



SAFETY UPDATE BRIEFING – DECEMBER 2011

INTRODUCTION

This is our last briefing this year, and we'd like to again say thanks to all our clients for your continued support this year. We'd like to wish you all a very happy Christmas, and wish you every success and a full order book in the coming year.

What changes will Santa bring for 2012?

With the current economic climate, the Government seems keen to find ways of publicising "Good News" stories at the moment, and this is often linked with low-cost initiatives. Health and Safety is one such topic.

In essence, there is likely to be little real discernable change in 2012. There are a number of Government initiatives promised, but these are

likely to emerge very slowly and have a largely minimal impact.

What is also apparent is that publicised government initiatives appear to be emerging rapidly and in a rather uncoordinated way in response to short-term perceptions. It remains hard to judge the sometimes conflicting impact of these initiatives.

Compensation and claims

The Legal Aid, Sentencing and Punishment of Offenders Bill will receive its final reading in the House of Lords and Royal Assent early in 2012.

This introduces a new protocol for compensation claims recommended by Lord Jackson, namely that a claimant must cover his legal aid from his claim and cannot supplement any settlement with large additional legal fees payable by the defendant's insurance. This means that for small injuries, only a small legal fee would be justified and the claimant runs the risk of having all his compensation paid to

his no-win, no-fee solicitor if he/she fails to manage their costs.

In addition, the Loftstedt review has recommended that the "Pre-action protocol" which sets out a standardised demand for all manner of records as a starting point for a claim be reviewed to avoid the problem of employers and other defendants being daunted and intimidated by a demand for huge amounts of documentation, some of which is neither legally required nor often relevant.

The Loftstedt Review

Dr Ragnar Lofstedt published his review of safety laws at the end of November. This review was commissioned in March 2011 as a further attempt to identify where safety laws could be cut.

The Government has published a response which suggests that at least some of these recommendations will be implemented, although others seem to be avoided or sidelined.



Head Office

Nigel Daniels

Tel: 0116 2392594

Fax: 07005 803086

Mob: 07850 377570

e-mail: nigel.daniels@prruk.co.uk

Rugby Office

David Daniel

Tel: 01788 226111

Fax: 07005 982176

Mob: 07970 672274

e-mail: david.r.daniel@prruk.co.uk



The main findings of the review were that most safety laws were based on EC directives and only the re-negotiation of the base directives would allow substantive changes to be made. There are, or were, plans for this to be discussed at EC level in 2013, although the UK's current position with the EC may compromise such matters.

Dr Loftstedt recommended that all Approved Codes of Practice written by the HSE should be reviewed and simplified by June 2012. The HSE has just suffered a 35% budget cut and this monumental task seems unlikely to be achievable,

and in fact is unlikely to make much difference in practice.

The consolidation of some specialised safety laws is also recommended, but again this is highly specific and unlikely to apply to most employers.

Several regulations were recommended for re-writing, including the Construction (Design and Management) Regulations 2007 (yet again) and the Working at Heights Regulations 2005, the latter to include excluding low level, low risk work.

The "Challenge Panel"

DWP Minister Chris Greyling has promised the establishment of a "Challenge Panel" from 1st January 2012, which, in Mr Greyling's own words:

"... will allow businesses to get the decisions of health and safety inspectors overturned immediately if they have got it wrong."

Exactly what this panel will consist of and how it will work remains unclear.

In Summary

It looks like the HSE's authors will have their work cut out in 2012. It remains to be seen whether all this work will have any measurable effect.

The changes to compensation law are likely to come into effect by April, and will at least deter claimants making claims for smaller minor injuries where there is little real liability.

The idea that the HSE might charge for their costs where they find compliance deficiencies seems to remain an option planned for 2012, and possibly the "Challenge Panel" will provide some form of appeal system for such things, although this does all seem to be being developed "on the hoof", which does not bode well.

Once again – Our best wishes to you over Christmas in the New Year

This newsletter can be freely distributed to friends and colleagues. If you have queries about any of the matters mentioned in this newsletter, or require more information, please contact us for advice

Don't forget: We're here to help you with any question on the burdens of Health & Safety.

We're here when you need us. Just call:

Rugby Office: David on 01788 226111 or Mobile: 07970 672274

Email: Enquiries@PRMuk.co.uk

**Website: www.PRMuk.co.uk
for Health & Safety advice.**



Head Office

Nigel Daniels

Tel: 0116 2392594

Fax: 07005 803086

Mob: 07850 377570

e-mail: nigel.daniels@prmuk.co.uk

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David Daniel

Tel: 01788 226111

Fax: 07005 982176

Mob: 07970 672274

e-mail: david.r.daniel@prmuk.co.uk