

## What could Brexit mean for health and safety?

Now the votes have been cast and counted and the dust has started to settle, what might an "EU free" Britain look like for health and safety? It is true that Brussels's has had a major influence on our regulation, and this extends back to the introduction of Directive 89/391/EEC - OSH "Framework Directive" in June 1989 "to encourage improvements in the safety and health of workers at work."



But in the UK we already had a proud and developing health and safety culture. Or did we? While our health and safety performance record is world leading it was only in 2012 when David Cameron announced "this coalition has a clear new year's resolution: to kill off the health and safety culture for good."

It is clear from commentators that the opinion "we are burdened by regulation which is driven by the EU" - and not just for health and safety - was an attraction for many to leave, but is it really the case? Having researched opinion from a range of angles here are some of the answers to some of the questions

### 1. What was the basis of Framework Directive 89/391/EEC – OSH and what did it really affect?

The Health and Safety at Work etc. Act 1974 is purely UK legislation and provides a goal setting framework for health and safety. It places a duty on all employers "to ensure, so far as is reasonably practicable, the health, safety and welfare at work" of their employees, as well as duties on employees too.

Directive 89/391/EEC - OSH introduced in June 1989 provides general principles concerning the prevention and protection of workers against occupational accidents and diseases. It contains principles concerning the prevention of risks, the protection of safety and health, the assessment of risks, the elimination of risks and accident factors, the informing, consultation and training of workers.

**For example, the general principles of prevention listed in the directive cover:**

- avoiding risks;
- evaluating the risks;
- combating the risks at source;
- adapting the work to the individual;
- adapting to technical progress;
- replacing the dangerous by the non- or the less dangerous;
- developing a coherent overall prevention policy;
- prioritising collective protective measures (over individual protective measures); and
- giving appropriate instructions to the workers.

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### Employer obligations include:

- evaluate all the risks to the safety and health of workers, inter alia in the choice of work equipment, the chemical substances or preparations used, and the fitting-out of work places;
- implement measures which assure an improvement in the level of protection afforded to workers and are integrated into all the activities of the undertaking and/or establishment at all hierarchical levels;
- take into consideration the worker's capabilities as regards health and safety when he entrusts tasks to workers;
- consult workers on introduction of new technologies;
- designate worker(s) to carry out activities related to the protection and prevention of occupational risks;
- take the necessary measures for first aid, fire-fighting, evacuation of workers and action required in the event of serious and imminent danger;
- keep a list of occupational accidents and draw up and draw up, for the responsible authorities reports on occupational accidents suffered by his workers;
- inform and consult workers and allow them to take part in discussions on all questions relating to safety and health at work; and
- ensure that each worker receives adequate safety and health training.

### and worker (employee) obligations cover:

- make correct use of machinery, apparatus, tools, dangerous substances, transport equipment, other means of production and personal protective equipment;
- immediately inform the employer of any work situation presenting a serious and immediate danger and of any shortcomings in the protection arrangements; and
- cooperate with the employer in fulfilling any requirements imposed for the protection of health and safety and in enabling him to ensure that the working environment and working conditions are safe and pose no risks.

As a set of principles to produce health and safety arrangements from, these would seem to work well.

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### 2. How has this affected our health and safety performance?

There has been a range of health and safety related EU directives covering risks from musculoskeletal disorders, noise, work at height, manual handling and display screen equipment as well as for new or expectant mothers, young people and temporary workers. Specific regulations have covered areas such as asbestos, construction work and chemicals too.

When we joined the "Common Market" our fatal injuries totaled 651 (1974 figure and also the year of the Health and Safety at Work etc. Act) by the time Directive 89/391/EEC was in force this had dropped to 368. For 2015/16 it is 144.

Bearing in mind that asbestos is the biggest occupational health killer in the UK and work related upper limb disorders account for a significant proportion of lost time illness/injury, it would be hoped we would have introduced some form of regulation ourselves for these areas where it didn't exist or amended it where not adequate. Consider what successive UK governments has done with the introduction and/or removal of UK owned environmental law and regulations, would such a level of consistency been maintained?

In comparison to our EU neighbours, the UK has long had the lowest incidence of fatal injuries to workers. While the same was true for policies, procedures and risk assessments historically, at a time when we are looking to cut back, our EU counterparts are all increasing and in some instances overtaking us at the top (European Survey of Enterprises on New and Emerging Risks (ESENER) 2014 survey.



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### 3. Our regulatory burden is continually increasing because of the EU?

Between 1997 and 2009 it is true that approximately 41 out of the 65 new health and safety regulations introduced had their roots in the EU. In total these were part of the just over 200 regulations owned and enforced by the Health and Safety Executive (HSE) at the time.

With a focus on health and safety as part of the red tape challenge, "Common sense Common Safety" and "Reclaiming health and safety for all" that HSE "burden" is somewhere down to 160 regulations now, but were you also aware that new directives have reduced by 50% in the past five years and a recent EU Work Programme abandoned 80 health and safety proposals and introduced just 23 - which ironically is actually a better rate of reduction than we achieved!



### 4. So what for the future?

Having seen organisations start to invest again in their compliance, as greater certainty in our economy has occurred, it remains to be seen how the out vote will affect this sentiment.

The move to reduce legislative burden and control - less regulation and fewer proactive inspections from the enforcers, etc. - is changing the statistics, if nothing else. Using the fatal injury statistics over the years as an indication of performance, since 2012/13 they have plateaued at around 150. Why?

As we start to look to other partners and markets for trade, is this likely to see existing, new or different rules and regulations applied? If either of the latter will that mean more or less burden, as an adjunct, there is a growing belief by some that the EU is actually entering a deregulatory phase and EU REFIT have reported that since 2006, more than 6,100 acts have been replaced.

What is clear is the UK has a World leading health and safety culture, which can and should be exported. From asbestos to Legionella and fire we have the knowledge and experience that can really help others. We are seeing and will also see greater emphasis placed on health/wellbeing as well as safety, this should see increased innovation in how we tackle and solve the issues surrounding them - again valuable and exportable.

Assurity Consulting are leading experts in workplace health, safety and environmental compliance, and have been working with some of the UK's largest organisations for 30 years. We have also worked alongside the regulators to improve legislation. For more information, please contact us on tel. +44 (0)1403 269375 or email us - [info@assurityconsulting.co.uk](mailto:info@assurityconsulting.co.uk)

