

Removal of strict liability criticised by Opposition

A proposed change to civil liability laws in relation to breaches of health and safety duties has been included in the Enterprise and Regulatory Reform Bill, which is currently working its way through Parliament. The Bill, which makes provision for a broad range of changes to the business regulatory regime, was debated in the House of Commons earlier this week and will now be considered by the House of Lords.

During this week's debate, the Government successfully forced through a clause that will amend the HSWA 1974, by removing the right to bring civil claims for breach of a statutory duty contained in certain health and safety legislation. The proposal fulfils the Government's commitment to reduce the perceived burden of health and safety, in line with the Löfstedt report's recommendations.

Introducing the clause, Parliamentary Under-Secretary of State for Skills Matthew Hancock said: "Prof Löfstedt identified the unfairness that can arise when health and safety at work regulations impose a strict duty on employers that makes them liable to pay compensation to employees injured or made ill by their work, despite all reasonable steps having been taken to protect them from harm. Employers can, for example, be held liable for damages when an injury is caused by equipment failure, even when a rigorous examination would not have revealed the defect. The new clause is designed to address that and other unfair consequences of the existing health and safety system. The result of ensuring that employers who have taken all reasonable precautions cannot be sued for a technical breach will be to "reduce the impression among many businesses, especially small firms, that they are liable to health and safety legislation in many cases when they are not".

A number of Labour MPs slammed the proposal, insisting that the Government was trying to push through the change without having carried out any proper consultation, research, or impact assessment.

Iain Wright MP described the proposal as another example of ministers seeking to water down civil redress on the basis of "anecdote, ideology and perception", referring to Mr Hancock as "the Mike Yarwood of the House of Commons". He urged the minister to consider allowing employers to sue third parties, such as manufacturers or suppliers of potentially defective goods, in cases where there is no fault on the part of either employer or employee.

Labour MP David Anderson continued with the "perceptions" theme, by suggesting that the Bill will create a new impression that "all bets are off; that employers do not have to care about health and safety, and that people can do what they want as long as they believe it is reasonable". Opposition MP Julie Hilling warned that not only could the Bill reverse years of improvement in the number of work-related deaths and injuries but also make things worse in terms of conditions that give rise to long-term health problems, such as repetitive strain injury.

Defending the proposal, Conservative MP Andrew Bridgen attacked Labour MPs for failing to consider the economic consequences that can result from a perception that health and safety is burdensome and restrictive. He said: "They seem to believe that there is no cost to over-compliance with regulations, but there is not only a cost to our economy and the Exchequer, which is important at the moment, but a cost borne by the long-term unemployed and the workless. They pay for over-compliance by not having access to the workplace, which vastly decreases their life expectancy. They are the people paying the price."

Mr Hancock addressed the suggestion that the Government had not consulted properly on the proposal by highlighting that the overall Löfstedt review had been based on around 400 submissions of stakeholder evidence. He also insisted that because employers do not make a distinction between health and safety measures on a civil and criminal basis, their focus is diverted away from the need to ensure rigorous health and safety and towards an obsession with over-compliance and technicalities that are not helpful to outcomes.

The vote showed a clear division in the House, with 295 in favour versus 215 against, but the clause still made its way on to the Bill.

Source: SHP 19th October 2012