have put themselves at risk as a result of committing a heroic act. The HSE, Association of Chief Police Officers (ACPO) and Crown Prosecution Service (CPS) should consider further guidance to put this into effect.

Progress

This recommendation is jointly owned by Home Office, DCLG, and HSE who are working with the CPS and others. HSE has worked with stakeholders in the fire and rescue service to produce a short statement making it clear that HSE will not investigate or prosecute individual firefighters if they have undertaken a heroic act. This statement extends to individual officers who have undertaken a heroic act in

either an individual or team member capacity, and provides illustrative examples; this has now been published on the HSE website at www.hse.gov.uk/services/fire/heroism.htm .

HSE has also worked with ACPO to produce guidance to support the statement “Striking the balance between operational and health and safety duties in the Police Service”. The new explanatory note was published on 7 July 2011 and is available on the HSE website at <http://www.hse.gov.uk/services/police/explanatory-note.pdf>.

The recommendation is fully implemented by the two pieces of HSE guidance together with the CPS guidance to their lawyers “Heroic acts by Police Officers and Firefighters” http://www.cps.gov.uk/legal/h_to_k/heroic_acts_by_police_officers_and_firefighters/ which was published in March this year.

Proposal

15. Abolish the Adventure Activities Licensing Authority (AALA) and replace with a code of practice (**in DWP Business Plan**, primary legislation needed).

Progress

Consultation on a proposed replacement Code was launched on 29 June 2011 and ended on 21 September 2011. The consultation document can be found at <http://www.hse.gov.uk/consult/condocs/cd236.htm>. Responses to this consultation are being evaluated. HSE is working closely with the adventure activities sector to develop new arrangements, and subject to the outcomes of discussions with the devolved administrations, expect to be able to announce plans for the post AALA regime in Spring 2012.

Ministry of Justice

Proposal

16. Introduce a simplified claims procedure for personal injury claims similar to that for road traffic accidents under £10,000 on a fixed costs basis. Explore the possibility of extending the framework of such a scheme to cover low value clinical negligence claims **(in MoJ Business Plan, consultation response by October 2011)**.

and

Proposal

17. Examine the option of extending the upper limit for personal injury claims to £25,000.

Progress

On 29 March 2011 the Ministry of Justice published their consultation paper “Solving disputes in the county courts: creating a simpler, quicker and more proportionate system”. As well as proposals to reform the Civil Justice System, the paper also consults on Lord Young’s recommendations in relation to the expansion of the RTA Scheme.

The consultation closed on 30 June 2011 and the response will be published at the end of October 2011. The consultation document can be found at:

<http://www.justice.gov.uk/consultations/consultation-cp6-2011.htm>.

Proposal

18. Introduce the recommendations in the Jackson report **(in MoJ Business Plan, consultation by February 2011)**.

Progress

On 29 March 2011, “Reforming Civil Litigation Funding and Costs in England and Wales – Implementation of Lord Justice Jackson’s Recommendations: The Government Response” was published. Following full consultation, the Government will be implementing the primary recommendations contained in the Lord Justice’s report for a fundamental reform of no win no fee conditional fee agreements (CFAs).

Changes to the CFA regime requiring primary legislation will follow as soon as Parliamentary time allows. The Legal Aid, Sentencing and Punishment of Offenders Bill was introduced to Parliament on 21 June 2011, and includes provisions to:

- abolish the general recoverability of CFA success fee from the losing side
- abolish the general recoverability of ATE insurance from the losing side, except for expert reports in clinical negligence cases
- permit damages-based agreements in civil litigation

- allow for Part 36 of the Civil Procedure Rules (offers to settle) to be amended to equalise the incentives between claimants and defendants to make and accept reasonable offers

Other changes will require changes to the Civil Procedure Rules or other secondary legislation. The target (subject to Parliamentary time) for full implementation is autumn 2012.

Proposal

19. Clarify (through legislation if necessary) that people will not be held liable for any consequences due to well-intentioned voluntary acts on their part.

Progress

The Department for Transport (assisted by the Ministry of Justice) published guidance in October 2010 clarifying the position on snow clearance. The Ministry of Justice has committed to work with relevant Government Departments to provide further advice to the public when appropriate, for example in response to extreme weather conditions. Other than responding to such issues as they arise, no further work is planned in this area.

Ministry of Justice (Claims Management Regulator and Solicitors Regulation Authority)

Proposal

20. Restrict the operation of referral agencies and personal injury lawyers and control the volume and type of advertising.

Progress

Claims Management Companies

The Regulator has consulted on proposals to amend the rules governing claims management businesses conduct to ban any form of cash or similar marketing inducements used to attract people to bring a claim. The consultation closed in February and a summary of responses was published on 17 March 2011.

As a government regulator there is a requirement to submit proposed rule changes to additional scrutiny under the Government's reducing regulation processes, including by the independent Regulatory Policy Committee. An impact assessment regarding the proposed changes has been prepared and will be considered by the committee in due course.

Separate work is in progress to the claims management regulation conduct rules to address Lord Young's and others' general concerns over the conduct of claims management businesses. The Regulator conducted an informal, pre-consultation exercise with stakeholders and is currently working on a consultation and impact assessment for publication later this year, subject to scrutiny and relevant clearance of the reducing regulation process mentioned above.

Ban on Referral Fees

The Government announced on 9 September 2011 that it intended to ban the use of referral fees in personal injury claims. This is in line with Lord Young's "Common sense, Common safety" recommendations. An amendment to the Legal Aid, Sentencing and Punishment of Offenders Bill will be laid shortly to include this reform.

Personal Injury Lawyers

The Solicitors Regulation Authority (SRA) is engaging with stakeholders, including the Government, the Legal Services Board, the Ministry of Justice/Claims Management Regulator and the Advertising Standards Authority.

Education

Proposal

21. Simplify the process that schools and similar organisations undertake before taking children on trips.

Progress

Completed. The Department for Education (DfE) published revised advice on health and safety law for schools 2 July 2011, to clarify understanding around the duty of care both in-school and during off-site visits. *Inter alia*, the advice reminds schools that, as stated in Common Sense, Common Safety, (with the exception of nursery age children) parental consent is not necessary for most off-site educational visits, such as those that occur during the school day and for which information will suffice.

Proposal

22. Introduce a single consent form that covers all the activities a child may undertake during his or her time at a school.

Progress

Completed. DfE published a generic consent form on 2 July 2011, alongside the guidance. The form is on the DfE website and is available to schools for them to give to the parents of every pupil to be valid for his or her school career for those activities on which consent is advised – such as residential trips in the UK or abroad, adventure activities, and activities for nursery schools.

Proposal

23. Shift from a system of risk assessment to a system of risk-benefit assessment and consider reviewing the Health and Safety at Work etc Act to separate out play and leisure from workplace contexts.

Progress

HSE, working with Play Safety Forum members, DfE and Department for Culture, Media and Sport, have concluded that a review of the Health and Safety at Work etc. Act 1974 is not necessary at this stage. A workshop was held with Play Safety Forum representatives and other stakeholders, in June, to consider the proposal further and agreed the development of a high level statement on this area. It is anticipated this work will be completed by the end of November 2011.

Department for Communities and Local Government

Proposal

24. Officials who ban events on health and safety grounds should put their reasons in writing **(in Department for Communities and Local Government (DCLG) Business Plan, by May 2012)**.

and

Proposal

25. Enable citizens to have a route for redress where they want to challenge local officials' decisions. Local authorities will conduct an internal review of all refusals on the grounds of health and safety.

and

Proposal

26. Citizens will be able to refer unfair decisions to the Ombudsman and a fast track process should be implemented to ensure that decisions can be overturned within two weeks. If appropriate, the Ombudsman may award damages where it is not possible to reinstate an event. If the Ombudsman's role requires further strengthening, legislation should be considered **(in DCLG Business Plan, by May 2012)**.

Progress

Action on the above three recommendations has been included in Part 2 – “Reinvigorating local accountability, democracy and participation” - of DCLG's published Business Plan, with any necessary legislation (which would also deal with the wider role of the Ombudsman) scheduled for 2012.

In advance of that, the Local Government Ombudsman has implemented a pilot of internal process changes to enable relevant complaints to be rapidly identified and then fast-tracked through their investigation systems. The pilot has been completed and is now being evaluated.

Proposal

27. Insurance companies to cease the current practice that requires businesses operating in low hazard environments to employ health and safety consultants to carry out full health and safety risk assessments.

and

Proposal

28. Where health and safety consultants are employed to carry out full health and safety risk assessments, only qualified consultants who are included in the OSHCR web based directory should be used.

and

Proposal

29. There should be consultation with the insurance industry to ensure worthwhile activities are not unnecessarily curtailed on health and safety grounds. Insurance companies should draw up a code of practice on health and safety for businesses and the voluntary sector. If the industry is unable to draw up such a code then legislation should be considered.

Progress

Initial meetings have been held with the insurance industry on the proposed voluntary code of practice and a timetable for agreement. The Association of British Insurers (ABI) provided a first draft to DCLG and HSE at the end of May 2011. Further work will be undertaken to finalise the code, with a publication target of autumn 2011.

The code will deal with concerns that businesses operating in low hazard environments can be required by insurers to employ consultants to carry out full health and safety risk assessments; and, in environments where such assessments are necessary, will help ensure that only qualified consultants are used.

Food Standards Agency (and relevant Departments)

Proposal

30. Combine food safety and health and safety inspections in local authorities **(guidance, with HSE, by January 2011)**

Progress

A joint Food Standards Agency (FSA)/HSE/Local Government Regulation statement on implementing combined inspection programmes from 1 April 2011 has been agreed and was issued to local authorities in England on 4 February 2011. The statement is available on the FSA website at:

<http://www.food.gov.uk/archived/enforcementarchive/enf/e/11>

Proposal

31. Mandatory local authority participation in the Food Hygiene Rating Scheme (FHRS) where businesses serving or selling food to the public will be given a rating of 0 to 5 which will be published in an online database **(requires primary legislation)**.

Progress

Food safety is a devolved matter so the recommendations relate to England only.

Since the last progress report, voluntary uptake of the FHRS has continued to rise steadily and the number of authorities operating the scheme in England has risen from 112 to 128 which represents nearly 40% (all 22 authorities in Wales and 17 of the 26 authorities in Northern Ireland are also running the scheme). On the basis of current commitments, a further 78 authorities in England (and seven in Northern Ireland) are expected to launch the scheme over the next few weeks and months.

The FSA recently announced a package of additional support measures which aim to encourage the remaining local authorities – many of which are still running their own local ‘scores on the doors’ schemes – to commit voluntarily to the national scheme ahead of the 2012 London Games. The measures include a partnership between the FSA and Transparency Data – the company that was running the “scores on the doors” website for local authorities. This will enable the FSA to enhance the FHRS IT platform and it will facilitate the integration of data from the two schemes. In addition, local authorities have been invited again to apply for grant funding to cover the costs of activities required prior to FHRS launch. The deadline for applications is not until the end of October but the level of interest has been encouraging.

Proposal

32. Promote usage of the scheme by consumers by harnessing the power and influence of local and national media.

Progress

The FSA is continuing to work closely with local authorities to promote the scheme in their areas and this is still generating much local and regional media interest.

Proposal

33. Encourage voluntary display of ratings, but review after 12 months and if necessary make display compulsory particularly for those businesses that fail to achieve a 'generally satisfactory' rating (**review by April 2012**).

Progress

The FSA is working with local authorities launching the FHRS to encourage businesses to display their ratings at their premises in places where their customers can easily see them.

The review in April 2012 of the voluntary approach to display of ratings will form part of a wider evaluation of the FHRS. The FSA has now commissioned the work to support this and field work is expected to begin shortly.

Proposal

34. The results of inspections to be published by local authorities in an online database in an open and standardised way.

Progress

The FHRS online search facility at <http://ratings.food.gov.uk/> provides a single point of access to consumers for ratings of businesses in areas where local authorities are running the scheme. To date, information on approximately 126,000 businesses has been published on the site.

Proposal

35. Open delivery of inspections to accredited certification bodies, reducing the burden on local authorities and allowing them to target resources on high risk businesses.

Progress

In July 2011, the FSA's Board considered proposals for opening delivery of food safety inspections to accredited certification bodies as part of a wider compliance and enforcement strategy. Following that, the FSA has been discussing possible approaches with the industry sector, certification bodies, scheme owners and UKAS, and development of a detailed planned project management model is underway.