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report of the Commons Work and Pension Committee

The Health and Pensions Committee has published its report into the role of the HSC and the HSE in regulating workplace health and safety. It makes 63 findings and recommendations, the more interesting of which are summarised in this article.

The report expresses concern that the HSE's role in regulating public safety is detracting from its role in regulating workplace safety and calls on the Government to clarify both the role of the HSE in relation to public safety and the allocation of funding.

The Committee claims that there has been gold plating of some EU directives in transposition to UK law, and complains that, as a result, recent UK regulations have moved away from the duty of "reasonable practicability" to an absolute standard. Curiously, it later criticises the "reasonable practicability" test as introducing a lack of clarity that increases the burden on employers in meeting their obligations. It calls on the Government to review the test of "reasonable practicability" and how it applies to the Health and Safety at Work Act.

The Committee does not believe that the voluntary guidance for directors' duties (INDG417) is sufficient. It recommends that the working of the voluntary system be monitored over the next three years and that, if it is proved to be inadequate, the Government should introduce statutory duties.

The Committee takes issue with media portrayal of "elf and safety". No recommendation is made.

The report recommends that the health and safety consultancy profession should be regulated as a profession, in order to discourage alleged over-zealousness leading to over-burdensome risk

assessments. It also recommends that the new Risk and Regulation Advisory Council should "introduce effective means of addressing" overly risk-averse behaviour. It does not recommend what these "effective means" might be.

The Committee criticises the "Fit 3" (Fit for work, Fit for life, Fit for tomorrow) programme and suggests that its relevance should be re-assessed. This is the HSE's main strategic programme by which it intends to deliver its strategic targets in workplace injury reduction.

The Report is very critical of the HSE's failures in the construction industry and blames it in part on the reduction in rates of inspection. It commends the DWP's establishment of the Construction Forum and calls on the HSE to make the registration of construction plant compulsory, with details being kept of ownership, age, design type and date of last inspection. It gives no clue as to what it expects the HSE to do with the information produced as a result of this minor increase in red tape. It commends the French system whereby a state inspector is present whenever a tower crane is brought on site.

The report expresses concern at the reduction in the number of inspections by the HSE and recommends that they should be increased. Elsewhere in the report the Committee calls on the HSE to redress the balance of proactive/reactive work in favour of proactive work (ie inspections).

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A few paragraphs later, however, the report calls for "a robust system of prosecution and conviction" and criticises the HSE for the downward trend in the number of prosecutions (i.e. reactive work). This is reinforced by calls elsewhere in the report for the HSE to bring more prosecutions against employers who:

- fail to consult the workforce on safety issues
- fail to report accidents properly under RIDDOR
- breach their statutory duties in relation to occupational ill health

One is left with the feeling that if the number of prosecutions is to be increased, whilst at the same time the balance of the work of the HSE is to be redressed in favour of inspections, there will need to be a huge increase in the number of inspections, which will require significant numbers of additional inspectors. The Committee neatly dodges this issue by acknowledging that there will need to be an increase in resource but claiming that due to lack of clarity in the financial information supplied it is unable to make a judgement as to whether the HSE can afford this under its current budget.

The Committee recommends that in health and safety prosecution cases the HSE should be able to recoup "the full cost" of the prosecution from the defendant. It does not explain how this will help the employees who lose their jobs as a result of their employer not being able to meet these costs. It also recommends that maximum fines for health and safety offences should be increased and that the HSE should

reconsider its aversion to the alternative penalties proposed in the Regulatory Enforcement and Sanctions Bill.

The Committee calls on the Government to explain what steps it plans to take to make the role and effectiveness of workplace safety representatives more effective and urges the Government to make elected safety representatives compulsory in all workplaces.

The Committee makes various suggestions and recommendations in relation to the safety of migrant workers and urges the HSE to increase its efforts to establish what the risk factors are for migrant workers.

The overall impression of the report is that it is a rag bag of genuine issues, factional whinges and political shopping lists pulled together without any coherent thought for an overall strategy. It has yet to be debated in Parliament.

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