

Alarm at 70% Increase in Recorded Workplace Deaths in Scotland

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Colin Bissett, partner in our Regulatory team considers a call for devolution of health and safety law-making as HSE publishes their (provisional) accident statistics for last year.

Ahead of finalised figures due in the Autumn the HSE, has published provisional annual figures for work-related deaths in the year 2018-19, to the alarm of workplace safety campaigners in Scotland. A steep increase to 29 recorded deaths - up from 17 in the previous year - has contributed to a rise in the UK-wide figure for deaths in the workplace, to 147.

In Scotland, the increase is mainly attributable to 13 fatalities in the Agriculture, Forestry and Fishing sector, with 10 more deaths than last year in a sector which is crucial to the Scottish economy. According to the HSE's figures for the UK, this sector carries the highest risk of injury for workers, being some 18 times higher than the average when taken across all industry sectors. A sector which accounts for a small fraction of the UK workforce overall therefore accounts for more than one in five of the fatal accidents recorded last year.

While the figure for the whole of the UK has increased by five deaths from the previous year (described by the HSE as not presenting "any statistically significant change") the marked increase in the Scottish figure has led Scottish Hazards, a workplace safety charity, to call for devolution of health and safety law to the Scottish parliament. They cite the lack of any prosecutions in Scotland for the offence of Corporate Homicide since its introduction in the Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA) and the proportionally lower number of prosecutions in Scotland for health and safety offences as justification. Certainly, the significance of the Agriculture, Forestry and Fishing sector to Scotland's economy suggests addressing health and safety practices among the workforce as a particularly Scottish priority.

Ian Tasker of Scottish Hazards told the Herald newspaper, "The concern is that Scotland has a larger proportion of people working in forestry, fishing and farms, and the problem is these are areas that are hard to enforce. That's not an excuse for not doing it. We need to spend time trying to work round the problems in these sectors. If Scotland had powers over health and safety legislation, we see that working hand in hand with our existing criminal justice laws to ensure everyone who puts workers lives at risk, whether it is employers, individually or corporately, are accountable under law, whether it is health and safety laws or criminal laws."^[1]

Comment

Any fatality in the workplace is a tragedy and takes a dreadful toll on the casualty's family, friends and co-workers. A significant increase in the fatality statistics justifies public alarm and entitles the question to be asked: "should we be doing things differently?"

Analysis of the figures released by HSE by sector suggests where they might focus further regulatory and enforcement action. Across the UK, employers in the Agriculture, Forestry and Fishing sector must address the significantly higher risk of reportable injuries for their employees.

Given that this elevated risk is true for the whole of the UK, those calling for Scottish regulation of health and safety law must explain why the effectiveness of enforcement measures in this sector is a particularly Scottish question. It's not at all clear that having a devolved enforcement regime in Scotland would automatically result in more attention being given to the Agriculture, Forestry and Fishing sector.

Besides, analysis of the types of injury across all sectors show a consistent pattern throughout the UK, with five types of accident accounting for three-quarters of the fatalities sustained in 2018/19:

- Falls from height (40)
- Struck by a moving vehicle (30)
- Struck by another moving object (16)
- Trapped by something collapsing / overturning (11)
- Contact with moving machinery (14)

Taken together, falls from height and being struck by moving objects (including vehicles) constitute half of all fatal injuries. This has been true every year since 2001/2.

The Agriculture, Forestry and Fishing sector involves inherent risks from working at height, working with vehicles / machines, working with electricity etc. The statistics published by the HSE suggest that there is still a need for increased awareness of the risks in this sector.

From a regulatory perspective, workplace risks have broadly been addressed in regulations focussing on workplace activities rather than the industry sectors in which workers operate - for example work at height - and this logical approach to regulation doesn't seem to be criticised by safety campaigners.

Across all sectors it's essential that risk assessments, safe systems of work and method statements are in place and that they have been communicated effectively and understood by those signing them. Frequently we are presented with situations where someone has tried to do something quickly, or decided to cut corners or take a risk because they weren't injured last time they did it that way, and on that day it's resulted in serious injury or worse. These types of incidents can largely be avoided through effective training, supervision, monitoring and clear documentation.

The application of the Definitive Guideline for Health and Safety Offences in England and Wales by Scottish courts, in the event of a serious injury or fatality resulting in prosecution, means organisations and individuals are at real risk of incurring enormous fines and custodial sentences for breaches of health and safety law. Since the application of the guidelines was approved by the Appeal Court in November 2016 (in *Scottish Power Generation Ltd. v. HM Advocate*) we have seen a step-change in the scale of the fines being imposed in these cases. The 2018/19 statistics could suggest that the message which the Guidelines intended to convey is not getting through.

Ultimately, Scotland already has localised powers with respect to health and safety legislation in that prosecutorial decisions are made by Crown Office and Procurator Fiscal Service (COPFS), unlike England and Wales where the HSE acts as the prosecuting authority. What safety campaigners seem to suggest is that by further localising enforcement to Scotland more attention can be given by officials to a sector which, on the basis of the fatality statistics, seems to be lagging behind.

There is however no specification as to why 'full localisation' to Scotland would result in things being done better. There is also no analysis of whether the current localisation to COPFS is effective or whether its way of dealing with health and safety cases needs reviewed. (The comparatively lower rate of health and safety-related prosecutions and no prosecution at all under the CMCHA since its introduction suggests such a review is merited.) Furthermore, if a more effective approach to enforcement by officials can be identified, there is no explanation as to why it couldn't or shouldn't be applied across the UK - given the consistency of the workplace risk profile across the UK.

Without further specification by those (justifiably) concerned by these latest figures, of :-

- (i) what about enforcement should change and why;
- (ii) why these changes cannot be implemented across the UK; and
- (iii) why a fully devolved enforcement regime is thus required,

the case for localising law-making and enforcement powers in Scotland has still to be made out.

The HSE have registered the public alarm in Scotland over these statistics however and the Agriculture, Forestry and Fishing sector can expect to be the focus of heightened scrutiny by their inspectors.

Related article - [HSE Fatal Accident Statistics 2018/19 - an increase in workplace fatalities for 2018/19](#)

References

[1] The Herald, Thursday 5th July 2019

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