

Peer continues to fight over self-employed HSW Act exemption

In the UK the Health and Safety Etc at Work Act 1974 (HASWA) imposes a general duty on self-employed people to conduct their work in a way that ensures that, so far as is reasonably practicable, they and other persons affected by their activities are not exposed to significant risks. This is backed by the Management of Health and Safety at Work Regulations 1999, which require the self-employed to carry out a suitable and sufficient assessment of any significant risks to themselves as well as to others affected by their work. The approach by other EU Members varies - some countries don't apply health and safety law to the self-employed; others only apply the law to the self-employed if their activities are considered to be particularly hazardous. So for example, in Professor Löfstedt's home country of Sweden the self-employed are only covered in relation to chemicals and machinery to protect their safety and that of others who may be affected by what they are doing.

A bid to halt the government's plans to exempt self-employed people from HASWA failed in the House of Lord's on 21 October when members voted against an amendment that would have removed Clause 1 from the Deregulation Bill.

The amendment which was tabled by Labour peer and former Health and Safety minister Lord McKenzie of Luton, was rejected by 253 votes to 175.

Number of fatal injuries by main industry – 2013/14p

(the table below illustrates that there are a significant number of self-employed fatalities)

Main Industry SIC 2007 (section)	Self Employed	Employee	Workers	Members of the public	Total fatal injuries
Agriculture	17	10	27	4	31
Mining & Quarrying	0	3	3	1	4
Manufacturing	5	9	14	0	14
Gas, electricity and water supply; sewerage, waste and recycling	2	4	6	1	7
- of which waste and recycling	2	2	4	1	5
Construction	14	28	42	4	46
Services	6	35	41	254	295
All Industries	44	89	133	264	397

www.hse.gov.uk/statistics/pdf/fatalinjuries.pdf

The proposed exemption stems from a recommendation in Professor Löfstedt's 2011 report Reclaiming Health and Safety for All which suggests that self-employed people whose work poses no risk to others could be exempted from health and safety regulations.

www.gov.uk/government/publications/reclaiming-health-and-safety-for-all-lofstedt-report

However, Lord McKenzie has pledged to continue his fight to amend the government's Deregulation Bill who states 'the proposal cannot remain as it is because it is dangerous'. And he continues to say 'I don't think we revisit striking out the clause but we will look at changing the wording to substantially lessen the risk, concerns and confusion raised by the proposed exemption'. McKenzie states that the proposals are a long way from what Löfstedt insinuated and that the recommendation in the report was 'impossible to translate into sensible legislation'. McKenzie's issue is that he believes when the government realised this, it should have maintained the status quo, since HASWA already places a very limited burden on most self-employed people.

In the government's own impact assessment of the proposal, the HSE noted some of the occupations that will be exempt have injury rates higher than the average including motor mechanics, van and HGV drivers. McKenzie commented that this 'is a million miles from what Löfstedt intended'. Löfstedt has confirmed that his intention aligns with McKenzie's and restated his intention was to exempt the lowest risk homeworkers such as novel writers, web designers and academics.

The bill will continue to move through the committee phase – a detailed, line by line examination. It is expected to enter the next phase, the report stage, in December or January when McKenzie will table an amendment challenging the wording of the exemption. After the report stage, the bill will have a third reading in the House of Lords, before amendments are considered by both the Lords and the House of Commons. Only then will the bill be sent for royal assent.

Ark's view on the subject

More information is needed - when looking at the cost benefit analysis it will be necessary to consider broadly the number of people deemed to be both self-employed and working entirely alone in different industries. And it will also be necessary to obtain reliable data on the number

of work related injuries suffered by such self-employed people, for example, using accident and emergency treatment information. Any assessment based on RIDDOR (the Reporting of Injuries, Diseases and Dangerous Occurrences 2013) data is likely to be inadequate.

Some self-employed 'working from home' individuals e.g. web designers are low risk whilst others are high risk e.g. construction workers even if they are working on their own.

The proposed changes could mean some self-employed workers enjoy a competitive advantage as well as encouraging 'cowboys' in high risk sectors.

There is a great variety of circumstances in which people work on their own, either as genuinely isolated and 'low risk' individuals at one extreme, through to only nominally self-employed persons in 'high risk' contexts at the other. And the situation can be very fluid as self-employed people move over time from isolated to collective working environments, even during the course of a working day.

The great advantage of the law as it currently stands is that the firm of one person, just like the firm of two – or two thousand people – has to determine what needs to be done to ensure health and safety – so far as is reasonably practicable – by making a suitable and sufficient risk assessment and then acting in a proportionate way. If there are no significant risks, no action is required.

This appears to be the struggle between two different world views; deregulation to secure the freedom of the individual versus regulation and the utilitarian disciplines of the collective to ensure the greatest good for the greatest number.

Please contact us if you require any advice or further information on how the self-employed HASWA exemption may affect you or your organisation.