

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT HEALTH AND SAFETY AT WORK ETC.
ACT 1974 (GENERAL DUTIES OF SELF-
EMPLOYED PERSONS) (PRESCRIBED
UNDERTAKINGS) REGULATIONS 2015

Tuesday 21 July 2015

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† Blenkinsop, Tom (*Middlesbrough South and East Cleveland*) (Lab)

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† Quin, Jeremy (*Horsham*) (Con)

Shannon, Jim (*Strangford*) (DUP)

† Stephens, Chris (*Glasgow South West*) (SNP)

† Timms, Stephen (*East Ham*) (Lab)

† Tomlinson, Justin (*Parliamentary Under-Secretary of State for Work and Pensions*)

Marek Kubala, *Committee Clerk*

† **attended the Committee**

Second Delegated Legislation Committee

Tuesday 21 July 2015

[MRS MADELEINE MOON *in the Chair*]

Draft Health and Safety at Work etc. Act 1974 (General Duties of Self-Employed Persons) (Prescribed Undertakings) Regulations 2015

8.55 am

The Parliamentary Under-Secretary of State for Work and Pensions (Justin Tomlinson): I beg to move,

That the Committee has considered the draft Health and Safety at Work etc. Act 1974 (General Duties of Self-Employed Persons) (Prescribed Undertakings) Regulations 2015.

It is a pleasure to serve under your chairmanship, Mrs Moon. The regulations were laid before both Houses on 22 June 2015. Section 1 of the Deregulation Act 2015 gives the Secretary of State the power to make regulations that limit the scope of section 3(2) of the Health and Safety at Work etc. Act 1974 so that only those self-employed people who conduct an undertaking of a prescribed description will continue to have a duty under the provision.

The regulations will retain duties for all self-employed persons who conduct specified high-risk work activities or might expose others to risks to their health or safety. I am satisfied that the instrument is compatible with the European convention on human rights.

In 2011, the Government commissioned Professor Löffstedt, director of King's Centre for Risk Management, to conduct an independent review of health and safety regulations. One of his recommendations was to exempt from health and safety law self-employed people whose work activities pose no potential risk of harm to others. The Government accepted that recommendation and asked the Health and Safety Executive to draw up proposals for changing the law.

Currently, section 3(2) of the 1974 Act imposes a general duty on self-employed people to protect themselves and others from risks to their health and safety, regardless of the type of activity they are undertaking. The proposed change to the law was included in clause 1 of the Deregulation Bill, to ensure that only self-employed who conduct an

“undertaking of a prescribed description” will continue to have a duty.

The underlying policy is that self-employed people will retain duties under section 3(2) only if their undertaking involves carrying out an activity that is specified in the regulations. It was intended that the regulations would consist of a short, concise list of activities. The proposed policy was subject to two public consultations and debated in Parliament. The Government carefully considered the consultation responses and listened to respondents' concerns during the debates in both Houses. The clause was amended on Report in the House of Lords to ensure that self-employed people whose work poses a risk to others' health and safety remain subject

to the law. Those amended regulations are now subject to scrutiny by both Houses of Parliament. The Deregulation Bill received Royal Assent on 26 March 2015.

The regulations have been drafted to ensure that self-employed people still have a duty under the law where they carry out high-risk activities that create risks to themselves or others. That is intended to include the most common activities carried out by the self-employed that statistically result in high numbers of fatalities and injuries. Such an approach puts beyond doubt that these self-employed people will not be exempt from health and safety law, irrespective of what they do. Work activities in agriculture, on the railways or involving gas and asbestos are therefore included.

The regulations also include any EU requirements that impose a specific duty on someone who is self-employed to protect themselves from risks to their own health and safety, bringing in work with genetically-modified organisms and self-employed people who work on construction sites. Crucially, there is still a catch-all provision in the regulations to include self-employed people who carry out an undertaking that may expose others to health and safety risks.

Finally, the Government acknowledge that the self-employed will need some help to understand this change, in order to limit the possibility of people incorrectly assessing whether their work activities might expose others to risk. The Health and Safety Executive will therefore produce guidance to support the regulations and signpost existing guidance that explains in practical terms what people need to do to comply with health and safety legislation. I commend the regulations to the Committee.

8.59 am

Stephen Timms (East Ham) (Lab): I welcome you as Chair of our Committee, Mrs Moon. I also welcome the Minister to his new role and congratulate him on his appointment.

The regulations, as implied by their name, amend the Health and Safety at Work etc. Act 1974. Last year, we celebrated the 40th anniversary of that landmark piece of legislation. Barbara Castle originally commissioned Lord Alf Robens to undertake a review of health and safety at work, given the high level of workplace accidents and fatalities in the late 1960s. The work to convert his recommendations into legislation took place largely under Edward Heath's Government but it was Michael Foot, as Employment Secretary, who oversaw the legislation in 1974.

The essential principle of the Act was that those who create risk should have the key responsibility for mitigating it. The legislation took a flexible, non-prescriptive approach that stood the test of time and allowed adaptation to a radically changed economic and social environment since then. It has been looked to as a model for common sense and safety throughout the world.

The Minister gave us a brief précis of the rather long and winding road that has led to this point. The regulations began when Professor Löffstedt made his recommendation in an excellent report commissioned by the previous Government. He said:

“I...recommend exempting from health and safety law those self-employed whose work activities pose no potential risk of harm to others.”

The Government initially tried to turn that recommendation on its head with a proposal that no self-employed people had health and safety obligations other than those undertaking activities included on a list, which was to be set out in regulations. Inevitably, in the background to this discussion is a concern that the good and obviously welcome long-term fall in accidents at work—workplace fatalities are down 75% since 1974—is showing worrying signs of starting to move in the wrong direction.

The Health and Safety Executive has reported that fatal injuries went up from 136 to 142 in the year to March. Fatalities in the agricultural sector increased, which underlines the importance of including that sector in the schedule to the regulations. We must all hope that this increase is just a blip, but it is absolutely clear that there is no ground for complacency, or for the rather cavalier approach to these matters that some of the Minister's colleagues—not the current Minister, I am pleased to say—appear to have favoured in the past.

The Government's initial approach was superficially attractive to people with an ideological hostility to health and safety legislation. Analysis by the HSE showed that that approach would more than double the number of self-employed people who would be exempt from health and safety obligations compared with Professor Löfstedt's recommendation. The proposed list of high risk activities left out a lot with injury rates statistically higher than the average. For example, it was proposed that there would be no health and safety obligations on self-employed motor mechanics, van drivers, heavy goods vehicle drivers, furniture makers, woodworkers, metalworkers and maintenance fitters. That struck many people as a pretty serious list of omissions.

The proposed approach was fraught with other problems. In particular, it would have introduced huge uncertainty for self-employed people about whether they had obligations. The existing arrangement was felt by some to be onerous, but at least everybody understood what it was. The Government's first proposed approach did not have that virtue. How exactly were the listed activities in the regulations defined? What about people who spent some of their time on prescribed activities and some on other activities? Under the Government's proposal, even though people engaged in activities on the prescribed list did not have obligations under the Health and Safety at Work etc. Act 1974, they would still have obligations under other legislation. How would they know what those obligations were and how to fulfil them? In response to that initial proposal, EEF The Manufacturers Organisation said:

"EEF understands the logic of excluding the self-employed from the scope of the Health and Safety at Work etc. Act 1974 where they pose no potential risk, but do not believe it will be easy to determine or define (with any accuracy) who poses a potential risk and who doesn't. This will lead to a very complex legal situation which will prove impracticable to interpret and enforce. On that basis we believe that current requirements should be retained."

It is certainly the Opposition's view that the important virtues of clarity and certainty in health and safety legislation should not readily be given up.

The CBI responded to the Government's consultation. In answer to the question it posed,

"would a self-employed person know if the law applied to them or not?"

61% said that they would not. It was frankly a terrible mess.

The regulations represent a significant shift from the initial, unattractive proposal and I welcome that the Government made those changes. It has been a long and winding road, but the scale of the problems that we were heading towards has been averted. I pay tribute in particular to my noble Friend Lord McKenzie of Luton, who, through his tireless efforts in the other place, should take much of the credit for the Government's change of heart.

The TUC described the regulations as

"unnecessary legislation that no-one wanted, aimed at resolving a non-existent problem",

and that remains correct. As I look through the impact assessment, I am struck by the scale of the so-called problem. At paragraph 52, it tells us that research was carried out in 2012 involving interviews with 60 people and only five of them

"thought they had any health and safety obligations."

Therefore, fewer than one in 10 were conscious that they had any obligations that the Government wanted to remove from them. The remaining 55 either said that they did not have any such obligation—they were the majority—or that they were not sure.

Paragraph 62 of the assessment says:

"Interviewees who took part in the qualitative research were asked directly whether they thought the removal of health and safety obligations would make any difference to their working practices. The response was unanimous, with all participants stating it would not."

It is not quite clear what the Government are trying to achieve. Paragraph 67 says:

"One of the questions asked of interviewees in the 2012 qualitative research was how much time they spent each year ensuring they were compliant with health and safety law"—

as we know, of the 60 respondents, 55 did not think that they had any obligations. It continues:

"The five respondents who were aware that legal requirements in this area applied to them provided estimates centred around 30 minutes."

The impact assessment assumes that those self-employed people probably do only half of that anyway, so perhaps that 10% will save 15 minutes a year as a result of the regulations. I guess that is why the Government came up with the extremely modest total net present value of £4.65 million benefit from the changes.

Compared with the long-standing position that everyone is covered, the regulations stipulate that people who are not involved in activities listed in the schedule and who do not pose a risk to the health and safety of another person are no longer covered by the Health and Safety at Work etc. Act 1974. In principle, that is a reasonable position finally to have arrived at, but I want to press the Minister on how self-employed people will know what their obligations are. As we know from the impact assessment, the great majority of self-employed people do not think that they have any obligations under the Act at the moment.

For people undertaking activities listed in the schedule—now a much clearer and broader list—including agriculture, asbestos, construction, gas, genetically modified organisms and railways, the position is as it always was: they are covered by the Act. However, how are those not participating in those activities to know whether they

[Stephen Timms]

should be regarded as posing a risk to the health and safety of another person and so have legal obligations under the Act? If they reach the view that they do not pose a risk to anyone and then there is an accident in which someone is badly injured or even dies, will they be liable for having reached the wrong conclusion? What penalty might they suffer? How can self-employed people who, in good faith, do not believe they pose a risk to anyone but, in fact, do, protect their position?

The £4.65 million claimed benefit to business from the change, which is an extremely modest amount, will quickly be lost if a few difficult and costly legal cases arise from the uncertainty that might be created. Does the Minister expect the courts to clarify the position, or will the guidance that he mentioned make that clear? If he intends to follow the latter approach, can he tell us now what the guidance will say, and when does he expect to publish it? How do the Government intend that we establish whether someone poses a risk to the health and safety of another person if they are self-employed? Will he reassure us that guidance will be available in good time before the regulations come into effect on 1 October? The regulations provide for a review to be undertaken in five years' time, but it is not clear to me why we are waiting so long. Will the Minister comment on whether that review could be brought forward?

There is not much to admire in the regulations, even though I do not think they will cause the problems that the Government's previous suggestions would have created. We welcome the Government's re-think, especially following the debates in the other place on the Deregulation Act 2015. I will not be calling on my hon. Friends to vote against the regulations, but I hope that the Minister will be able to clarify the important points that I have raised.

9.12 am

Justin Tomlinson: I thank the shadow Minister for his characteristically thoughtful and assured speech, in which he raised important points. I am delighted to hear about Barbara Castle's involvement. She was my mother's MP, so that bodes well.

The right hon. Gentleman is absolutely right to highlight the importance of the long-term fall in injuries. The driver for that is not the £4.7 million, but ensuring that the perception of health and safety exists so that the workplace is made safer and businesses engage. As a former self-employed person in a relatively small office, I know that things are a lot harder for a small business than for companies with big human resources departments that are skilled and well-trained in such areas.

On why the list is not more exhaustive, those occupations listed were the ones that were deemed to involve high risk, and that therefore were high profile, but the crucial catch-all proviso remains. It is vital that we encourage wider engagement, and I have already done a huge amount of work with the HSE board. If we look at all the statistics over recent years, there has been good progress in how much businesses are engaging and their seeing that it is beneficial to do so, but the change will clarify where there is no risk and no duty, thus helping

to reduce the perception that health and safety law is inappropriately applied, which was turning businesses off from engaging and helping to maintain a safe workplace.

As I said, it is not the £4.7 million that, in the grand scheme of things, will make a huge difference, but 1.7 million self-employed people. The Government consider that the proposal will encourage an increase in self-employment and boost economic growth by removing negative perceptions about health and safety law in circumstances in which there is a low risk of harm, which we would all welcome.

The shadow Minister rightly highlighted the need to ensure that people are aware of the changes and guidelines. Once the changes have been agreed by Parliament, the Health and Safety Executive will implement an extensive communications plan to publicise them. Every effort will be made to ensure that self-employed workers are aware of the changes and that they can easily understand how those changes affect them. That is especially the case for those to whom the law will continue to apply. As I have said, in recent years there has been a complete transformation in the documents and communications provided by the HSE, which has been well received by the business community, but the self-employed will not be exempt from the Health and Safety at Work etc. Act 1974, only from section 3(2). Other sections will still apply even if someone is exempt from section 3(2), so this is not a complete wipe-away of any responsibility.

The right hon. Gentleman asked who is responsible if the wrong conclusion is reached. It is the duty of the self-employed person to understand that the law applies to them, and liability will not be based on a subjective understanding.

Stephen Timms: That is the point that troubles me most and I do not really understand that answer. The old position was that one was subject to the law, so the position was clear. Under the regulations, a person will be subject to the law if they pose a risk to someone else. I do not understand how somebody can make a sound assessment of whether, as a self-employed person, they pose a risk to somebody else.

Justin Tomlinson: Businesses have to make such decisions day after day. For example, they have to decide if they are subject to VAT conditions if they are in an industry in which certain products are VAT-able and others are not. A self-employed bookkeeper working at home who does not invite the public into their home would clearly be exempt according to the guidelines. If someone is coming into contact with the public and doing work that might pose a risk, they will be covered. That is why the guidelines will be produced, and self-employed people will make a judgment. It is estimated that approximately 1 million people will still be subject to health and safety law as they fall into those high-risk activities listed on the schedule.

Question put and agreed to.

9.17 am

Committee rose.