

Health and Safety



Reducing the burden

Corin Taylor

Edited by Natalie Evans



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About the Author

Corin Taylor is a Senior Policy Adviser at the Institute of Directors. He also sits on the Social Return on Investment Steering Group at the Centre for Social Justice and is a Senior Fellow at the Economic Policy Centre. He was previously a member of the Economic Dependency Working Group at the Centre for Social Justice, Research Director at the TaxPayers' Alliance, Political Secretary at the Tax Reform Commission and Economics Research Officer at the think tank Reform. He has also written for the Centre for Policy Studies and Civitas think tanks on a freelance basis.

The views expressed in this paper are personal and do not necessarily reflect the views of the Institute of Directors.

Natalie Evans is Deputy Director at Policy Exchange, responsible for the output and strategic direction of the research team. Prior to joining Policy Exchange she was Head of Policy at the British Chambers of Commerce. She has also previously been Deputy Director at the Conservative Research Department specialising in welfare and social policy issues.

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Foreword

Back in the eighties, when I was responsible for health and safety in the Department of Employment, the Health and Safety Executive (HSE) was a worthwhile, solid and unexciting Agency concerned with Factory inspections and the like. Today health and safety permeates every corner of our lives and has become the butt of newspapers and comedians up and down the land.

Yet, for workplaces covered by the HSE, actual inspections by HSE inspectors take place, on average, every fourteen and a half years and prosecutions have, if anything, been declining over the last few years. On this basis the concern about health and safety should have faded away and not increased exponentially.

This review by Policy Exchange is designed to establish some basic facts about health and safety and to pose some questions. I am very grateful to Corin Taylor and all at Policy Exchange for the clarity of this report and, of course, for all the hard work that it entails.

David Young

Executive Summary

Health and safety regulation has a long history and a noble purpose. Britain has gone from a country where children climbed chimneys to sweep away coal dust to virtually the safest place to work in the EU. Improvements to health and safety have played an important part.

But something has clearly gone wrong. Micro-businesses, employing fewer than ten people, are spending one person-day a month complying with health and safety rules. The health and safety industry is growing at a rapid rate. Volunteers are being put off helping their communities for fear of being sued. Emergency service personnel are instructed to consider their own health and safety before the welfare of those in need. Much as the media will exaggerate isolated cases, the health and safety culture in Britain is having a pernicious effect on our lives. Health and safety is becoming a ritual excuse for not doing anything.

Health and safety is itself potentially becoming dangerous to people's health. Medical evidence shows that people who are physically active reduce their risk of developing major diseases by up to a half, and their risk of premature death by a quarter. To the extent that health and safety worries discourage volunteers from organising outdoor physical activities, the health and safety culture may be undermining the goal of a healthy society.

This report analyses the health and safety regime in the UK. The problem lies less with the regulations themselves and more with the culture of over-compliance that has developed. There is considerable scope to align the health and safety regime more closely with proportionality and common sense in order to lessen the burdens that it creates.

Excessive regulation and enforcement is not the biggest problem

Health and safety regulations are extensive, but they are not as burdensome as might be thought, while the inspection regime is relatively light:

- There has not been a faster increase in health and safety regulation in recent years. In the thirteen years before 1997, the UK passed 60 Statutory Instruments (SIs) relating to health and safety into law; in the thirteen years since 1997, it has enacted 65.
- There were 41,496 HSE inspections in 2006-07 (down from over 65,000 in 2002-03) which evidence suggests equates to the average workplace covered by the HSE being inspected just once every 14.5 years. Such numbers are not readily available for local authorities, but with approximately 5,500 employees dedicated to inspection and enforcement covering over 1.1 million premises, the rate of local authority inspection could not be much higher.

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- The number of prosecutions by HSE and local authorities is also relatively low, falling from a high of around 2,500 in 1999-00 to around 1,400 in 2008-09.

The health and safety culture

There is, however, a great deal of uncertainty surrounding health and safety legislation. For example, what precisely are “reasonably practical” precautions, and when does a risk assessment need to be carried out? This uncertainty has led to an over-cautious health and safety culture. The health and safety industry and its relationship with the legal and insurance industries further exacerbate this culture of over-compliance:

- Over 1,500 “specialist” health and safety firms now offer their services to businesses, and analysts have valued the sector at between £700 million and £1 billion. The Better Regulation Executive has described it as “one of the fastest growing business to business sales sectors in the UK”.
- There are no qualifications required to become a health and safety consultant, and it is possible to acquire an industry-respected health and safety certificate after just a 10-day course. Consultants have a clear incentive to inflate the level of risk-mitigation that must be carried out, both to generate more business and to protect their reputation.
- While personal injury claims settled in court have not increased since the introduction of “no win, no fee” arrangements in 1999, evidence suggests that more claims are settled out of court.

The impact of health and safety on the ground

The health and safety culture means that the health and safety regime, as experienced on the ground by businesses, charities and the public sector, can be extremely burdensome:

- While health and safety regulations do not specifically restrict community events, continuing uncertainty over what is sensible and proportionate health and safety, combined with the fear of litigation should something go wrong and the considerable costs of public liability insurance, discourages organisers. Health and safety guidance also intimidates. The Voluntary Arts Network’s guide to *Health and Safety for Community Outdoor Events* – recommended by numerous local authorities – stretches to over 227 pages.
- Volunteering organisations estimate that at least 5% of volunteers have considered giving up because of fear of litigation. Derek Twine, Chief Executive of the Scout Association, has said that 50% of the Association’s volunteers are concerned that fear of being sued is affecting the retention of them and their peers, while 70% feel that litigation worries are a deterrent to recruiting additional volunteers.
- The costs for businesses of complying with health and safety are considerable. Data from the Forum of Private Businesses found that micro businesses, employing fewer than ten people, are spending 7.2 hours a month, almost one working day, on compliance. The British Chambers of Commerce has estimated

that the total cumulative cost of health and safety regulation introduced since 1998 is almost £4 billion. A recent Institute of Directors survey found that 60% of businesses now see improvement of health and safety regulation as a key priority.

- Health and safety is also a particular burden on the public sector, which has a greater level of unionisation than the private sector. Administration and liability claims are costing many millions of pounds each year, diverting money away from key services. When Health and Safety Executive (HSE) staff are instructed to call for a porter rather than move furniture across the room, and when a police force uses health and safety to justify the failure of two PCSOs to rescue a drowning boy (and when, within the context of health and safety, they made the right decision), it is clear that something has gone badly wrong.

Next steps

No-one would wish to go back to the days when manual workers carried out dangerous jobs without proper training and equipment, machines lacked guards and office workers spent every day in rooms filled with cigarette smoke. But there is considerable scope to align the health and safety regime more closely with proportionality, common sense and to lessen the burdens that it creates.

Any reforms will need to be checked as being compatible with EU law. If they are not compatible, either they will need to be redesigned, or EU and UK competencies over health and safety will need to be renegotiated. This report suggests a number of areas where reform is needed:

- Greater clarity is needed around legal requirements such as ‘reasonably practical’ and HSE guidance on when a risk assessment needs to be made or how extensive it needs to be. This would reassure people that only proportionate, common-sense and practical health and safety steps need to be taken, and may lessen organisations’ dependence on the health and safety industry.
- A minimum standard of qualification for health and safety consultants should be introduced.
- Given that extensive legal liabilities already exist for individual directors, the HSE should think again as to whether it really should add further duties.
- Consideration should be given as to whether certain health and safety requirements, for example risk assessments, can be lifted from micro-enterprises and low-risk office-based businesses.
- It is questionable whether the self-employed need any health and safety requirements at all, except for ensuring that their work does not harm others. Stripping back regulation in this area should be investigated.
- The current costs of health and safety regulation are too high. There are a number of approaches that could be taken to tackle this cost: the introduction of regulatory budgets, the removal of individual regulations or a reduction in the number of regulatory requirements. An investigation should be carried out into the viability and effectiveness of these approaches.
- The last, and biggest, question is whether we should really try to eliminate all risk, or whether we should try to manage risk effectively. At some point, the

marginal cost of risk-mitigation will exceed the marginal benefit of fewer injuries. Much as it will take a brave politician to advocate a reduction in regulation following an accident, it may be important to make explicit where health and safety lies in the order of priorities.

Introduction: The Importance and Difficulties of Health and Safety

This report aims to highlight the burden of health and safety in Britain. But the importance of preventing needless accidents and saving lives should not be forgotten.

Health and safety legislation in Britain has a long history. For example, the Factory Acts in the nineteenth century helped to protect people from exploitation at work, while Lord Shaftsbury's Act for the Regulation of Chimney Sweepers outlawed the use of children for climbing chimneys in 1864.

“It is clear to most people that something has gone wrong with the health and safety culture in Britain, and that it is too often preventing people from carrying out activities which are of great benefit to them and to their communities”

Nor is the introduction of bodies to monitor workplace safety a new development. In 1833, HM Factory Inspectorate was formed. This was followed by the formation of, among others, the Mines Inspectorate in 1843, the Quarry Inspectorate in 1895, and the Nuclear Installations Inspectorate in 1959.¹

It will be impossible to know how many lives have been saved and injuries

prevented by these and other, more recent reforms. The UK now has one of the lowest workplace fatality rates, and close to the lowest for non-fatal accidents, in the EU.

No one would seriously suggest that much of the health and safety legislation that currently exists should be removed. Indeed much of it plays an extremely valuable role. But at the same time, it is clear to most people that something has gone wrong with the health and safety culture in Britain, and that it is too often preventing people from carrying out activities which are of great benefit to them and to their communities.

Society often demands action following disasters, however small. Too often, politicians and regulators, keen always to be seen to be doing something, react disproportionately. It would take a brave minister to stand up and say that accidents happen.

But unless, as a society, we wish to eliminate all risk, there must be a point at which the marginal cost of risk-abatement exceeds the marginal benefit of the reduced risk. Indeed, if health and safety concerns discourage volunteers from organising physical activities, the health and safety regime surely undermines the broader goal of a healthier society.

Too much of health and safety as experienced on the ground by businesses, charities and the public sector would not pass a common sense test. We seem to have forgotten the existing legal principle of *negligence*, which should be the standard by which organisations' duty of care is maintained.

This report will attempt to show where the health and safety regime has gone wrong and why, and will suggest a number of steps that could be taken to reduce the burden on society.

¹ Health and Safety Executive, timeline <http://www.hse.gov.uk/aboutus/timeline/index.htm>

1

The Health and Safety Regime Today

A micro business (fewer than ten employees) in the UK now spends almost one day a month (7.2 hours) complying with health and safety regulations. Since 1998, according to the British Chambers of Commerce, new regulations have imposed a financial cost on organisations of nearly £4 billion. Dissatisfaction with ‘health and safety’ is now widespread, with managers in all sectors complaining of an excessive burden. Improvement of health and safety regulation is a key priority for 60% of members of the Institute of Directors.

Yet while the total number of regulations may have increased significantly, the likelihood of inspection or prosecution has actually fallen. The average workplace covered by the Health and Safety Executive (HSE) can expect an inspection just once every 14.5 years; indeed for the majority of office-based businesses, regulated by local authorities, inspection is even less frequent. Why then do businesses and other organisations continue to identify health and safety as a particular problem?

This Chapter will explore the realities of the health and safety landscape in the UK, while Chapter 2 will provide further evidence of how the experience of health and safety on the ground is often more onerous than the regulations demand.

The UK’s record on health and safety

The UK is currently one of the safest places to work in the EU. It has the lowest workplace death rate of any EU country, and has reduced its rate of serious accidents at work by one quarter since 1998. Other EU countries have made larger percentage improvements, but these were often from a higher initial rate.²

How health and safety legislation is enacted

The 1974 *Health and Safety at Work Act* is the legislative foundation for the UK’s present health and safety regime, effectively bringing together all previous legislation.

The Act placed on employers for the first time an obligation to ensure, “so far as reasonably practicable”, the health, safety and welfare of their employees whilst at work, and any other persons affected by their businesses activities.³ It also established the Health and Safety Executive (HSE) and the Health and Safety Commission (now merged), prescribed the regulatory remits for the different

² Eurostat

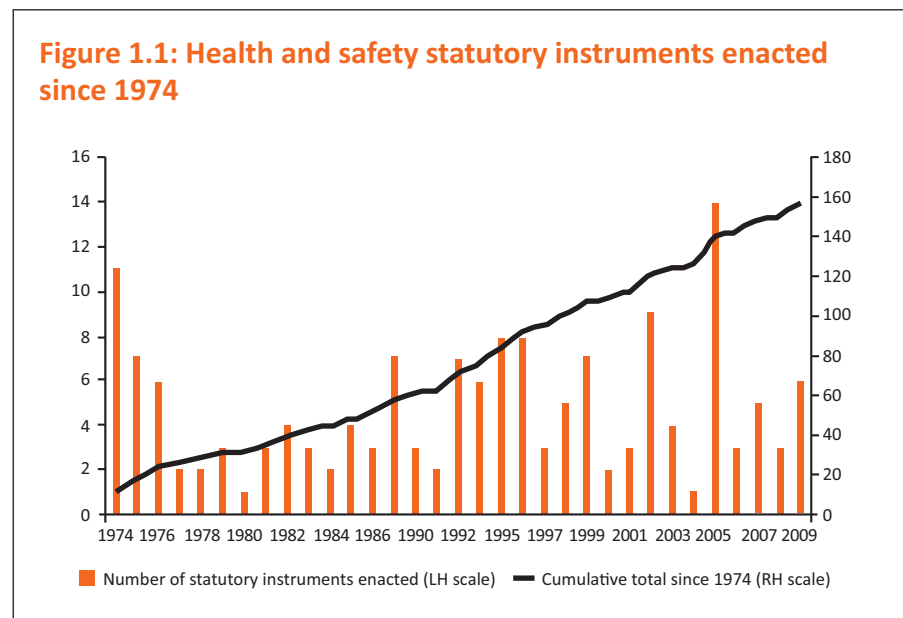
³ *Health and Safety at Work Act, 1974, Part 2, Section 3*

inspection and enforcement agencies, and set in place the framework that has allowed health and safety to be developed through secondary legislation:

- Today the HSE and local authorities enforce over 200 SIs that relate to health and safety (see Appendix A1 for a full list), of which 157 have been passed since 1974.
- The busiest year in this period was 2005, in which 14 SIs were added to the statute book.

But despite assertions to the contrary, there has not been a faster increase in health and safety regulation in recent years:

- In the thirteen years before 1997, governments passed 60 SIs relating to health and safety into law; in the thirteen years since 1997, 65 have been enacted.⁴



A major source of these regulations is the EU:

- According to analysis by Open Europe, between 1997 and 2009, 41 of the 65 new health and safety SIs, or 63%, originated in the EU.⁵

There is evidence of gold-plating of a number of EU directives. For example, the Work at Height and other regulations have been extended to the self-employed, even though there is no requirement to do so in the EU directive. As the Government’s Davidson Review found:

“The UK regulations that transpose these EU directives on health and safety gold-plate their requirements in a number of ways with regards to the self-employed, a few of which are outlined below. The Management of Health and Safety at Work Regulations 1999 implement the Framework Directive. Regulation 3(2) requires every self-employed person to make an assessment of the risks to his own health and safety at work, and the risk to the health and

⁴ Health and Safety Executive, *Regulations owned (and enforced) by the HSE and Local Authorities*, January 2010
<http://www.hse.gov.uk/legislation/statinstruments.htm>

⁵ Open Europe, database

safety of others arising from his work. Other requirements that apply to the self-employed include the requirement to co-operate on health and safety issues where two or more employers share a workplace.

“The Control of Vibrations at Work Regulations 2005 implement the 2002 Physical Agents (Vibration) Directive. Under the regulations the self-employed have to carry out and record a risk assessment on the level of vibration, and reduce vibration as far as reasonably practicable; and comply with exposure limits set out in the regulations. Under Regulation 3(3) of the 2005 Work at Height Regulations, many of the duties imposed by the directive on an employer are extended to the self-employed. These include the duty to plan and supervise work at height appropriately, provide appropriate safety equipment and avoid, so far as reasonably practicable, people falling from height.”⁶

How health and safety is enforced

Most of the health and safety regulation encountered by people in their day to day lives is the responsibility of local authorities. Offices, shops, retail and wholesale distribution, hotels and catering establishments, petrol stations, residential care homes and the leisure industry – over 1.1 million places of work – fall within their scope.⁷

Heavy and light industries, construction sites and local authorities themselves are the focus of HSE’s inspectors, although there is a degree of overlap. The HSE (an executive agency of the Department for Work and Pensions) also provides most of the resources for the ‘self-compliance’ element of health and safety: guidance, risk assessment forms, info-packs and so on.

As the statutory regulator, the HSE sets the parameters for all inspections, although local authorities do issue their own guidance for their inspectors. HSE inspectors must be trained to at least level 5 (postgraduate level), with local authority inspectors required to be trained to level 4 (graduate level).⁸

Despite public notions of an aggressive bureaucracy, the burden of inspection and prosecution is relatively light:

- There were 41,496 HSE inspections in 2006-07 (the latest year for which data is available), which evidence suggests equates to the average workplace covered by the HSE being inspected once every 14.5 years.⁹ This itself represents a fall from around 55,000 in 2004-05 and 2005-06, and from over 65,000 in 2002-03 and 2003-04.¹⁰ There are around 1,500 HSE inspectors.¹¹
- Such numbers are not readily available for local authorities, but with approximately 5,500 employees dedicated to inspection and enforcement covering over 1.1 million premises, the rate of local authority inspection could not be much higher.¹²
- The number of prosecutions by HSE and local authorities is also relatively low, falling from a high of around 2,500 in 1999-00 to around 1,400 in 2008-09.¹³

While internationally comparable data is very limited, and any overseas comparisons need to be treated with caution, such data as there is suggests that the HSE and local authorities carry out relatively few inspections compared with other EU countries. Although around two thirds of inspections in Germany are carried out by insurance associations rather than regional inspectorates, there are over a million inspections in Germany each year.

6 Davidson Review, *Final Report*, November 2006, p.97. The Review did, however, note that business representative bodies “were relatively unconcerned by the over-implementation”

7 Work and Pensions Select Committee, *The role of the Health and Safety Commission/Executive in regulating the work place*, April 2008, p.20

8 Better Regulation Executive, *Improving outcomes from health and safety*, August 2008, p.58

9 Work and Pensions Select Committee, *The role of the Health and Safety Commission/Executive in regulating the work place*, April 2008, p.27

10 House of Commons, *Hansard*, 4 June 2007, Column 29W

11 Health and Safety Executive, *Annual Report and Accounts 2008-09*, Table 5. Figures for inspectors include “front-line inspectors” and “inspectors working in functions other than front-line”

12 Hampton Review, *Reducing administrative burdens*, 2005

13 Health and Safety Executive, data <http://www.hse.gov.uk/statistics/enforce/index-Id.htm#table2>

Figure 1.2: Prosecutions and convictions for health and safety breaches by the HSE and local authorities

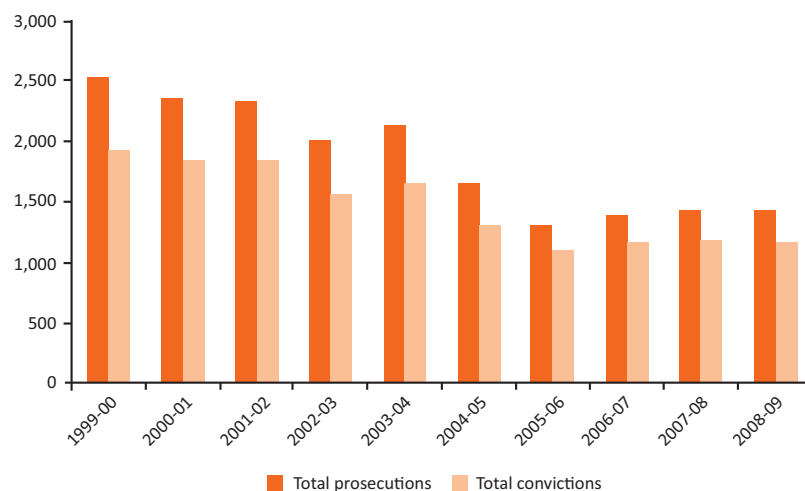


Table 1.1: Inspections in other EU countries, 2004¹⁴

Country	Inspections	Labour force covered by inspectorate	Workers per inspection
Netherlands (2003)	14,276	6,900,000	483
Germany	1,297,954	42,630,000	33
Italy	98,689	24,150,000	245
Sweden	20,887	4,449,000	213

This minimal approach to inspection is at the heart of the UK’s health and safety regime. The system sets out what outcomes employers are obliged to deliver, but it is not prescriptive as to how to deliver them. This flexibility has many benefits, not least that employers are able to balance the interests of the business with reasonable protection.

But at the same time, the lack of prescription creates problems of its own. Small businesses and charities in particular find it difficult to understand and apply health and safety legislation within their organisations, even with all the HSE guidance available. As a result of the confusion, there is often over-compliance with the legislation, as people play it safe.

Indeed, a particular feature of the UK’s regime is the confusion surrounding the mandatory assessment of risk. As the HSE guidance makes clear, the law does not require organisations to eliminate all risk, but to protect people as far as is “reasonably practical”. However, it is often unclear what this means in practice, and the threat of litigation, consultants and insurers all encourage over-compliance.

The HSE guidance cited in Box 1.1 provides some reassurance that excessive risk prevention measures need not be taken, but it is also not entirely clear for the lay person exactly when a risk assessment needs to be taken or how extensive it needs to be. It is not surprising that many organisations rely on outside “experts”.

14 Health and Safety Executive, *International comparison of (a) techniques used by state bodies to obtain compliance with health and safety law and accountability for administrative and criminal offences and (b) sentences for criminal offences*, prepared by the Centre for Corporate Accountability, 2007

Box 1.1: HSE guidance on risk assessment¹⁵

“A risk assessment is an important step in protecting your workers and your business, as well as complying with the law. It helps you focus on the risks that really matter in your workplace – the ones with the potential to cause harm. In many instances, straightforward measures can readily control risks, for example, ensuring spillages are cleaned up promptly so people do not slip or cupboard drawers kept closed to ensure people do not trip. For most, that means simple, cheap and effective measures to ensure your most valuable asset – your workforce – is protected.

“The law does not expect you to eliminate all risk, but you are required to protect people as far as is ‘reasonably practicable’...

“A risk assessment is simply a careful examination of what, in your work, could cause harm to people, so that you can weigh up whether you have taken enough precautions or should do more to prevent harm. Workers and others have a right to be protected from harm caused by a failure to take reasonable control measures.

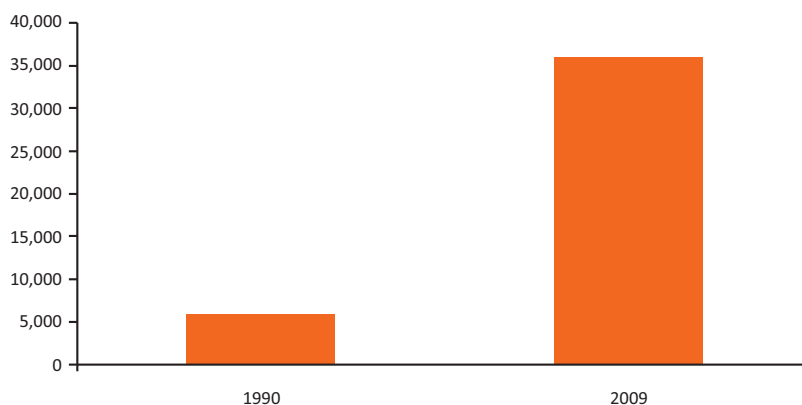
“Accidents and ill health can ruin lives and affect your business if output is lost, machinery is damaged, insurance costs increase or you have to go to court. You are legally required to assess the risks in your workplace so you must put plans in place to control risks.”

The health and safety industry

The uncertainty amongst many organisations as to what exactly is expected of them to comply with health and safety regulations and the need to carry out risk assessments are principal factors behind the rapid growth of private health and safety consultants.

In the early 1990s the Institution of Occupational Safety and Health (IOSH) had just 6,000 members.¹⁶ Today its membership stands closer to 36,000, with at least 3,500 of them working in the UK as dedicated health and safety consultants (both employed and self-employed).¹⁷

Figure 1.3: Membership of the Institution of Occupational Safety and Health



¹⁵ Health and Safety Executive, guidance <http://www.hse.gov.uk/risk/fivesteps.htm>

¹⁶ Better Regulation Executive, *Improving outcomes from health and safety*, August 2008, p.36

¹⁷ Institution of Occupational Safety and Health, *Annual Report 2008-09: Developing People*, p.7. The report notes that about 11% of members are based outside the UK and around 5,000 are in the “affiliate” category of membership and may not be practising as health and safety professionals. The estimate of UK-based consultants was given by Richard Jones, Chief Executive of IOSH, in oral evidence to the Work and Pensions Select Committee, 27 February 2008.

As every employer in the UK has a legal responsibility to “appoint one or more competent persons” to help with health and safety, the growth in this industry is unsurprising.¹⁸ At present:

- Over 1,500 ‘specialist’ health and safety firms now offer their services to businesses (this excludes the business support services that may also offer health and safety advice).¹⁹
- Analysts have valued the sector at between £700 million and £1 billion.²⁰ It is, according to the Better Regulation Executive (BRE), “one of the fastest growing business-to-business sales sectors in the UK”.²¹

Standards of professionalism and training, however, have not kept pace with the industry’s growth. Health and safety consultants require no accreditation at all, and a simple internet search reveals a plethora of health and safety training institutions, some offering a National Examination Board in Occupational Safety and Health (NEBOSH) National Certificate in health and safety, the ‘national standard’, after just a 10-day course.²² According to Richard Jones, Chief Executive of IOSH:

“anybody can set themselves up as a health and safety consultant and start operating, anybody can call themselves a health and safety advisor without any level of qualification or experience.”²³

IOSH itself produces a “good practice” guide for health and safety consultancy, recommending that consultants gain the Chartered Health and Safety Practitioner (CMIOSH or CFIOSH) qualification before starting out.²⁴ Members of the IOSH also have to follow a 19-point code of conduct.²⁵ It is clear, however, that advice such as this is not always followed by all practitioners in the industry.

The uncertainty that leads many organisations to hire a health and safety consultant in the first place provides an incentive for consultants to inflate the level of risk and hence the actions that are advised to be taken in mitigation. Consultants would also clearly wish to protect their reputation, and would be likely to go out of business quite rapidly if a business they advised subsequently fell foul of an inspection, litigation or an insurance claim. Consequently, health and safety advice is too often excessively risk-averse.

In market research carried out for the BRE, Small and Medium Sized Enterprises (SMEs) made clear that it was often a lack of clarity over what is legally required, coupled with time constraints, which pushed them to involve an outside consultant.²⁶ Respondents to the BRE’s inquiry complained that the resulting reports from consultants were often off-the-shelf, generalised ones, of little relevance to their business. Others commented that consultants’ recommendations appeared to be nothing more than thinly disguised sales opportunities. The BRE report noted:

“The experience of employers who use consultants for health and safety support is variable. While some report good experiences, others pay for support they could undertake in-house more cheaply, or take action on the advice of consultants that is not required by the law, and which provides little or no benefit to workplace health and safety.... Often the sense was that involving a consultant ‘ticked the box’ of getting a Risk Assessment rather than added value to the workplace.”²⁷

18 Regulation 7(1) of the *Management of Health and Safety at Work Regulations 1999*

19 Better Regulation Executive, *Improving outcomes from health and safety*, August 2008, p.32; data from the KOMPASS database of firms – <http://www.kompass.co.uk/>

20 ARK Business Analysis Ltd, *UK Health and Safety Services: Commercial Due Diligence 2008 – A summary*

21 Better Regulation Executive, *Improving outcomes from health and safety*, August 2008, p.32

22 <http://www.abertaytraining.co.uk/healthandsafetytraining/nebosh-training.html>

23 Oral evidence to the Work and Pensions Select Committee, 27 February 2008

24 Institute of Occupation Safety and Health, *Consultancy – good practice guide*

25 Institute of Occupation Safety and Health, *Code of Conduct*

26 Vanilla Research (for the Better Regulation Executive), *Perceptions of the Health and Safety Regime*, March 2008, p.14

27 Better Regulation Executive, *Improving outcomes from health and safety*, August 2008, p.37 and p.15

Box 1.2: The NEBOSH qualifications

The principal National Examination Board in Occupational Safety and Health (NEBOSH) qualifications are described below:²⁸

“Over 30,000 people take a NEBOSH qualification every year. Our qualifications are globally recognised and taken by people working in all types of industries, as well as national and local government organisations.

“NEBOSH’s Certificate-level qualifications give a good foundation in health and safety for managers, supervisors and staff with health and safety among their day to day responsibilities. No previous knowledge of health and safety is required. They are also widely taken as a first step towards a career in health and safety and are accepted by IOSH – the Institution of Occupational Safety and Health – in meeting the academic requirements of Technician Membership of IOSH (Tech IOSH).

“NEBOSH’s National Diploma is the qualification for professional health and safety advisors. The National Diploma equips holders for a career in this demanding and rewarding field. The Diploma is accepted by IOSH in meeting the academic requirements for the admission to Chartered Membership, and allows holders to use the designatory letters DIPNEBOSH after their name.

“NEBOSH’s Diploma in Environmental Management is intended for practitioners who have environmental responsibilities who may use the designatory letters EnvDipNEBOSH after their name. Holders of the Environmental Diploma from February 2008 onward are eligible for Associate Membership of the Institute of Environmental Management and Assessment (IEMA).”

The recommended length of study for the NEBOSH Certificate-level qualification, with no previous health and safety knowledge required, is a minimum of 80 taught hours and around 49 hours of private study and background reading.²⁹

The recommended length of study for the NEBOSH National Diploma, which allows the holder to attain Chartered Membership of the IOSH (CMIOSH), is a minimum of 241 taught hours and around 234 hours of private study and background reading.³⁰

In the evidence sessions for the recent Work and Pensions Select Committee inquiry, health and safety consultants admitted that the poor quality advice from some among them was forcing businesses to undertake overly bureaucratic activity. IOSH itself has had informal discussions with the HSE over the “credibility of the evidence used by some consultants to form the basis of risk assessments”.³¹ Lord McKenzie of Luton, Parliamentary Under Secretary of State at the Department for Work and Pensions, in his evidence to the Committee, concluded that “it is certainly a fact that this [over-zealous consultants] happens”.³²

Box 1.3: A business view³³

“[The legal framework] is complicated, unclear, over-regulated and obtuse which leads to scaremongering by certain companies who want to sell you their services and this in turn leads to even more confusion.”

28 <http://www.nebosh.org.uk/qualifications/default.asp?cref=23&ct=2>

29 <http://www.nebosh.org.uk/Qualifications/Certificate/default.asp?cref=45&ct=2>

30 <http://www.nebosh.org.uk/qualifications/diploma/default.asp?cref=73&ct=2>

31 Work and Pensions Select Committee, *The role of the Health and Safety Commission/Executive in regulating the work place*, April 2008, oral evidence session – Q 221

32 *Ibid*, p.20

33 Forum of Private Business (FPB), *The cost of compliance on micro, small and medium-sized business employers*, 2009, FPB member response to survey

The Risk and Regulation Advisory Council (RRAC) has also drawn the same conclusions, noting that, as one delegate to a regulation seminar put it: “a lot of red tape in health and safety is created by people who are not statutory regulators”.³⁴ A survey commissioned by the RRAC found that 50% of the small organisations questioned had received conflicting advice over health and safety issues.³⁵ The RRAC concluded:

“Many H&S consultants provide sensible advice that empowers small organisations to undertake their own risk assessments and manage their risks appropriately. But often the profusion of risk actors adds to the uncertainty and reduces small organisations’ confidence. Some risk actors act as risk mongers – by taking opportunities to inflate perceptions of risk, often driven by self-interest, thanks to the confusion and uncertainty that can exist.”³⁶

Box 1.4: “Elf and safety gone mad” – examples of how the cultural effect of health and safety often goes beyond the legislative requirements

Photo Ban at Rosslyn Chapel, Scotland

Incident: Rosslyn Chapel (used in the filming of Dan Brown’s *The Da Vinci Code*) decided in late 2007 to ban tourists from photographing the inside of the Chapel on health and safety grounds.³⁷

Reason: After a health and safety audit, officials at the Chapel decided to impose the ban because of the cracked and uneven floor surface. As tourists were trying to photograph the interior and especially the ceiling, they were tripping on the floor and injuring themselves.

Chapel response: Colin Glynne Percy, the director of the Rosslyn Chapel Trust, commented: “In the past we have used tape to cordon off some of the worst areas, but we took the decision to have a health and safety review carried out and on the basis of that, it was decided this would be the best course of action.”³⁸

34 Risk and Regulation Advisory Council, *Health and Safety in Small Organisations*, 2009, p.6

35 Ibid, p.7

36 Ibid, p.7

37 Rosslyn Chapel, FAQ <http://www.rosslynchapel.org.uk/p/faqs-180/>

38 Scotsman, 19 December 2007 <http://news.scotsman.com/rosslynchapel/Health-and-safety-bans-3602539.jp>

39 Committee for Constitutional Affairs, *Compensation Culture*, House of Commons, February 2006, p.6

40 Better Regulation Task Force, *Better Routes to Redress*, May 2004, p.20

Health and safety and the judicial system

A further factor that has led to the growth of the health and safety industry has been the growing fear of litigation and the reliance by courts on ‘expert’ opinion.

In 1990 the *Courts and Legal Services Act* established ‘conditional fee agreements’, specific arrangements in which part (or all) of a solicitor’s fee was made conditional on the delivery of success.³⁹ This ‘no win, no fee’ approach, as it has come to be known, was given a significant boost by the *Access to Justice Act* of 1999, which abolished legal aid for most personal injury work, and which introduced a new notion of ‘recoverability’. This effectively isolated claimants from the financial risks of pursuing litigation, with lawyers working on ‘no win, no fee’ arrangements and all potential costs covered by either the taxpayer or the defendant.⁴⁰

Whether the UK has actually become more litigious as a result of these changes is a matter of some contention, but there is little disagreement that the ‘compensation

culture’ (real or imagined) has played a significant part in increasing people’s aversion to risk, and in parallel their hostility to health and safety.

In reporting the findings of its investigation into compensation claims, the Better Regulation Task Force concluded:

“[A] culture that encourages people to pursue misconceived or trivial claims has put a drain on public sector resources [and] made businesses and other organisations more cautious”.⁴¹

Fear of litigation now sits at the heart of risk assessment, with businesses, charities and organisers encouraged to do all that they can to minimise, if not eliminate, risk. For businesses, this approach can mean expensive professional risk assessments and excessive precautionary measures. For volunteers, unable because of costs or time to identify and minimise all potential risks, the threat of litigation may discourage activity from the start.

Interestingly, the data available on litigation suggests some discordance between public perceptions and the reality. The number of ‘personal injury’ and ‘negligence’ claims (under which most health and safety cases would fall) taken to court has not increased significantly over the past decade:

- At the High Court, personal injury claims dropped by more than 50% between 1999 and 2003, although they have risen since.⁴²
- Data is unfortunately not available for the number of proceedings started in County Courts beyond 2004, but between 1999 (the Access to Justice Act) and 2003, numbers remained fairly consistent.⁴³

Table 1.2: High Court & County Courts: Proceedings started⁴⁴

Year	Personal Injury Claims	Other Negligence Claims	Small Claims: Negligence / Personal Injury (County Courts)
1999	1,187	373	3,560
2000	1,024	225	1,790
2001	1,019	292	2,280
2002	827	268	3,150
2003	570	128	2,210
2004	749	119	-
2005	716	197	-
2006	914	197	-
2007	1,157	205	-
2008	1,205	194	-

On viewing these figures, a Professor of Law at the Open University concluded that the UK has become a more emotionally litigious society, one much more prone to shout “see you in court” than it used to be.⁴⁵ There is no way of substantiating this, but such threats, however hollow, would certainly impact on behaviour.

Perhaps more pertinently, anecdotal evidence does suggest that claims are on the rise, but that they are simply settled before the case comes to court. Considering that unsuccessful defendants are liable to be shouldered with costs

41 Ibid p.7

42 Department for Constitutional Affairs, *Judicial Statistics 2003/2004/2005/2006*; Ministry of Justice, *Court and Judicial Statistics 2007/2008*, Table 3.2

43 Ibid.

44 Data for 1999 to 2003 taken from Neal, Prof. A & Wright, Prof. F, *A survey of changes in the volume and composition of claims for damages for occupational injury or ill health resulting from the Management of Health and Safety at Work and Fire Precautions (Workplace) Regulations 2003*, HSE Research Report RR594

45 Lloyds Insurance, Interview with Professor Garry Slapper, http://www.lloyds.com/News_Centre/360_risk_insight/Expert_opinion/Expert_interviews/Expert_interviews_liability/Garry_Slapper_interview.htm

over and above the lawyer's fees, out-of-court settlements are the rational option for many organisations. Just dealing with claims can impose a significant financial burden, with local authorities and NHS Trusts estimated to spend millions each year dealing with vexatious claims alone. For example, in its investigation into compensation, the Better Regulation Taskforce found that one local authority spent over £2 million a year simply dealing with its highways liability claims.⁴⁶

Finally, while the number of court cases may not have risen significantly over the past decade, how the courts deal with health and safety cases has appeared to change, with real implications for duty holders. In a 2009 study into the relationship between the courts and health and safety, the Risk and Regulation Advisory Council (RRAC) noted that "courts of first instance" (those in which personal injury claims would initially be heard) rely predominately on evidence drawn from "expert" opinion.⁴⁷

Such opinion is largely based upon the health and safety industry's notions of "best practice", and that is invariably orientated more towards risk elimination than risk management. For instance the Royal Society for the Prevention of Accidents, a key standards setter in the UK, makes no effort to disguise the fact that it believes "risk assessment is to confirm that risks have either been eliminated or are being adequately controlled".⁴⁸

The fact that the law does not expect employers to eliminate all risks, and that the duty to protect people only extends to what is 'reasonably practicable', appears to be ignored. Indeed for many health and safety experts – and by association the courts that rely on their advice – the 'reasonably practicable' provision has been discarded in favour of an 'everything possible' approach.

Box 1.5: Personal injury case study

A claimant injured his back when landing in a splash pool at the foot of a water slide. It was argued that the water was too shallow and he had thereby contacted the bottom of the pool. The case was decided on the evidence of a German standard which said splash pools should be 1 metre (39 inches) deep. The pool in question was 36 inches deep. Although the German choice of 39 inches was obviously an approximation based on their use of the metric system whereas the British preference for 36 inches was based on the imperial yard, the claimant was successful.⁴⁹

Fear of litigation and the predominately conservative legal advice available to duty holders conspire to exaggerate the burden of health and safety significantly. The courts and legal profession (with help from the media) have encouraged employers and other duty holders to focus almost exclusively on the assessment and amelioration of risk, rather than considering the benefits that may accrue in the pursuit of certain activities.

Insurance and its impact on health and safety management

Although the UK's insurance industry as a whole is vast, the proportion related to health and safety issues is relatively small. In 2008 around £57 million was paid

46 Better Regulation Taskforce, *Better Routes to Redress*, May 2004, p.17

47 Risk and Regulation Advisory Council, *Judges, courts, the legal profession and public risk*, October 2009, p.11

48 <http://www.rospa.com/occupational-safety/smallfirms/sheet7.htm>

49 Risk and Regulation Advisory Council, *Judges, courts, the legal profession and public risk*, October 2009, p.12

out each day in general accident claims, of which just £7.5 million related to liability cases.⁵⁰ But with an annual bill of £2.7 billion for insurers, it would be wrong to dismiss such claims as a low priority for the insurance industry. Insurers have a strong incentive to minimise the number of claims, and reduce their clients' liability.

Nor is the involvement of insurance companies limited to a small group of organisations. All private and third sector employers are obliged by law to hold *Employer's Liability Insurance*, which covers them in the event of accidents involving their employees.⁵¹ Although not compulsory (but frequently required by contract), *Public Liability Insurance* is highly recommended by regulators for all those organisations that have regular dealings with the public, including local authorities. Depending on the nature of the activity undertaken by the organisation, additional insurance policies may also be held.⁵²

Data on typical insurance costs is not currently available, but a small, well established estate agent with seven employees and no history of claims can expect to pay only around £250 per annum for a combined employer / public liability insurance package.⁵³ With the increased risks associated with other industries such as construction – for both employees and the public – premiums are unsurprisingly much higher than this.

It is important to note, however, that it is rarely insurers that make a determination of 'risk'. Not claiming an expert knowledge of health and safety, few insurers will inspect premises or assess the risk management strategies of their clients. Premiums are therefore linked more to the health and safety industry's (invariably conservative) opinion of the risks associated with a particular activity, than an organisation's actual risk profile.

This approach by insurers does potentially inflate the premiums available for many organisations.⁵⁴ For example, a business with a high risk profile (such as a scaffolding firm), but a good health and safety strategy and a low claim rate, can still expect to pay high premiums. Any attempt to compensate for this by considering the claims record is itself problematic, as claims may not always accurately correlate with the accident rate. This is of particular importance for voluntary organisations and community events, where high claim rates (however vexatious the claims may be) may have pushed up premiums beyond viability.

Box 1.6: Insurance case study

Insurers for a local authority demanded that a traditional and much-loved playground slide be removed because it did not comply with new equipment safety standards, being slightly higher than the new specification advised. The standards were not intended to be applied retrospectively, and were for guidance only. Despite this and the fact that the slide had a good safety record, it had to be removed.⁵⁵

“Not claiming an expert knowledge of health and safety, few insurers will inspect premises or assess the risk management strategies of their clients”

50 Association of British Insurers, *UK Insurance – Key Facts 2008*, September 2009, p.4

51 Exemptions do apply, for instance in relation to family run businesses, but the number of exemptions are negligible. Public sector organisations, from central government departments through to NHS Trusts and magistrates courts, are not required to hold this insurance, as the Treasury represents the insurer.

52 BusinessLink, *What insurance does my business need?*

53 Estimate obtained from SimplyBusiness – www.simplybusiness.co.uk

54 Risk and Regulation Advisory Council, *Insurers and Public Risk*, October 2009

55 *Ibid*, p.14

Little evidence exists to support the popular idea that insurers prohibit activities by refusing to provide cover, but as the case study above illustrates, insurers' attachment to the technical or general standards laid down by 'experts' (which provide insurers with a quantifiable way to determine risk and which often provide a good indication of what the courts would find acceptable) is likely to be encouraging 'risk avoidance' rather than 'risk management'.

Much of the burden from health and safety regulation derives directly from this kind of excessive focus on risk avoidance, but the fact that insurers effectively demand it goes a long way in explaining why organisations frequently go beyond what the law demands, or what regulators advise. As the CEO of Hiscox Insurance succinctly put it:

*"Claims will never be eliminated, nor will the events that give rise to them; taking all the preventive steps possible by investing in good risk management is crucial, backed by quality insurance from an insurer who is proactive in helping clients to manage their exposures."*⁵⁶

56 Lloyds, *Compensation culture or common sense culture?* December 2008
http://www.lloyds.com/News_Centre/Features_from_Lloyds/Compensation_culture_or_common_sense_culture.htm

2

Health and Safety on the Ground: Problems with the Current Regime

The principal problems with health and safety lie in its application on the ground. A culture of risk-aversion and over-compliance has developed, at odds with what the legislation demands. Despite the fact that workplace inspections are generally infrequent, the experience of health and safety on the ground is too often a very restricting one.

Health and safety on the ground 1: community events

If the press is to be believed, health and safety regulation is corroding the British community. But it is generally not the health and safety regulations themselves that restrict behaviour. No law bans Morris dancing for example, or demands that lifejackets be worn at all times when apple bobbing.

The decision by organisers to avoid such activities is the result of continued uncertainty over what is “sensible and proportionate” health and safety. More specifically, it is the fear of litigation (should something go wrong) combined with the considerable potential costs of insurance that creates the health and safety disincentive.

Box 2.1: “Elf and safety gone mad” continued...

Sun cream ban

Incident: A girl was banned from bringing and applying her sun cream in school in case someone else had an allergic reaction to it.

Reason: As temperatures reached 26°C in 2003, Georgia Holt’s teachers at Seymour Road Primary School in Clayton, Greater Manchester, argued that due to the guidelines issued by Manchester City Council, it broke school rules to apply the cream in case it triggered allergic reactions in other children.⁵⁷

Council response: Manchester City Council confirmed that the school had “acted in accordance with health and safety guidelines”.⁵⁸

57 Daily Telegraph, 19 June 2003
<http://www.telegraph.co.uk/news/uknews/1436539/Sunscreen-ban-at-school-for-girl-10.html>

58 Daily Telegraph, 19 June 2003
<http://www.telegraph.co.uk/news/uknews/1436539/Sunscreen-ban-at-school-for-girl-10.html>

But while the picture may be more complicated than media stories allow, health and safety’s defenders are too quick to dismiss these concerns as

‘myths’. The Voluntary Arts Network’s guide to *Health and Safety for Community Outdoor Events* – recommended by numerous local authorities – stretches to over 227 pages.⁵⁹ One section of the guide is presaged by the image of a skull and crossbones, and the ominous warning that the checklists provided must be used only as a guide, “not a short cut to understanding the perils and possibilities of health and safety”.⁶⁰

In the introduction to a similar publication – *A Step by Step Guide to Planning Safe Events* – the authors state unequivocally that “organisers will be responsible **under the law** for the safety of everyone at the event” [emphasis added], including the public, members and employees.⁶¹ Whatever the event, from a car boot sale to a music festival, the guide insists that all organisers must carry out a risk assessment, for it is the only way “you and your organisers have protection in law should the unthinkable happen”.⁶²

Whether such statements are true is beside the point. Such literature represents the health and safety culture in which community events operate. Local councils, the most relevant health and safety authority in these cases, do little themselves to assuage public fears. For example, guidance from Ashford Borough Council states:

“Organisers could be held legally liable for the costs or damages for injuries which may occur. Public liability insurance will cover this risk. If the event is being held on public open space or the highway, insurance with an indemnity of £5 million is required.”⁶³

So while health and safety regulations may not specifically ban activities, the law does require organisers to have insurance. The cost of that insurance depends on a health and safety risk assessment.

So just as it is misleading to suggest that health and safety inspectors are closing down village fetes, it is equally misleading to suggest that health and safety regulations are blameless for the increasing caution of organisers. Indeed, once health and safety is considered as just one part of the modern bureaucratic labyrinth organisers face (including food safety regulation and various mandatory permits), the fact that many small community events are still put on is a testament to the commitment of the volunteers involved.

Health and safety on the ground 2: volunteering

Twenty million people get involved with charities and volunteer groups in the UK.⁶⁴ In 2007-08 nearly 1.9 billion hours were spent volunteering, making possible a whole range of services and public goods. But while the general popularity of volunteering continues to rise, there are concerns that health and safety regulations may be discouraging people from pursuing certain activities and the costs involved in insuring volunteers may be increasing.

There is, in law, actually no such thing as a ‘volunteer’. As such, if individuals decide that they want to clean the local park or grow food for the local school, no legislation formally covers them.⁶⁵ There is an expectation, under the common law ‘duty of care’, that volunteers will consider such issues as health and safety, but they are not – in theory at least – obliged to carry out formal risk assessment and training before undertaking most activities.⁶⁶

59 Voluntary Arts Network, *Health and Safety for Outdoor Community Events* <http://www.vascotland.org.uk/uploaded/map2519.pdf>

60 Ibid, p.179

61 KayDeeElle, 2002 <http://www.kdl.to/guides/event-safety-planning-guide.htm#RESPONSIBILITY>

62 KayDeeElle, 2002 <http://www.kdl.to/guides/event-safety-planning-guide.htm#assessing-risks>

63 Ashford Borough Council http://www.ashford.gov.uk/health_and_wellbeing/protection_and_safety/public_outdoor_events_safety.aspx

64 HM Government, *Helping Out: A national survey of volunteering and charitable giving*, 2008

65 Volunteering England, *Insurance and Health and Safety* <http://www.volunteering.org.uk/WhatWeDo/Projects+and+initiatives/Employer+Supported+Volunteering/Employers/Key+issues/Insurance+and+health+safety.htm#1>

66 Events are different because the public are invited in, so the duty of care falls on the organiser, volunteer or not

However, as most volunteering is carried out on behalf of professional groups or charities, this ‘freedom’ is largely irrelevant. Under the *Health and Safety at Work Act 1974*, when an organisation has at least one employee who works under a contract of employment (paid or unpaid), it is considered to be an “employer”, bound by all the legal responsibilities that go with that status.⁶⁷ That includes the duty:

“To ensure, as far as reasonably practicable, that persons not in their employment, who may be affected by their undertaking, are not exposed to risks to their health and safety” and “to give to persons (not being their employees) who may be affected in a prescribed manner, information as might affect their health or safety”.⁶⁸

This does not mean that volunteering organisations have to provide all the volunteers with the same level of information or training as they would to a full time employee; the specific clause cited above actually applies to anyone who has dealings with the organisation, be they a volunteer working for a group or a person receiving help. But the HSE is clear in what it expects from charities and other volunteer organisations:

“[We consider] it good practice for a volunteer user to provide the same level of health and safety protection as they would in an employer/employee relationship, irrespective of whether there are strict legal duties.”⁶⁹

All volunteers therefore have a right (in law) to expect that the organisation they are working with has done everything “reasonably practicable” to ensure their safety. Considering the fact that voluntary organisations often deal in genuinely high-risk environments (lone visits to the elderly or incapacitated, drug rehabilitation, clearing waste land, etc), this responsibility is likely to be quite a burden. Indeed volunteer health and safety is liable to be a significantly greater burden than it is for the vast majority of small and medium-sized enterprises (particularly those that are office-based).

Box 2.2: “Elf and safety gone mad” continued...

Trees earmarked for felling

Incident: In 2004 South Tyneside District Council made plans to axe a large number of old horse chestnut trees and, in the interim, chopped them back.

Reason: The decision was made on health and safety grounds, due to a child falling out of a tree searching for conkers and after children threw sticks into the trees to bring the conkers down.

Council response: Cllr John Wood, the Mayor of South Tyneside, confirming the incident, said: “Obviously I realise they look quite bad the way they have been cut, but it’s a health and safety measure.”⁷⁰

67 Volunteering England, *Health and Safety for Volunteers*, March 2008, p.2

68 *Health and Safety at Work Act 1974*, Section 3

69 Health and Safety Executive guidance <http://www.hse.gov.uk/contact/faqs/charities.htm>

70 BBC News, 22 September 2004 <http://news.bbc.co.uk/1/hi/england/tyne/3679162.stm>

Just as with community events, the primary experience of health and safety on the ground for volunteer users is in the ‘risk assessment’. If a volunteer is expected to help people in and out of bed, the responsible organisation has a duty to assess the risks and then supply the volunteer with information and training on the correct manner and technique of lifting. If a volunteer is helping to run a lucky dip stall, training may not be necessary; the risk assessment would determine what had to be provided.

To give an example of how volunteer users are expected to assess risk, Box 2.3 presents a case study of a “Talk to local Women’s Institute (WI)”, taken from the HSE’s *Charity and volunteer workers; a guide to health and safety at work*.

Box 2.3: Example of HSE guidance to charity and volunteer workers⁷¹

“The community fundraiser [employee or volunteer] has been asked to present a short illustrated talk on the work of the charity to the local WI group in the church hall one evening. The only equipment available at the venue is an electric extension lead.”

Hazards

- Unfamiliar venue;
- Moving and handling of equipment;
- Unknown safety standards of electric wiring and extension lead;
- Trailing wires;
- Work in darkness during presentation;
- Fire;
- Handling and carrying money donations;
- Out-of-hours working.

Harm

- Slips, trips and falls;
- Unable to escape in an emergency;
- Back injuries;
- Electric shock or electrocution;
- Assault.

Solutions

- Arrange to visit the premises before the event to see the parking available, the entrances and exits, general layout, escape routes and any relevant certificates, eg electrical wiring, insurance.
- Make a plan of where the equipment will be set up and where the audience will sit to minimise trailing wires and trips etc.
- Explain the fire and emergency arrangements at the beginning of the talk.
- Provide a trolley or bag on wheels to transport any equipment or get assistance – park as close as possible to where the equipment will be used.

71 Health and Safety Executive, *Charity and voluntary workers: A guide to health and safety at work*, 2006, p.59 <http://www.hse.gov.uk/pubns/priced/hsg192.pdf>

- Check all the electrical equipment to look for loose wires, damaged cables, plugs.
- Provide an extension lead – this should be PAT tested.
- Provide a residual circuit breaker (RCB) – this is a device that plugs into the mains and that the extension lead then plugs into – it is designed to detect leaks in the electric supply and will turn off the power to the electric equipment.
- Request money donations to be given as cheques rather than cash.
- Carry any cash in inconspicuous bags – don't make it obvious and arrange for the worker to be escorted to the car.
- Send two workers to avoid lone working – if lone working is necessary, ensure there is a "lone worker contact arrangement" in place, i.e. ensure there is someone else who knows where the worker is and when they are expected back.
- Provide personal safety training and (if required) personal alarms.
- Try and arrange talks during the day rather than in the evenings.

In addition, for volunteers, unable because of costs or time to identify and minimise all potential risks, the threat of litigation may discourage activity from the start. Volunteering organisations estimate that at least 5% of volunteers have considered giving up because of fear of litigation.⁷²

In his evidence to a 2005 Commons enquiry into the 'Compensation Culture', Derek Twine, Chief Executive of the Scout Association, noted:

*"50% of our existing volunteers are concerned that fear of being sued for compensation is affecting the retention of themselves and their peers as volunteers. 70% of them are testifying that the fear of being sued is a deterrent to recruiting additional volunteers into the organisation because they see that as a very real pressure upon them."*⁷³

Such statements are common, underlining the fact that beyond the simple burden of risk assessment and costly compliance, people on the ground view health and safety as a court case waiting to happen.

The health risks, however, from not engaging in volunteering, sporting and outdoor activities may be far greater than the risks involved with the activities. In its written submission to this report, the CCPR, which represents sporting organisations across the UK, noted that, in 2005, the Chief Medical Officer outlined that:

*"People who are physically active reduce their risk of developing major chronic diseases – such as coronary heart disease, stroke and type 2 diabetes – by up to 50%, and the risk of premature death by about 20-30%."*⁷⁴

As the CCPR also pointed out, sport and recreation volunteers account for around a quarter of Britain's total, but there have been increasing reports of sports clubs struggling to recruit sufficient volunteers. While there are clearly a number of factors behind this, to the extent that health and safety worries discourage volunteers from organising outdoor physical activities, the health and safety culture may be undermining the goal of a healthy society.

⁷² Committee for Constitutional Affairs, *Compensation Culture*, House of Commons, February 2006, p.16

⁷³ Ibid.

⁷⁴ CCPR submission to the Conservative Party review of health and safety, February 2010

Health and safety on the ground 3: administration for businesses

The administrative burden of health and safety regulation on businesses is considerable, in terms of both time and costs. It must be noted that the administrative cost figures do not account for any benefits of health and safety regulation.

Box 2.4: Legal responsibilities of employers

Joint health and safety guidance from the Institute of Directors and the Health and Safety Commission sets out the legal health and safety responsibilities of employers:⁷⁵

“Health and safety law states that organisations must:

- *Provide a written health and safety policy (if they employ five or more people); assess risks to employees, customers, partners and any other people who could be affected by their activities;*
- *Arrange for the effective planning, organisation, control, monitoring and review of preventive and protective measures;*
- *Ensure they have access to competent health and safety advice;*
- *Consult employees about their risks at work and current preventive and protective measures.*

“Failure to comply with these requirements can have serious consequences – for both organisations and individuals. Sanctions include fines, imprisonment and disqualification.

“Under the Corporate Manslaughter and Corporate Homicide Act 2007 an offence will be committed where failings by an organisation’s senior management are a substantial element in any gross breach of the duty of care owed to the organisation’s employees or members of the public, which results in death. The maximum penalty is an unlimited fine and the court can additionally make a publicity order requiring the organisation to publish details of its conviction and fine.”

Firstly, the time factor can be very damaging, especially for small businesses:

- A recent Forum of Private Business survey of SMEs found that 40% thought that implementation of health and safety law was too costly, but 66% thought it was too time-consuming;
- The same survey found that 78% of the cost of regulation in general is borne internally, so it is unsurprising that businesses felt that time constraints were the biggest problem.⁷⁶

Table 2.1 shows how great these time constraints are. Proportionately they are more damaging for the smallest businesses:

⁷⁵ Institute of Directors and Health and Safety Commission, *Leading health and safety at work* http://www.iod.com/intershop-root/eCS/Store/en//pdfs/hse_guide.pdf

⁷⁶ Forum of Private Business, *The cost of compliance on micro, small and medium-sized business employers*, 2009

- Micro businesses employing fewer than 10 people are spending 7.2 hours a month – almost one working day – complying with health and safety regulation;
- Small businesses employing 10-49 people are spending 11.2 hours a month, in absolute terms, more than micro businesses but much less as a proportion of total person-hours at the business;
- Medium-sized businesses employing 50-249 people are spending 28.9 hours a month, again spread over a much greater number of employees.⁷⁷

Table 2.1: Average (mean) time spent by SMEs complying with health and safety regulation

	Person hours per month (mean)
Micro businesses – 9 or fewer employees	7.2
Small businesses – 10-49 employees	11.2
Medium-sized businesses – 50-249 employees	28.9

Secondly, the cost can be extensive, particularly for SMEs. In a 2003 study into the costs of compliance with just one set of health and safety regulations, an average medium sized business (50–249 employees) was found to spend approximately £27,345 a year, or £177 per person.⁷⁸ As the size of the company grew, per person costs fell, but the total bill rose inexorably.

Table 2.2: Cost of compliance with the Management of Health and Safety at Work Regulations⁷⁹

Organisation type (by employees)	Average spend per employee	Average mean spend per annum
Small (0-49)	£111.59	£4,136
Medium (50-249)	£176.75	£27,345
Large (250-4,999)	£20.89	£419,691
Very Large (5,000 +)	£15.99	£628,926

Thirdly, the HSE estimates that the overall administrative burden of health and safety regulation is around £2 billion annually, a considerable sum of money, although the HSE believes it has reduced this figure by almost a quarter.⁸⁰

The British Chambers of Commerce (BCC) has also published its estimate of the cumulative cost of health and safety regulations introduced since 1998. The BCC’s figures do not include the ongoing cost of regulations introduced before 1998, and hence do not cover the full annual cost that businesses face. The BCC has found:⁸¹

- Since 1998, the cumulative one-off cost to businesses of new health and safety legislation is £2.2 billion, of which £750 million originates from the EU and £1.4 billion from the UK.

⁷⁷ Ibid.

⁷⁸ Lancaster et al, *Cost of compliance with health and safety regulations in SMEs*, Health and Safety Executive, 2003

⁷⁹ Better Regulation Executive, *Improving outcomes from health and safety*, 2008, p.22

⁸⁰ Health and Safety Executive, *Fourth Simplification Plan and Progress Report*, December 2009

⁸¹ NB: figures are rounded for ease of understanding. British Chambers of Commerce, *Burdens Barometer database*.

- Since 1998, the cumulative recurring cost of new health and safety legislation is £1.8 billion, of which £1.7 billion originates from the EU and £100 million from the UK.
- The total cumulative cost to businesses of health and safety legislation introduced since 1998 is almost £4 billion, of which £2.5 billion is from the EU and £1.5 billion from the UK. It is worth noting that the UK's high share of one-off costs is primarily due to the Control of Asbestos at Work Regulations 2002, which imposed £1.35 billion of one-off costs. Excluding the asbestos regulations, the EU accounts for over 90% of both the one-off and recurring costs of new health and safety regulations.

Table 2.3: Cumulative cost to businesses of health and safety regulations introduced since 1998

£million	EU	UK	Total
Cumulative one-off cost	752	1,406	2,158
Percentage	34.8%	65.2%	
Cumulative recurring cost	1,716	111	1,827
Percentage	93.9%	6.1%	
Total cumulative cost	2,468	1,517	3,985
Percentage	61.9%	38.1%	

Fourth, the overall administrative cost must also be viewed in the context of separate government estimates of the cost of lack of clarity and poor advice:

The Anderson Review in 2009 estimated that the current “uncertainty” over regulations (with the under/over-compliance it brings) is costing business over £880 million a year.⁸² This represents a significant amount of wasted time, effort and expenditure.

It is difficult to ascertain, however, whether the overall administrative burden of health and safety regulation has risen over the past few years. The HSE is currently pursuing a target to reduce the administrative burden of health and safety by 25% from its 2005 baseline by May 2010. This would represent around £500 million of savings.⁸³

According to the HSE, by May 2009, administrative burdens had been reduced by a net £382 million, 76% of the target, and by December 2009 net administrative burdens would have been reduced by £499 million, 99% of the target. The HSE admits, however, that “this figure includes estimated savings that have not been validated and which may be subject to change or revision.”⁸⁴

Table 2.4: HSE's reported delivery and forecast delivery of reductions in the administrative burdens of health and safety

	May 2009	December 2009	May 2010
Gross savings	£403.6 million	£521.2 million	£548.9 million
Gross burdens	£21.6 million	£21.6 million	£21.6 million
Net reductions	£382.0 million	£499.6 million	£527.3 million
% reduction	18.9%	24.7%	26.1%

82 Anderson Review, January 2009, p.6

83 Health and Safety Executive, *Fourth Simplification Plan and Progress Report*, December 2009

84 Ibid, p.5

In an analysis of departments' progress in reducing the administrative burden of regulation, the National Audit Office found:

"The reported reductions in administrative burdens should be treated with caution. The imprecision inherent in the original measurement methodology means that the estimates of administrative burdens are indicative in nature due to the small sample sizes used. The calculations of claimed reductions are estimates of savings, rather than an accurate absolute measure.... Our assessment is that while departments can provide assurance on their calculations, the arrangements for independent validation of claimed reductions are inadequate, particularly given the emphasis placed on reporting aggregate savings achieved for business."⁸⁵

This comment applies not just to the HSE, as all departments have been pursuing targets to reduce the administrative burden of regulations that they are responsible for by 25%, but it illustrates the difficulties in making precise assessments of the savings that have been claimed. Moreover, the overwhelming anecdotal impression is that the administrative burden of health and safety regulation is increasing not decreasing.

Box 2.5: Legal liability of individual board members for health and safety failures

The joint guidance from the Institute of Directors and the Health and Safety Commission also sets out the legal liabilities of individual board members with respect to health and safety:⁸⁶

"If a health and safety offence is committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the organisation, then that person (as well as the organisation) can be prosecuted under section 37 of the Health and Safety at Work Act 1974.

"Recent case law has confirmed that directors cannot avoid a charge of neglect under section 37 by arranging their organisation's business so as to leave them ignorant of circumstances which would trigger their obligation to address health and safety breaches.

"Those found guilty are liable for fines and, in some cases, imprisonment. In addition, the Company Directors Disqualification Act 1986, section 2(1), empowers the court to disqualify an individual convicted of an offence in connection with the management of a company. This includes health and safety offences. This power is exercised at the discretion of the court; it requires no additional investigation or evidence.

"Individual directors are also potentially liable for other related offences, such as the common law offence of gross negligence manslaughter. Under the common law, gross negligence manslaughter is proved when individual officers of a company (directors or business owners) by their own grossly negligent behaviour cause death. This offence is punishable by a maximum of life imprisonment."

⁸⁵ National Audit Office, *The Administrative Burdens Reduction Programme*, October 2008, p.6 and p.16

⁸⁶ Institute of Directors and Health and Safety Commission, *Leading health and safety at work* http://www.iod.com/intershop-root/eCS/Store/en/pdfs/hse_guide.pdf

The guidance also gives several examples of recent prosecutions:

- *“Following the fatal injury of an employee maintaining machinery at a recycling firm employing approximately 30 people, a company director received a 12-month custodial sentence for manslaughter. The machinery was not properly isolated and started up unexpectedly. An HSE and police investigation revealed there was no safe system of work for maintenance; instruction, training and supervision were inadequate. HSE’s investigating principal inspector said: ‘Evidence showed that the director chose not to follow the advice of his health and safety advisor and instead adopted a complacent attitude, allowing the standards in his business to fall.’”*
- *“The managing director of a manufacturing company with around 100 workers was sentenced to 12 months’ imprisonment for manslaughter following the death of an employee who became caught in unguarded machinery. The investigation revealed that, had the company adequately maintained guarding around a conveyor, the death would have been avoided. The judge made clear that whether the managing director was aware of the situation was not the issue: he should have known as this was a long-standing problem. An area manager also received a custodial sentence. The company received a substantial fine and had to pay the prosecution’s costs.”*

There are also a number of instances of specific health and safety legislation that impact on the ability of businesses to conduct operations. To give two examples:

- As the British Chambers of Commerce (BCC) has pointed out, employers are responsible for the health and safety of employees working from home, with the current legal position being that “you have the same responsibilities for ensuring the health and safety of home workers as you would for staff based at your premises”. As the BCC points out, in practice “this means carrying out a risk assessment on a worker’s home; keeping a record of accidents; making sure there are no dangerous obstructions or cables; and ensuring that the level of lighting and glare is safe.”⁸⁷
- Interns must also be considered in health and safety policies, even for short internships lasting one week. If part of the internship period is taken up by health and safety briefings, then the benefit to a business from an internship is correspondingly reduced.⁸⁸

Confusion can also be generated from badly thought out or poorly worded regulations. A good example is the Work at Height Regulations 2005, which implemented the EU’s Work at Height Directive. The precise height at which the regulations apply is not specified, and according to the HSE’s guidance to the regulations:

“The Work at Height Regulations 2005 apply to all work at height where there is a risk of a fall liable to cause personal injury A place is ‘at height’ if (unless these Regulations are followed) a person could be injured falling from it, even if it is at or below ground level.”⁸⁹

⁸⁷ British Chambers of Commerce, *Employment law: up to the job?*, March 2010

⁸⁸ *Ibid.*

⁸⁹ HSE, *The Work at Height Regulations 2005 (as amended): A brief guide* <http://www.hse.gov.uk/pubns/indg401.pdf>

In theory, therefore, these regulations could apply to work being carried out on the bottom rung of a stepladder, or to a librarian climbing on a small stool to reach a book from the top shelf of a library, as it is possible that someone could be injured from a fall from such a low height.

Box 2.6: “Elf and safety gone mad” continued...

Toothpick ban

Incident: In early January 2010, after finishing his evening meal at the Macdonald Portal Golf and Spa Hotel, retired head teacher John Freeman asked for a toothpick but a waiter informed him that they had been banned from the hotel.

Reason for incident: The waiter stipulated that toothpicks had been banned on health and safety grounds and when asked, the Manager of the hotel said that a directive from Head Office had been issued stating that toothpicks were “too dangerous” to be issued.⁹⁰

HSE response: “That’s possibly the most ridiculous thing I’ve heard”, said a spokesman for the Health and Safety Executive, who said there was nothing in its guidelines to cover toothpicks.⁹¹

Not surprisingly, businesses see a reduction in the burden of health and safety regulation as vitally important. A recent survey of members of the Institute of Directors found that the improvement of health and safety regulation was a key priority for 60% of respondents, second only to employment law.⁹²

Health and safety on the ground 4: public services

Although complaints about ‘health and safety’ tend to come from the private sector, it is public sector organisations which feel the burden of regulation most acutely. Highly exposed to litigation – both from employees and the public – authorities often go beyond the ‘reasonably practicable’ in their search for compliance and legal cover.

The results are often expensive and absurd, but at times they are also tragic. In 2007 two Community Support Officers refused to attempt the rescue of a drowning boy, citing a lack of suitable training.⁹³ It was a decision defended by senior officers, for, within the context of ‘health and safety’, incredibly, it was the right one: had one of the officers drowned in the attempt, the police force would have been liable.

From cancelled school trips to fenced-off puddles, health and safety has made many public authorities excessively risk-averse. Unfortunately though, while risk aversion in the private and third sectors often has the unwelcome consequence of increased costs, in the public sector it potentially undermines the very services it provides.

⁹⁰ Daily Mail, 22 January 2010
<http://www.dailymail.co.uk/news/article-1245019/Restaurant-refuses-diner-toothpick-dangerous.html>

⁹¹ Metro, 22 January 2010
<http://www.metro.co.uk/news/810044-hotel-bans-dangerous-toothpicks-from-restaurant>

⁹² Institute of Directors, *Policy Voice survey* of 1,235 members of the Institute of Directors, October 2009

Box 2.7: “Elf and safety gone mad” continued...**Drowning boy**

Incident: Two Police Community Support Officers (PCSOs) did not enter the water as a 10-year-old boy, Jordan Lyon, drowned in a pond.

Reason for incident: The PCSOs did not rescue him as they were not trained to deal with the incident.

Police response: In a statement after the inquest hearing, Det Ch Insp Phil Owen, of Wigan CID, who led the investigation into Jordan’s death, said: “PCSOs are not trained to deal with major incidents such as this. Both ourselves and the fire brigade regularly warn the public of the dangers of going into unknown stretches of water so it would have been inappropriate for PCSOs, who are not trained in water rescue, to enter the pond.”

The costs of compliance for public sector authorities are difficult to pin down. At the very minimum they equate to those experienced by private sector organisations, whose costs depend on the activity pursued and the number of employees. A 2003 study into the costs of just one set of health and safety regulations, cited in the previous section of this chapter, found that the average spend for compliance was over £400,000 per annum for organisations employing 250-4,999 people, and over £600,000 a year for organisations employing more than 5,000 people.⁹⁴

As many public sector employers fall within these ‘large’ to ‘very large’ categories, the annual bill for compliance in the public sector will run into hundreds of millions of pounds. But this assumes that public sector organisations operate like private sector employers, doing just enough to meet their obligations and protect them from liability.

Evidence suggests, however, that public sector organisations often go beyond what might be considered ‘reasonably practicable’ by most employers, pushing up the costs of compliance. For instance, the HSE had notices put up around its offices, instructing its employees not to move any furniture not already mounted on lockable wheels.⁹⁵ (Staff are expected to inform a porter, and allow two days for the furniture to be moved.) In a similar vein, West Midlands Police have dedicated resources to a campaign designed to inform its police officers of “seasonal dangers”, including slippery leaves in autumn and sunburn in summer.⁹⁶ This excessively strict interpretation of the duty to educate and protect employees from risk carries a considerable cost. Ultimately, it means a diversion of resources away from the authorities’ core activities.

In the case of the HSE, ‘over-compliance’ might be expected. The regulator cannot, after all, command authority if it itself has a poor safety record. But in most instances the cause is probably fear of litigation. Parts of the public sector – most notably the police, schools and hospitals – have high levels of public and employee liability. The daily risks faced by a policeman or nurse are unusually high, and employers are under a legal obligation to identify and address those risks. At the same time, public sector managers have to consider the welfare of all of those who come to make use of a service, be it a jobcentre or hospital.

93 BBC News, 21 September 2007 <http://news.bbc.co.uk/1/hi/england/manchester/7006412.stm>

94 Lancaster et al, *Cost of compliance with health and safety regulations in SMEs*, Health and Safety Executive, 2003

95 House of Commons, *Hansard*, 1 March 2007, Col. WA 320 <http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70301w0002.htm>

96 Birmingham Mail, 31 October 2009 <http://www.birmingham-mail.net/news/top-stories/2009/10/31/police-s-health-and-safety-campaign-advice-on-slippery-leaves-is-absurd-97319-25054525/>

Box 2.8: “Elf and safety gone mad” continued...

Police and the Four Seasons Campaign

Incident: Since October 2009 West Midlands Police have been rolling out a health and safety poster campaign warning police about the dangers of inclement weather.⁹⁷

Reason: To highlight the risks of slips, trips and falls due to the slippery autumnal leaves, as well as sun in summer, snow in winter and rain in spring.

Police force response: Andy Gilbert, chairman of West Midlands Police Federation, told Police Review: “While we welcome anything that enhances officer safety, there is a clear danger here of being patronising and stating the bleeding obvious.”⁹⁸

If all these risks are not effectively managed, the authority opens itself up to claims, however frivolous or vexatious they may be. In its investigation into compensation, the Better Regulation Taskforce found that one local authority spent over £2 million a year dealing with its highways liability claims alone.⁹⁹

The NHS Litigation Authority, an organisation set up expressly to deal with claims made against NHS Trusts, records non-clinical claims (such as those brought under health and safety laws) under its ‘Liabilities to Third Parties’ and ‘Property Expenses’ schemes. Interestingly, the number of claims under these two schemes has not increased significantly in recent years. But critically, the total amount paid out by NHS Trusts has increased substantially. If this pattern is replicated elsewhere in the public sector, a clear financial incentive exists for public authorities to go above and beyond the ‘reasonably practicable’ principle.

Table 2.5: Claims and payouts under the NHS Litigation Authority’s ‘non-clinical’ schemes¹⁰⁰

Year	Total Number of Claims	Total Paid out
2004-05	3,766	£25,119,000
2005-06	3,497	£31,278,000
2006-07	3,211	£33,883,000
2007-08	3,336	£27,715,000
2008-09	3,724	£37,890,000

It is also worth noting that the public sector is disproportionately unionised in relation to the UK’s total workforce. Not only were unions central to the establishment of today’s health and safety regime, they continue to be one of its staunchest defenders, campaigning vocally for strict enforcement of regulations and prosecutions for offences. The high level of compliance within public authorities is likely to be connected to the fact that, unlike in much of the private and third sectors, unions continue to wield considerable power.

97 Ibid.

98 Tax Payers Alliance, 31 October 2009 <http://www.taxpayersalliance.com/media/2009/10/daily-mail-police-officers-warned-of-slippery-leaves-and-bright-sun-shine-in-new-seasonal-safety-leaf.html>

99 Better Regulation Taskforce, *Better Routes to Redress*, May 2004, p.17

100 NHS Litigation Authority, *Annual Report 2009*, pp.9-14 and *Annual Report 2006*, pp.14-17

It is now ‘conventional wisdom’ that health and safety emasculates public services. Banned science experiments and cancelled school trips are featured daily in the media, and increasingly the ‘pernicious’ influence of health and safety is seen within the police and rescue services. When a tree collapsed on a car recently for instance, the injured man inside was left trapped for hours while fire service and council staff negotiated rules that prohibited the use of chainsaws after dark.¹⁰¹ In a separate case, Cheshire Police have referred themselves to the HSE after an officer sustained a broken ankle in the course of rescuing a teenager from Runcorn Bridge.¹⁰²

Stories such as this cement the view in the public mind that excessive attention to health and safety is not only mad, but also bad. This is a unique problem for the public sector, as it alone in the UK encompasses those activities which are generally considered to be beyond the realm of health and safety, particularly within the emergency services and the police. Thankfully most public authorities appear to appreciate that risk cannot be eliminated entirely, and efforts to do so potentially undermine the service being provided. But to a greater degree than in both the private and third sectors, health and safety regulation does appear to have negative effects on the public sector.

101 Wicklow People, 10 February 2010 <http://www.wicklowpeople.ie/news/driver-in-intensive-care-after-tree-crushes-car-2058846.html>

102 Liverpool Echo, 8 February 2010 <http://www.liverpoolecho.co.uk/liverpool-news/local-news/2010/02/08/police-officer-breaks-ankle-helping-to-stop-teen-jumping-off-the-runcorn-bridge-100252-25787010/>

3

Next Steps

No one would wish to go back to the days when manual workers carried out dangerous jobs without proper training and equipment, machines lacked guards and office workers spent every day in rooms filled with cigarette smoke. But there is considerable scope to align the health and safety regime more closely with common sense and to lessen the burdens that it creates.

The health and safety culture: a recap

It is worth recalling the factors that lie behind the UK's excessively onerous health and safety culture. Listed below are the most important causes of over-compliance:

- **Uncertainty.** Businesses, voluntary groups and individuals often do not know what is required of them to ensure the health and safety of those under their charge. The law is often not specific enough.
- **Risk assessments.** The uncertainty over the requirement to carry out a risk assessment and a lack of clarity over what is proportionate drives worries about falling foul of health and safety laws, and encourages the use of outside 'experts'.
- **The health and safety industry.** The health and safety industry is one of the fastest growing areas of the UK economy. Anyone can set themselves up as a health and safety consultant without any qualifications or experience. The uncertainty that leads many organisations to hire a health and safety consultant in the first place provides an incentive for consultants to inflate the level of risk and hence the actions that are advised to be taken in mitigation.
- **The insurance industry.** Perhaps because of the legal uncertainties, insurance companies tend to rely on the generally conservative views of health and safety experts. The approach is one of doing 'everything possible' to prevent risk, rather than the 'reasonably practical' approach that is actually the legal requirement.
- **No win, no fee.** The growth of no win, no fee cases has encouraged a culture of compensation to develop, and crucially, leads organisations to over-comply due to the fear of litigation. Courts often refer to 'expert' opinion from the health and safety industry in making their judgements.

Quite naturally, these factors lead people and organisations to play it safe, and to over-comply with the legislation. People don't know where they stand, and do not want to be blamed, or sued, if something goes wrong. Common sense proportionality has too often gone out the window. At the same time, there are a number of groups that benefit from the status quo:

- Parts of the legal industry have extra business;
- The media has a ready supply of stories;
- The health and safety industry has a constant supply of business.

In designing a set of reforms to the UK's health and safety regime, there are a number of questions that first need to be considered. These are explained below. Any reforms will need to be checked for compatibility with EU law. If they are not compatible, either they will need to be redesigned, or EU and UK competencies over health and safety will need to be renegotiated.

Does the law need clarifying?

One of the biggest problems with the current health and safety regime that this report has identified is the uncertainty surrounding the precise legal requirements. For example:

- 'Reasonably practical' is not the tightest of legal definitions;
- HSE guidance is not clear about exactly when a risk assessment needs to be made or how extensive, practical or proportionate it needs to be.

With such uncertainties, it is not surprising that organisations rely on the advice of health and safety consultants, who often advocate a conservative approach. Together with media stories highlighting, for example, the risk of being sued if one clears snow in one's driveway and a passer-by slips and falls over, despite the actual risk being minimal or non-existent, the perception of health and safety may go beyond the strict requirements of the law.

The UK may well be in a state of some legal uncertainty, as the traditional common law, which permits anything not prohibited by it, is being gradually superseded by European law, which tends to prohibit anything not permitted by it. Rather than yearning for simpler times, it might be better to clarify health and safety law, making clear that an organisation will be liable for negligence.

The advantage of such an approach might be that, rather than worrying about risk assessments and when to carry out health and safety training, a business owner would know that their company would be liable if they were negligent in protecting their employees from health and safety risks. Similarly, a homeowner would know that clearing snow from one's driveway would not constitute *negligence*.

Such a measure would have the potential to make it clear to people that health and safety is really about taking common sense precautions, rather than eliminating all risk. Combined with an assurance that failure to comply with all health and safety processes would not necessarily imply negligence, it could dramatically lessen the health and safety burden.

Does the health and safety industry need regulating?

Chapter 1 of this report set out the growth of the health and safety industry in the UK, and the lack of formal qualifications needed to practice as a consultant. This is a real problem if the result is poor and over-cautious advice.

It may be strange to consider more regulation as a solution to the problems of regulatory burdens, but requiring health and safety consultants to acquire at least a NEBOSH National Diploma, where a minimum of 241 taught hours is recommended, might help to improve the quality of advice from the industry.

Are proposed further legal liabilities for health and safety really helpful?

This report has shown how the burdens of health and safety regulation are substantial, while joint guidance from the Institute of Directors and the Health and Safety Commission (detailed in Chapter 2) details the quite considerable legal liability of individual directors for health and safety failures. The Corporate Manslaughter and Corporate Homicide Act came into force less than two years ago (in April 2008).

Further legal liabilities on individual directors are, however, being considered by the HSE. Such additional duties would surely be excessive, given that the UK is already virtually the safest place to work in the EU. A survey of 1,235 members of the Institute of Directors, conducted in October 2009, unsurprisingly showed that only 8% of business leaders felt that the introduction of additional statutory duties for individual directors would have a positive impact on their organisation.¹⁰³ Employers' organisations more widely have also formed a consensus against such additional statutory duties, with the Institute of Directors, Federation of Small Businesses, CBI, Engineering Employers' Federation and Local Government Employers signing a joint statement to the HSE.

Should certain health and safety requirements be lifted from micro and low risk businesses?

As shown in Chapter 2, smaller businesses tend to incur a disproportionate administrative burden, particularly regarding the time spent on compliance. But they are a vital part of the economy. There are nearly 4.8 million private sector enterprises in the UK, with 23.1 million people in employment. Of these:

- 90.1% employ less than 5 people, covering 26.8% of employment and 17.7% of turnover;
- 95.7% employ less than 10 people, covering 33.5% of employment and 21.6% of turnover;
- 99.9% employ less than 250 people (and are hence SMEs), covering 59.4% of employment and 50% of turnover.¹⁰⁴

¹⁰³ Institute of Directors, *Policy Voice survey*, October 2009

¹⁰⁴ Department for Business, Innovation and Skills, *SME statistics for the UK and regions 2008*

¹⁰⁵ Ibid.

Table 3.1: Importance of businesses employing less than 10 people to the UK economy¹⁰⁵

Sector	Total number of enterprises	Total employment	Enterprises with less than 10 employees		
			Percentage of enterprises	Percentage of employment	Percentage of turnover
Agriculture, Hunting and Forestry, Fishing	174,315	459,000	98.1	83.0	71.5
Mining and Quarrying; Electricity, Gas and Water Supply	15,545	226,000	97.0	8.4	3.0
Manufacturing	324,330	3,132,000	89.6	17.6	8.0
Construction	1,009,725	2,227,000	98.0	60.4	39.8
Wholesale and Retail Trade, Repairs	583,280	4,963,000	93.5	24.7	17.9
Hotels and Restaurants	164,105	1,740,000	88.1	26.9	29.6
Transport, Storage and Communication	294,800	1,724,000	96.6	23.8	15.4
Financial Intermediation	74,160	1,146,000	94.3	10.9	-
Real Estate, Renting and Business Activities	1,206,505	4,502,000	96.6	41.9	38.5
Education	168,305	351,000	98.2	58.5	50.9
Health and Social Work	265,585	1,314,000	91.9	30.0	29.4
Other Community, Social and Personal Service Activities	502,630	1,344,000	98.0	54.8	27.1

Table 3.1 shows the importance of micro businesses (employing less than 10 people) to the economy, giving a breakdown by industry.

Given their importance to the economy, it might be sensible to reduce the health and safety requirements for micro businesses, and for low-risk enterprises, such as office-based businesses. With a ‘negligence’ safeguard, as suggested earlier in this chapter, there would be less of a need to carry out risk assessments and provide health and safety training. Reducing the administrative burden for such businesses would free up vital hours that would be better employed on growing the business and taking on new staff.

It is worth noting that there are already certain health and safety exemptions for businesses with less than five employees in the UK. In other countries, such as Germany, Italy and the US, exemptions tend to apply to firms with less than ten employees. Extending health and safety exemptions to firms with less than ten employees in the UK would be in line with international practice.

Table 3.2: Health and safety exemptions for small businesses¹⁰⁶

Country	Details of health and safety exemptions
Germany	Firms with less than ten employees are exempt from the requirement to keep records on hazard classification.
Italy	Firms with less than ten employees do not have to file a health and safety report, self certification being sufficient; firms with less than 15 employees are exempt from the requirement to hold an annual health and safety meeting; firms with less than 30 employees have simplified health and safety procedures and medical inspections need only be done once a year instead of twice.
USA	Firms with less than ten employees and ‘low hazard’ industries such as automobile dealers, eating and drinking places, finance, insurance and real estate and furniture stores, are exempt from the requirement to record job-related injuries and illnesses.
UK	Firms with less than five employees are exempt from preparing a written health and safety policy and bringing it to employees’ attention, recording risk assessment findings, and recording health and safety arrangements; fire certificates are not required for any factory, shop or office in which not more than 20 persons are at work on the premises at any one time and not more than 10 people work at any one time elsewhere than on the ground floor.

Do the self-employed need any health and safety requirements at all?

One point highlighted in Chapter 1 of this report, that was made by the Government’s Davidson Review in 2006, was that the UK gold-plates the requirements of a number of EU health and safety directives with regard to the self-employed.

But do the self-employed really need to be bound by health and safety regulations? Clearly they would if their work affected others, but it would surely be preferable to trust them to make the right decisions regarding their own health and safety, without requiring them to, for example, carry out assessments of their personal health and safety risks at work, which is a requirement of the *Management of Health and Safety at Work Regulations 1999*.

106 Better Regulation Task Force, *Helping Small Firms Cope with Regulation*, April 2000

What is the best way to reduce the cost of health and safety regulation?

There are a number of different approaches that could be taken to reduce the overall cost of health and safety regulation:

Removing individual regulations. The difficulty with this approach is that it is hard to suggest which regulations to remove, and once a death or injury occurs because of the absence of these regulations, the pressure to reintroduce them becomes great.

Reducing the number of regulatory requirements. This approach need not apply solely to health and safety, and indeed has applied generally when followed abroad, but could be a quick and effective way to reduce administrative burdens.

The province of British Columbia in Canada was previously beset by regulatory duplication and over-regulation, before the incoming Liberal provincial government in 2001 made a campaign promise to cut the regulatory burden by a third in three years. This target was accompanied by a straightforward and accountable way of measurement. The government counted the number of “regulatory requirements”, which were defined as “a compulsion, obligation, demand or prohibition placed on an individual, entity or activity by or under the authority of a provincial Act, regulation or related policy”. The first count revealed that there were 382,139 regulatory requirements in British Columbia.

Each government department had to reduce the number of regulatory requirements it was responsible for by a third over the next three years. Counts were made every three months and required few extra resources to undertake. By June 2004, there were 237,604 regulatory requirements in British Columbia, a decrease of 38% from the June 2001 total. The Canadian Federation of Independent Businesses’ 2005 survey of its members found that more than half of businesses in British Columbia thought that the regulatory burden had stayed the same or decreased in the past three years, the only province in Canada with such positive business opinion.¹⁰⁷

Such a target could be applied to the HSE in the UK.

Introducing regulatory budgets. Again, this measure need not apply solely to health and safety. A regulatory budget for the HSE would calculate the total policy and administration costs of all health and safety regulation. A target would then be set to reduce this budget by a certain percentage each year, which would force the HSE to remove unnecessary and duplicative regulations. Were new health and safety regulations to be introduced, they would need to be accompanied by the removal of existing ones. This approach has been widely recommended, including by business organisations such as the Institute of Directors and by Policy Exchange in a previous report.¹⁰⁸ In 2008, the Government launched a consultation on regulatory budgets, which found a firm majority in favour, but on which it didn’t act.¹⁰⁹

This approach has much to recommend it, and would be a major improvement on the current system, but the difficulty is accurately measuring the regulatory cost. The HSE has already been working towards a target of reducing the administrative (but not the policy) costs of health and safety regulation by 25%. But as Chapter 2 described, the National Audit Office expressed some scepticism about the possibility of rigorous verification.

107 For further details of the British Columbia experience, refer to Canadian Federation of Independent Businesses, *Prosperity restricted by Red Tape*, 2005, Chapter 4 <http://www.cfib-fcei.ca/cfib-documents/RatedR.pdf>

108 Policy Exchange, *Innovation and Industry: The Role of Government*, September 2009

109 Better Regulation Executive, *Regulatory Budgets: Consultation Summary*, April 2009

Carrying out better regulatory reviews. This is not a measure that will cut the regulatory burden, but it may help to prevent bad laws from being made in the future. Improvements to Regulatory Impact Assessments should ensure that the benefits of a new regulation are fully quantified before the regulation is introduced – clearly, if there are no benefits, the regulation should not be enacted. Post-implementation reviews should also be improved to ascertain better whether a new regulation has had the desired impact – if not, it could be repealed.

Should we really try to eliminate all risk?

The final question to be asked, and the one that really is central to all the others, is what our attitude, as a society, should be towards risk. Health and safety regulation is there to protect people, but should it be there to protect people from themselves?

Perhaps the first question to consider is whether it will ever be possible to eliminate all risk, and indeed, whether that is even desirable. Does it matter, for example, if a rugby player injures himself?

There is a wide consensus that there is a need for health and safety regulation in two sets of circumstances:

- *Where exploitation is possible.* For example, if employees are operating heavy machinery under potential pressure from their employer, there needs to be a system protecting them.
- *Where information is lacking.* For example, technical items are often not understood by non-experts.

The health and safety regime should be concentrating on these sets of circumstances, but appears to have strayed beyond these boundaries. Indeed, as explained in Chapter 2, physical activities, which inevitably carry some risk, are essential to good health and greatly reduce the risk of major diseases and premature death. If the health and safety regime reduces the scope of such activities, it undermines the goal of a healthy society.

It may be better to think about risk as a set of trade-offs – in the above example, the risk of physical injury from sport versus the risk of ill health as a result of not performing physical activities.

Another point to consider is that, once major risks have been taken care of, reduction of risks is likely to suffer from diminishing marginal returns. Previous Acts that improved safety in factories and the mines undoubtedly saved many lives and prevented many injuries, but there must be a point at which the cost of further risk-reduction exceeds the benefits from the reduction of risk.

While it will be difficult, if not impossible, to quantify where the marginal cost of risk-abatement equals the marginal benefit of risk reduction, it is worth asking whether we have already crossed this point, and therefore, whether efforts to reduce risk are now greater than an economically efficient level of risk reduction would demand.

It may therefore be important to make explicit where health and safety lies in the order of priorities. Should the priority be firstly to ensure everyone's safety and secondly to encourage business and social activities to take place, or should activities be allowed and encouraged first and foremost, subject to the secondary requirement to ensure people's safety? Should we therefore be managing and optimising risk rather than trying to minimise or eliminate it?

Of course, these questions often come up against a political need to be seen to be responding to accidents and disasters, which encourages hasty, over-bearing and ill-thought out regulation. Would any politician be happy to defend the removal of a health and safety regulation if a death or injury then occurred that the regulation would have prevented?

Conclusion

There are no easy answers, although this chapter has made a number of suggestions for measures that could be taken to improve the health and safety regime and lessen its burden on businesses and on society. Central to this is a recognition that the culture of health and safety is more over-bearing than the law. The culture seems to require “everything possible” to be done to reduce risk, rather than the more common-sense “reasonably practical” approach that the law in fact requires.

Returning the health and safety regime to common-sense principles, and ensuring that the health and safety culture reflects those principles, is the central task.

Appendix A1: List of Health and Safety Statutory Instruments

Table A1.1: Health and safety statutory instruments owned and enforced by the HSE and local authorities¹¹¹

	Name of Regulation	Year	SI Number	Subject
1	Order of Secretary of State (No 5) relating to Compressed Acetylene in Admixture with Oil-Gas (S.R. & O. 1898/248)	1898	248	Fire
2	Order of Secretary of State (No 5A) relating to Compressed Acetylene in Admixture with Oil-Gas (1905) (S.R. & O. 1905/1128)	1905	1128	Fire
3	The locomotives and wagons on lines and sidings in or used in connection with premises under Factory and Workshop Regulations 1906 (S.I. 19/679)	1906	679	Workplace transport
4	Order of Secretary of State (No 9) relating to Compressed Acetylene contained in a Porous Substance (1919) S.R. & O. 1919/809	1919	809	Fire
5	Petroleum (Mixtures) Order 1929 (S.I. 1929/993)	1929	993	Fire
6	Petroleum-Spirit (Motor Vehicles, etc) Regulations 1929 (S.I. 1929/952)	1929	952	Fire
7	Order in Council No. 30 Prohibiting the manufacture, importation, keeping, conveyance or sale of acetylene when an explosive as defined by the order (S.R. & O 1937/54)	1937	54	Fire
8	Factories Act (Docks, Building and Engineering Construction, etc) Modification Regulations 1938 (S.I. 1938/610)	1938	610	Factories
9	Gasholders (Record of Examinations) Order 1938 (S.I. 1938/598)	1938	598	Gas - supply
10	Compressed Acetylene Order 1947 (S.I. 1947/805)	1947	805	Fire
11	Pottery (Health and Welfare) Special Regulations 1950 (S.I. 1950/65)	1950	65	General
12	Coal and Other Mines (General Duties and Conduct) Order 1956 (S.I. 1956/2016)	1956	2016	Mining
13	Coal and Other Mines (Horses) Order 1956 (S.I. 1956/1777)	1956	1777	Mining
14	Coal and Other Mines (Locomotives) Order 1956 (S.I. 1956/1771)	1956	1771	Mining
15	Coal and Other Mines (Safety-Lamps and Lighting) Order 1956 (S.I. 1956/1765)	1956	1765	Mining
16	Coal and Other Mines (Sanitary Conveniences) Order 1956 (S.I. 1956/1776)	1956	1776	Mining
17	Coal and Other Mines (Sidings) Order 1956 (S.I. 1956/1773)	1956	1773	Mining
18	Coal and Other Mines (Ventilation) Order 1956 (S.I. 1956/1764)	1956	1764	Mining
19	Coal Mines (Cardrox and Hydrox) Regulations 1956 (S.I. 1956/1942)	1956	1942	Mining
20	Coal Mines (Clearances in Transport Roads) Regulations 1959 (S.I. 1956/1217)	1956	1217	Mining
21	Coal Mines (Precautions against Inflammable Dust) Order 1956 (S.I. 1956/1769)	1956	1769	Mining
22	Mines (Manner of Search for Smoking Materials) Order 1956 (S.I. 1956/2016)	1956	2016	Mining
23	Miscellaneous Mines (General) Order 1956 (S.I. 1956/1778)	1956	1778	Mining
24	Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956 (S.I. 1956/1943)	1956	1943	Explosives
25	Petroleum (Liquid Methane) Order 1957 (S.I. 1957/859)	1957	859	Fire
26	Miscellaneous Mines (Explosives) Regulations 1959 (S.I. 1959/2258)	1959	2258	Mining
27	Coal and Other Mines (Shafts, Outlets and Roads) Regulations 1960 (S.I. 1960/69)	1960	69	Mining
28	Coal and Other Mines (Ventilation) (Variation) Regulations 1960 (S.I. 1960/1116)	1960	1116	Mining
29	Coal Mines (Firedamp Drainage) Regulations 1960 (S.I. 1960/1015)	1960	1015	Mining
30	Coal Mines (Precautions against Inflammable Dust) (Variation) Regulations 1960 (S.I. 1960/1738)	1960	1738	Mining
31	Shipbuilding and Ship-repairing Regulations 1960 (S.I. 1960/1932)	1960	1932	General
32	Non-ferrous Metals (Melting and Founding) Regulations 1962 (S.I. 1962/1667)	1962	1667	Engineering
33	Mines (Medical Examinations) Regulations 1964 (S.I. 1964/209)	1964	209	Mining
34	Notification of Employment of Persons Order 1964 (S.I. 1964/533)	1964	533	Workers
35	Nuclear Installations (Dangerous Occurrences) Regulations 1965 (S.I. 1965/1824)	1965	1824	Nuclear

¹¹¹ Health and Safety Executive www.hse.gov.uk/legislation/statinstruments.htm

	Name of Regulation	Year	SI Number	Subject
36	Coal and Other Mines (Ventilation) (Variation) Regulations 1966 (S.I. 1966/1139)	1966	1139	Mining
37	Coal and Other Mines (Shafts, Outlets and Roads) (Amendment) Regulations 1968 (S.I. 1968/1037)	1968	1037	Mining
38	Disused Mine and Quarry Tips (Prescribed Forms) Regulations 1969 (S.I. 1969/807)	1969	807	Mining and quarries
39	Mines and Quarries (Tipping Plans) Rules 1971 (S.I. 1971/1378)	1971	1378	Mining
40	Mines and Quarries (Tips) Regulations 1971 (S.I. 1971/1377)	1971	1377	Mining
41	Offshore Installations (Logbooks and Registration of Death) Regulations 1972 (S.I. 1972/1542)	1972	1542	Offshore
42	Employment Medical Advisory Service (Factories Act Orders etc Amendment) Order 1973 (S.I. 1973/36)	1973	36	General
43	Factories Act General Register Order 1973 (S.I. 1973/8)	1973	8	General
44	Offshore Installations (Inspectors and Casualties) Regulations 1973 (S.I. 1973/1842)	1973	1842	Offshore
45	Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974 (S.I. 1974/1841)	1974	1841	Fire and explosion
46	Coal Mines (Precautions against Inflammable Dust) (Second Amendment) Regulations 1974 (S.I. 1974/2124)	1974	2124	Mining
47	Explosive Acts 1875 and 1923 etc (Repeals and Modifications) Regulations 1974 (S.I. 1974/1885)	1974	1885	Explosives
48	Explosives Acts 1875 and 1923 etc (Repeals and Modifications) (Amendment) Regulations 1974 (S.I. 1974/2166)	1974	2166	Explosives
49	Factories Act 1961 etc (Repeals and Modifications) Regulations 1974 (S.I. 1974/1941)	1974	1941	General
50	Health and Safety Licensing Appeals (Hearings Procedure) (Scotland) Rules 1974 (S.I. 1974/2068)	1974	2068	Scotland
51	Health and Safety Licensing Appeals (Hearings Procedure) Rules 1974 (S.I. 1974/2040)	1974	2040	General
52	Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1974 (S.I. 1974/2013)	1974	2013	Mining
53	Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 1974 (S.I. 1974/1943)	1974	1943	General
54	Petroleum (Regulation) Acts 1928 and 1936 (Repeals and Modifications) Regulations 1974 (S.I. 1974/1942)	1974	1942	Fire
55	Pipe-lines Act 1962 (Repeals and Modifications) Regulations 1974 (S.I. 1974/1986)	1974	1986	Pipelines
56	Agriculture (Safety, Health and Welfare Provisions) Act 1956 (Repeals and Modifications) Regulations 1975 (S.I. 1975/46)	1975	46	Agriculture
57	Coal Mines (Respirable Dust) Regulations 1975 (S.I. 1975/1433)	1975	1433	Mining
58	Employers' Health and Safety Policy Statements (Exception) Regulations 1975 (S.I. 1975/1584)	1975	1584	General
59	Factories Act 1961 (Repeals) Regulations 1975 (S.I. 1975/1012)	1975	1012	General
60	Health and Safety Inquiries (Procedure) Regulations 1975 (S.I. 1975/335)	1975	335	General
61	Mines and Quarries Acts 1954 to 1971 (Repeals and Modifications) Regulations 1975 (S.I. 1975/1102)	1975	1102	Mining
62	Offices, Shops and Railway Premises Act 1963 (Repeals) Regulations 1975 (S.I. 1975/1012)	1975	1012	General
63	Factories Act 1961 etc (Repeals) Regulations 1976 (S.I. 1976/2004)	1976	2004	General
64	Fire Certificates (Special Premises) Regulations 1976 (S.I. 1976/2003)	1976	2003	Fire
65	Health and Safety (Agriculture) (Miscellaneous Repeals and Modifications) Regulations 1976 (S.I. 1976/1247)	1976	1247	Agriculture
66	Health and Safety Inquiries (Procedure) (Amendment) Regulations 1976 (S.I. 1976/1246)	1976	1246	General
67	Mines and Quarries (Metrication) Regulations 1976 (S.I. 1976/2063)	1976	2063	Mining
68	Offices, Shops and Railway Premises Act 1963 etc (Repeals) Regulations 1976 (S.I. 1976/2005)	1976	2005	General
69	Safety Representatives and Safety Committees Regulations 1977 (S.I. 1977/500)	1977	500	Safety representatives
70	Submarine Pipe-lines (Inspectors etc) Regulations 1977 (S.I. 1977/835)	1977	835	Pipelines
71	Coal and Other Mines (Metrication) Regulations 1978 (S.I. 1978/1648)	1978	1648	Mining
72	Coal Mines (Respirable Dust) (Amendment) Regulations 1978 (S.I. 1978/807)	1978	807	Mining
73	Explosives Act 1875 (Exemptions) Regulations 1979 (S.I. 1979/1378)	1979	1378	Explosives
74	Mines (Precautions Against Inrushes) Regulations 1979 (S.I. 1979/318)	1979	318	Mining
75	Petroleum (Consolidation) Act 1928 (Enforcement) Regulations 1979 (S.I. 1979/427)	1979	427	Fire
76	Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations 1980 (S.I. 1980/1314)	1980	1314	Fire
77	Gasholders and Steam Boilers Regulations (Metrication) Regulations 1981 (S.I. 1981/687)	1981	687	Gas - supply
78	Health and Safety (First-Aid) Regulations 1981 (S.I. 1981/917)	1981	917	First aid
79	Health and Safety (Foundries etc) (Metrication) Regulations 1981 (S.I. 1981/1332)	1981	1332	Engineering
80	Notification of Installations Handling Hazardous Substances Regulations 1982 (S.I. 1982/1357)	1982	1357	COMAH

	Name of Regulation	Year	SI Number	Subject
81	Petroleum-Spirit (Plastic Containers) Regulations 1982 (S.I. 1982/630)	1982	630	Fire
82	Pottery (Health etc) (Metrication) Regulations 1982 (S.I. 1982/877)	1982	877	General
83	Submarine Pipe-lines Safety Regulations 1982 (S.I. 1982/1513)	1982	1513	Pipelines
84	Docks, Shipbuilding etc (Metrication) Regulations 1983 (S.I. 1983/644)	1983	644	Docks
85	Factories Act 1961 etc (Metrication) Regulations 1983 (S.I. 1983/978)	1983	978	General
86	Miscellaneous Mines (Metrication) Regulations 1983 (S.I. 1983/994)	1983	994	Mining
87	Explosives Act 1875 etc. (Metrication and Miscellaneous Amendment) Regulations 1984 (S.I. 1984/510)	1984	510	Explosives
88	Freight Containers (Safety Convention) Regulations 1984 (S.I. 1984/1890)	1984	1890	Workplace transport
89	Control of Industrial Air Pollution (Transfer of Powers of Enforcement) Regulations 1987 (S.I. 1987/180)	1987	180	General
90	Dangerous Substances in Harbour Areas Regulations 1987 (S.I. 1987/37)	1987	37	Dangerous substances (Explosives)
91	Health and Safety (Explosives and Petroleum Fees) (Modification) Regulations 1987 (S.I. 1998/52)	1987	52	Explosives
92	Offshore Installations (Safety Zones) Regulations 1987 (S.I. 1987/1331)	1987	1331	Offshore
93	Docks Regulations 1988 (S.I. 1988/1655)	1988	1655	Docks
94	Loading and Unloading of Fishing Vessels Regulations 1988 (S.I. 1988/1656)	1988	1656	Docks
95	Mines (Safety of Exit) Regulations 1988 (S.I. 1988/1729)	1988	1729	Mining
96	Construction (Head Protection) Regulations 1989 (S.I. 1989/2209)	1989	2209	Construction
97	Electricity at Work Regulations 1989 (S.I. 1989/635)	1989	635	Electrical safety
98	Fire Precautions (Factories, Offices, Shops and Railway Premises) Order 1989 (S.I. 1989/76)	1989	76	Fire
99	Fire Precautions Act 1971 (Modifications) (Revocation) Regulations 1989 (S.I. 1989/79)	1989	79	Fire
100	Health and Safety Information for Employees Regulations 1989 (S.I. 1989/682)	1989	682	Workers
101	Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 (S.I. 1989/971)	1989	971	Offshore
102	Offshore Installations and Pipeline Works (First-Aid) Regulations 1989 (S.I. 1989/1671)	1989	1671	Offshore
103	Agriculture (Tractor Cabs) (Amendment) Regulations 1990 (S.I.1990/1075)	1990	1075	Agriculture
104	Dangerous Substances (Notification and Marking of Sites) Regulations 1990 (S.I. 1990/304)	1990	304	General
105	Health and Safety (Training for Employment) Regulations 1990 (S.I. 1990/1380)	1990	1380	Workers
106	Control of Explosives Regulations 1991 (S.I. 1991/1531)	1991	1531	Explosives
107	Submarine Pipe-lines (Inspectors and Safety) (Amendment) Regulations 1991 (S.I. 1991/680)	1991	680	Pipelines
108	Health and Safety (Display Screen Equipment) Regulations 1992 (S.I. 1992/2792)	1992	2792	Offices
109	Health and Safety (Leasing Arrangements) Regulations 1992 (S.I. 1992/1524)	1992	1524	General
110	Health and Safety (Miscellaneous Provisions) (Metrication etc) Regulations 1992 (S.I. 1992/1811)	1992	1811	General
111	Manual Handling Operations Regulations 1992 (S.I. 1992/2793)	1992	2793	Manual handling
112	Notification of Cooling Towers and Evaporative Condensers Regulations 1992 (S.I.1992/2225)	1992	2225	Biosafety
113	Personal Protective Equipment Regulations 1992 (S.I. 1992/2966)	1992	2966	General
114	Workplace (Health, Safety and Welfare) Regulations 1992 (S.I. 1992/3004)	1992	3004	General
115	Coal and Other Safety-Lamp Mines (Explosives) Regulations 1993 (S.I. 1993/208)	1993	208	Mining
116	Coal Mines (Owner's Operating Rules) Regulations 1993 (S.I. 1993/2331)	1993	2331	Mining
117	Management and Administration of Safety and Health at Mines Regulations 1993 (S.I. 1993/1897)	1993	1897	Mining
118	Mines (Shafts and Winding) Regulations 1993 (S.I. 1993/302)	1993	302	Mining
119	Offshore Safety (Repeals and Modifications) Regulations 1993 (S.I. 1993/1823)	1993	1823	Offshore
120	Placing on the Market and Supervision of Transfers of Explosives Regulations 1993 (1993/2714)	1993	2714	Explosives
121	Borehole Sites and Operations Regulations 1995 (S.I. 1995/2038)	1995	2038	General
122	Escape and Rescue from Mines Regulations 1995 (S.I. 1995/2870)	1995	2870	Mining
123	Health and Safety (Repeals and Revocations) Regulations 1995 (S.I. 1995/3234)	1995	3234	General
124	Health and Safety Information for Employees (Modifications and Repeals) Regulations 1995 (S.I. 1995/2923)	1995	2923	Workers
125	Mines Miscellaneous Health and Safety Provisions Regulations 1995 (S.I. 1995/2005)	1995	2005	Mining
126	Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995 (S.I. 1995/743)	1995	743	Offshore
127	Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995 (S.I. 1995/738)	1995	738	Offshore

Name of Regulation	Year	SI Number	Subject
128 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (S.I. 1995/3163)	1995	3163	RIDDOR
129 Gas Safety (Management) Regulations 1996 (S.I. 1996/551)	1996	551	Gas - supply
130 Gas Safety (Rights of Entry) Regulations 1996 (S.I. 1996/2535)	1996	2535	Gas - domestic
131 Health and Safety (Consultation with Employees) Regulations 1996 (S.I. 1996/1513)	1996	1513	Workers
132 Health and Safety (Repeals and Revocations) Regulations 1996 (S.I. 1996/1811)	1996	1811	General
133 Health and Safety (Safety Signs and Signals) Regulations 1996 (S.I. 1996/341)	1996	341	General
134 Offshore Installations and Wells (Design and Construction, etc) Regulations 1996 (S.I. 1996/913)	1996	913	Offshore
135 Pipelines Safety Regulations 1996 (S.I. 1996/825)	1996	825	Pipelines
136 Work in Compressed Air Regulations 1996 (S.I. 1996/1656)	1996	1656	Compressed air
137 Confined Spaces Regulations 1997 (S.I. 1997/1713)	1997	1713	Confined spaces
138 Diving at Work Regulations 1997 (S.I. 1997/2776)	1997	2776	Diving
139 Offshore Electricity and Noise Regulations 1997 (S.I. 1997/1993)	1997	1993	Offshore
140 Gas Safety (Installation and Use) Regulations 1998 (S.I. 1998/2451)	1998	2451	Gas - domestic
141 Health and Safety (Enforcing Authority) Regulations 1998 (S.I. 1998/494)	1998	494	Local authorities
142 Lifting Operations and Lifting Equipment Regulations 1998 (S.I. 1998/2307)	1998	2307	Work equipment
143 Prevention of Accidents to Children in Agriculture Regulations 1998 (S.I. 1998/3262)	1998	3262	Agriculture
144 Provision and Use of Work Equipment Regulations 1998 (S.I. 1998/2306)	1998	2306	Work equipment
145 Control of Major Accident Hazards Regulations 1999 (S.I. 1999/743)	1999	743	COMAH
146 Ionising Radiations Regulations 1999 (S.I. 1999/3232)	1999	3232	Radiation
147 Management of Health and Safety at Work Regulations 1999 (S.I. 1999/3242)	1999	3242	Risk
148 Mines (Control of Ground Movement) Regulations 1999 (S.I.1999/2463)	1999	2463	Mining
149 Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 (S.I.1999/2892)	1999	2892	Nuclear
150 Police (Health and Safety) Regulations 1999 + (Commencement) Order (1999/860)	1999	860	Police Services
151 Quarries Regulations 1999 (S.I. 1999/2024)	1999	2024	Quarries
152 Genetically Modified Organisms (Contained Use) Regulations 2000 (S.I. 2000/2831)	2000	2831	Genetically modified organisms
153 Pressure Systems Safety Regulations 2000 (S.I. 2000/128)	2000	128	General
154 Biocidal Products Regulations 2001 (S.I. 2001/880)	2001	880	Biocides
155 Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001 (S.I. 2001/2127)	2001	2127	General
156 Radiation (Emergency Preparedness and Public Information) Regulations 2001 (S.I. 2001/2975)	2001	2975	Radiation
157 Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 (S.I. 2002/1689)	2002	1689	CHIP
158 Control of Lead at Work Regulations 2002 (S.I. 2002/2676)	2002	2676	General
159 Control of Substances Hazardous to Health Regulations 2002 (S.I. 2002/2677)	2002	2677	COSHH
160 Dangerous Substances and Explosive Atmospheres Regulations 2002 (S.I. 2002/2776)	2002	2776	Dangerous substances (Fire and explosion)
161 Genetically Modified Organisms (Contained Use) (Amendment) Regulations 2002 (S.I. 2002/63)	2002	63	Genetically modified organisms
162 Health and Safety (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/2174)	2002	2174	General
163 Health and Safety at Work etc Act 1974 (Application to Environmentally Hazardous substances) Regulations 2002 (S.I. 2002/282)	2002	282	Workers
164 Notification of Installations Handling Hazardous Substances (Amendment) Regulations 2002 (S.I. 2002/2979)	2002	2979	COMAH
165 Offshore Safety (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/2175)	2002	2174	Offshore

	Name of Regulation	Year	SI Number	Subject
166	Biocidal Products (Amendment) Regulations 2003 (S.I. 2003/429)	2003	429	Biocides
167	Control of Substances Hazardous to Health (Amendment) Regulations 2003 (S.I. 2003/978)	2003	978	COSHH
168	Management of Health and Safety at Work and Fire Precautions (Workplace) (Amendment) Regulations 2003 (S.I. 2003/2457)	2003	2003	
169	Pipelines Safety (Amendment) Regulations 2003 (S.I. 2003/2563)	2003	2563	Pipelines
170	Control of Substances Hazardous to Health (Amendment) Regulations 2004 (S.I. 2004/3386)	2004	3386	COSHH
171	Anthrax Prevention Order 1971 etc (Revocation) Regulations (S.I. 2005/228)	2005	228	Infections
172	Biocidal Products (Amendment) Regulations 2005 (S.I. 2005/2451)	2005	2451	Biocides
173	Chemicals (Hazard Information and Packaging for Supply) (Amendment) Regulations 2005 (S.I. 2005/2571)	2005	2571	CHIP
174	Control of Major Accident Hazards (Amendment) Regulations 2005 (S.I. 2005/1088)	2005	1088	COMAH
175	Control of Noise at Work Regulations 2005 (S.I. 2005/1643)	2005	1643	Noise
176	Control of Vibration at Work Regulations 2005 (S.I. 2005/1093)	2005	1093	Vibration
177	Export and Import of Dangerous Chemicals Regulations 2005 (S.I. 2005/928)	2005	928	Chemicals
178	Genetically Modified Organisms (Contained Use) (Amendment) Regulations 2005 (S.I. 2005/2466)	2005	2466	Genetically modified organisms
179	Manufacture and Storage of Explosives Regulations 2005 (S.I. 2005/1082)	2005	1082	Explosives
180	Offshore Installations (Safety Case) Regulations 2005 (S.I. 2005/3117)	2005	3117	Offshore
181	Offshore Installations (Safety Zones) Order 2005 (S.I. 2005/1656)	2005	1656	Offshore
182	Offshore Installations (Safety Zones) (No 2) Order 2005 (S.I. 2005/2669)	2005	2669	Offshore
183	Offshore Installations (Safety Zones) (No 3) Order 2005 (S.I. 2005/3227)	2005	3227	Offshore
184	Work at Height Regulations 2005 (S.I. 2005/735)	2005	735	Falls from height
185	Control of Asbestos Regulations (S.I. 2006/2739)	2006	2739	Asbestos
186	Management of Health and Safety at Work (Amendment) Regulations 2006 (S.I. 2006/438)	2006	438	Risk
187	Nuclear Reactors (Environmental Impact Assessment for Decommissioning) (Amendment) Regulations (EIA DR) 2006 (S.I. 2006/657)	2006	657	Nuclear
188	Biocidal Products (Amendment) Regulations 2007 (S.I. 2007/293)	2007	293	Biocides
189	Coal Mines (Control of Inhalable Dust) Regulations 2007	2007	1894	Mining
190	Construction (Design and Management) Regulations 2007 (S.I. 2007/320)	2007	320	Construction
191	Health and Safety (Fees) Regulations 2007 (2007/813)	2007	813	Charging
192	Work at Height (Amendment) Regulations 2007 (S.I. 2007/114)	2007	114	Falls from height
193	Chemicals (Hazard Information and Packaging for Supply) (Amendment) Regulations 2008 (S.I. 2008/2337)	2008	2337	CHIP
194	Classification, labelling and packaging of substances and mixtures (Regulation (EC) 2008 (S.I. 2008/1272)	2008	1272	GHS
195	Health and Safety (Fees) Regulations 2008 (2008/736)	2008	736	Charging
196	Chemicals (Hazard Information and packaging for supply) Regulations 2009 (S.I. 2009/716)	2009	716	CHIP
197	Factories Act 1961 and Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 2009 (S.I. 2009/605)	2006	605	General
198	Health and Safety (Fees) Regulations 2009 (2009/515)	2009	515	Charging
199	Health and Safety Information for Employees (Amendment) Regulations 2009 (S.I. 2009/606)	2009	606	Business
200	Health and Safety at Work etc. Act 1974 (Application outside Great Britain) (Variation) Order 2009	2009	1750	Offshore
201	Health and Safety (Miscellaneous Amendments and Revocations) Regulations 2009 (S.I. 2009/693)	2009	693	Mining



Health and safety regulation has a long history and a noble purpose. Britain has gone from a country where children climbed chimneys to sweep away coal dust to virtually the safest place to work in the EU. But something has clearly gone wrong with the health and safety culture. Businesses are spending more and more time on compliance and admin; volunteers are being put off helping their communities for fear of being sued; and even the emergency services are occasionally thinking twice before rescuing people in danger.

Society often demands action following disasters, however small. Too often, politicians and regulators, keen always to be seen to be doing something, react disproportionately. It would take a brave minister to stand up and say that accidents happen.

This report analyses the health and safety regime in the UK. The problem lies less with the regulations themselves and more with the culture of over-compliance that has developed. There is considerable scope to align the health and safety regime more closely with common sense and to lessen the burdens that it creates, and the report suggests a number of areas where reform is needed.

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Policy Exchange
Clutha House
10 Storey's Gate
London SW1P 3AY

www.policyexchange.org.uk