

Proposals to exempt from health and safety law those self-employed whose work activities pose no potential risk of harm to others – CD242

IOSH response to the Health and Safety Executive consultation CD242



Submission

25.10.12



Introduction

The Institution of Occupational Safety and Health (IOSH), the Chartered body for health and safety professionals, is pleased to respond to this important consultation 'Proposals to exempt from health and safety law those self-employed whose work activities pose no potential risk of harm to others – CD242'. We note that the Health and Safety Executive (HSE) has presented 4 options, with option 2 as its preference.

Option 1 – exempting from health and safety law the self-employed who pose no potential risk of harm to others.

Option 2 – exempting from health and safety law the self-employed who pose no potential risk of harm to others and who do not work in a high risk sector as prescribed by the Secretary of State.

Option 3 – exempting from health and safety law the self-employed who undertake office-type activities and pose no potential risk of harm to others.

Option 4 – do nothing.

Our response is based on our existing positions and our members' views. We provide a summary of our response; background; general comments; answer to consultation question nine; a reference section; and then close with information about IOSH.

Summary

IOSH believes it is unnecessary, unhelpful and unwise to seek to exempt certain self-employed from health and safety law¹ and is against proposed options 1, 2 and 3, believing current requirements should be retained (option 4).

We believe the concept of reliably identifying those 'who pose no potential risk' to others to be flawed and unworkable and that the current requirements for the self-employed are not onerous and make good business sense. Exemption would give the wrong message and may encourage the unscrupulous to gamble with people's safety and health.

IOSH has advocated more government support for business and the development of a more 'risk intelligent society', through improved education and promotion of the business case for good health and safety. We also provide many free tools for small businesses and start-ups.^{2,3}

Background

Labour market statistics for June-August 2011⁴ show there were 4,018,000 self-employed people in the UK. This is a substantial population with significant potential to impact the health and safety of themselves and others – they need to manage their risks sensibly. The health and safety that is required makes good business sense and is not onerous. For example, those employing fewer than 5 people are not required to write down their risk assessments or have written health and safety policies.

Self-employment covers a wide diversity of occupations, sectors and working arrangements. These arrangements can be fluid and change, depending on work load and situation. Self-employed workers may use premises or be home-based, mobile, outdoor or peripatetic (e.g. consultants). Many self-employed work in very hazardous sectors (e.g. construction, agriculture, and engineering). They also work in the allied building trades (electricians, gas-fitters, plumbers, carpenters, roofers, surveyors, cable installers, window installers, etc) visit premises and could inadvertently create hazards for others. Their work can involve chemicals, equipment and attending other workplaces; and many will drive on business.

Self-employed people can have employees and also ‘take people on’ as and when needed on a casual basis. Additionally, the self-employed may work from home and have clients visit them there, possibly exposing children, elderly or disabled relatives and the public to work-related hazards. It is important that they manage health and safety adequately.

The Davidson review⁵ into the implementation of EU legislation stated that the OECD and World Bank consistently report that the UK has “...one of the most favourable regulatory environments for doing business in the EU.” It reports that a number of responses highlighted that there could be good reasons to over-implement EU legislation and that the extension of health and safety directives to include the self-employed was an example of this. The Federation of Small Businesses felt that such application was good discipline and CBI that it would help achieve consistency, with the Professional Contractors Group concluding that it was not overly burdensome. Additionally, in evidence provided to the Regulatory Reform Committee, Tim Ambler of the London Business School described UK ‘goldplating’ of EU legislation as “something of a myth”.⁶ So where basic minimums have arguably been exceeded on occasion, this is not thought by stakeholders to be a problem, rather it is viewed as beneficial. It is also important to remember that Britain has the qualification ‘so far as is reasonably practicable’, whereas other European countries do not.

Interestingly, a recent position paper from the European Association of Craft, Small- and Medium-Sized Enterprises (UEAPME) on a European Commission report ‘Minimising regulatory burden for SMEs...’,⁷ argues strongly for inclusion and against exemption. Though UEAPME supports the EC efforts for better regulation and less red tape, they are concerned that generally exempting micro-enterprises from EU law is ‘one step too far’. They believe exemption would create a ‘two-level’ legal framework, with ‘lesser’ participants only active at a local or national level; and that regulations are

needed for smaller enterprises to be successful. Indeed, they believe a planned exemption of micro-enterprises would effectively deny them access to the EU internal market. For sub-contracting and the supply chain, they argue that micros will be obliged to comply with the regulations they are exempted from anyway. So, while they support simplification and the 'think small first' principle – they do not support exemptions.

Regarding the HSE self-employed exemption proposals; a recent survey by the Forum for Private Business⁸ (an organisation representing a community of 18,000 small businesses) highlighted that some self-employed people might mistake 'not posing a risk' as an excuse for no health and safety requirements at all. In business terms, some respondents raised concerns that the exempted organisations could possibly gain a competitive edge, by 'under-cutting' others. However, an alternative scenario could also be that those self-employed who can demonstrate effective health and safety risk management will remain more attractive as suppliers of goods and services, especially where pre-tendering and procurement requirements apply.

There are also associated societal costs to be considered here. If self-employed people are seriously injured / ill and cannot work, this will adversely affect their ability to earn and may cause them to permanently lose business. They may need support from GPs, NHS and possibly social services. So it makes economic sense all-round for people to take sensible steps to look after themselves at work. The average fatal injury rate for the self-employed (2004-5 to 2008-9) was much higher (1.4 per 100,000) than that for employees for the same period (0.6 per 100,000).⁹

And of course, exemption from health and safety law (which we are against) would not exempt the self-employed from common law duties and civil claims. Those providing goods and services need to be competent to do so and have a common law duty to take reasonable care regarding those who will be affected by their activities, goods or services (end users / recipients).

IOSH general comments

We believe exempting certain self-employed from health and safety law would be a backward step and would lead to needless human, social and economic toll. There are a number of particular areas where we believe the arguments to be ill-founded and incorrect, outlined below:

- Missing rationale – there is no data provided in CD242¹⁰ on how much time / resources the self-employed spend on health and safety; but the evidence they do have, suggests compliance is very low and that Local Authorities do not tend to proactively-enforce in lower risk situations, unless they receive a complaint. It should also be remembered that self-employed people who employ fewer than 5 workers do not need written health and safety policies or risk assessments anyway. So, it is difficult to understand how this exemption proposal has reached the consultation stage at all. Indeed, HSE are not sure the responsible self-employed will stop doing health and safety, even if they are exempted, because it is good management. However, our concern is that those self-employed who are less well-informed, motivated and responsible will take risks with health and safety and that accidents, injury, illness and death will increase.
- Misperception – Professor Löfstedt's report¹¹ said that “The actual burden that the regulations currently place upon these self-employed may not be particularly significant due to existing exceptions in some regulations and the limited prospect of these being enforced but it will help reduce the perception that health and safety law is inappropriately applied.” This indicates that the proposals are about misperceptions and **not** about reality. The solution cannot therefore be to change a perfectly good system; but rather, to change the conditions that cause the misperceptions. IOSH has advocated more government support for business and the development of a more ‘risk intelligent society’, through improved education and promotion of the business case for good health and safety. We also provide many free tools for small businesses and start-ups.^{2,3}
- Flawed concept / options – the concept of “pose no potential risk to others” is a flawed one. Potential risks will exist and if inadequately controlled, harm can result. The proposed options 1, 2 and 3 and their supporting flowcharts wrongly present a static situation; whereas, self-employed people may vary their activities, sometimes employing others and sometimes working in a ‘prescribed sector’ (high risk). In addition, many small firms will drive on company business.
- Confusion – exempting certain self-employed from health and safety law is likely to cause confusion, with some people wrongly believing that all self-employed are exempt. Under the proposals, the self-employed will need to assess their own ‘risk-causing potential’ in order to determine whether or not they are exempt; and paradoxically, this is the same risk assessment the proposals are seeking exemption from. We are concerned that some self-employed may not assess their risks and will just take it that they are probably exempt. Indeed, the Forum for Private Business survey⁸ suggests such an exemption could be used as an excuse not to do health and safety at all. They also comment about a competitive edge being given to the self-employed.

- Other negative impacts – proposals that exempt those self-employed who do not employ people could act as a deterrent to employment, which is particularly unhelpful in a recession. We would also be concerned if this exemption caused a growth in bogus self-employment and poor health and safety standards, a problem highlighted in construction by Rita Donaghy in her 2009 report.¹²

Answer to consultation question 9

Q9 Assuming that you have knowledge of groups of self-employed persons who would be exempted, do you think exemption from health and safety law would cause them to change their behaviour?

Legal compliance is a driver to behaviour and so removing legal requirements would be likely to cause standards and performance to drop.

As health and safety requirements are not onerous and make good business sense, we would hope that most responsible operators would continue to manage health and safety properly. And, as part of supply chain risk management, self-employed people may be encouraged to do so by tendering, insurance and third-party certification requirements. However, we believe this good practice needs underpinning by the proportionate and enforceable legislation we currently have.

Our concern is about the unscrupulous or ill-informed operators who may exploit the confusion and negative message given by exemption, to simply ignore health and safety altogether and put people at risk. In addition to human suffering, this would increase costs, not only for the organisation involved, but also for our economy (see 'general comments' above).

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About IOSH

Founded in 1945, the Institution of Occupational Safety and Health (IOSH) is the largest body for health and safety professionals in the world, with around 41,500 members in over 85 countries, including over 13,000 Chartered Safety and Health Practitioners. Incorporated by Royal Charter, IOSH is a registered charity, and an ILO international NGO and CIS collaborating centre. The IOSH vision is:

“A world of work which is safe, healthy and sustainable”

The Institution steers the profession, providing impartial, authoritative, free guidance. Regularly consulted by government and other bodies, IOSH is the founding member to UK, European and International professional body networks. IOSH has an active [research and development](#) fund and programme, helping develop the evidence-base for health and safety policy and practice. Summary and full reports are freely accessible from our website. IOSH publishes an international peer-reviewed journal of academic papers twice a year titled *Policy and practice in health and safety*. We have also developed a unique UK resource providing free access to a health and safety research database, as well other free on-line tools and guides, including websites for business start-ups and young people; an occupational health toolkit; and a risk management tool for small firms.

IOSH has 31 Branches in the UK and worldwide including the Caribbean, Hong Kong, Isle of Man, Middle East, Qatar, the Republic of Ireland and Singapore, 17 special interest groups covering aviation and aerospace; communications and media; construction; consultancy; education; environment; fire risk management; food and drink; hazardous industries; healthcare; international; offshore; public services; railways; retail and distribution; rural industries; and sports grounds and events. IOSH members work at both strategic and operational levels across all employment sectors. IOSH accredited trainers deliver health and safety awareness training to all levels of the workforce from shop floor to managers and directors, through a professional training network of more than 1,600 organisations. We issue around 100,000 certificates per year.

For more about IOSH, our members and our work please visit our website at www.iosh.co.uk

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