

Health and Safety Executive



**Post Implementation Review of the
Health and Safety at Work etc. Act 1974
(General Duties of Self-Employed Persons)
(Prescribed Undertakings) Regulations 2015
(SI 2015/1583)**

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1. EXECUTIVE SUMMARY

1.1 The Health and Safety at Work etc Act 1974 (General Duties of Self-Employed Persons) (Prescribed Undertakings) Regulations 2015 (“SE 2015”) implemented a recommendation made by Professor Löfstedt in his report [“Reclaiming health and safety for all: An independent review of health and safety legislation,”](#) to exempt from health and safety law those self-employed people whose work activities pose no potential risk of harm to others.

1.2 SE 2015, which came into force on 1 October 2015, specify the circumstances in which self-employed persons continue to have duties under Section 3(2) of the Health and Safety at Work etc. Act 1974 (“HSWA”) to conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that they themselves and other persons (not being their employees) are not exposed to risks to their health and safety.

1.3 SE 2015 identify which undertakings are of a prescribed description for the purposes of Section 3(2) of HSWA. Undertakings are of a prescribed description if they involve carrying out one or more of the activities specified in the Schedule to SE 2015 or they involve any activity that poses risks to the health and safety of another person.

1.4 Regulation 3 requires the Secretary of State to review the operation and effect of SE 2015 to assess whether its intended objectives have been achieved. The Secretary of State must consider whether these objectives remain appropriate and conclude whether SE 2015 should remain as it is, be revoked or be amended. These considerations and conclusions must be published in a report, the Post Implementation Review report (“PIR”), within five years of SE 2015 coming into force.

1.5 Evidence to support the review was intended to be gathered in a phased approach to ensure that the review was proportionate.

1.6 The first phase included a range of approaches to data collection: analysis of existing data and evidence sources, interviews with external stakeholders (trade unions, trade associations, professional bodies and a health and safety consultant), engagement with external regulators (Local Authorities (LAs) and the Office of Rail and Road (ORR)) and HSE’s regulatory, sector and policy colleagues operating across a wide industry spectrum.

1.7 The second phase was to engage with the self-employed sector, directly, via a targeted online survey. This phase did not go ahead, as planned, due to the Covid-19 outbreak and the introduction of “lockdown”.

1.8 In terms of meeting the objectives and the likely impact of SE 2015 on the self-employed, evidence from stakeholders during the first phase, was mixed. There was a divide between the views of organisations representing small businesses who were in favour of measures which reduce regulatory burdens on their members and trade unions who felt that any reduction in health and safety legislation sends the wrong messages to businesses, lowers the protection for self-employed workers and leads to a growth in companies moving towards de-centralised models. A written response was received from a professional body expressing similar views to that of the trade unions.

1.9 External stakeholders (LAs, a professional body, a trade association and a health and safety consultant) also expressed the view that SE 2015 had made very little difference to the self-employed and therefore hadn't achieved the objective of reducing regulatory burdens either because there was no regulatory burden in the first place or because the self-employed are unlikely to be aware of the exemption.

1.10 Internal stakeholders (HSE's sector and policy leads) also felt that the exemption had made very little difference in the areas and sectors they covered.

1.11 Some stakeholders expressed the view that SE 2015 should be amended as health and safety legislation should apply to all, some of those expressing this view felt SE 2015 had made little difference to the self-employed whereas others felt that SE 2015 had reduced the protection for the self-employed.

1.12 There is limited data available from the first phase as to the actual impact of SE 2015 on the self-employed. However, no evidence was provided by stakeholders of any actual adverse impacts. Results from the Labour Force Survey (LFS) show that employee and self-employed injury rates, pre and post 2015, were not statistically significantly different.

1.13 Due to the inconclusive nature of the evidence gathered during the first phase and the unexpected consequences of the Covid-19 outbreak on the second phase, this review makes only one recommendation and that is for SE 2015 to remain unchanged until such time as further research with the self-employed sector is undertaken to enable evidence based conclusions and recommendations to be made. This second phase research will be undertaken and a report will be published by 1 October 2021.

2. THE EFFECT OF THE COVID-19 OUTBREAK

2.1 The outbreak of Covid-19 across Great Britain had a major impact across all industry sectors during the early part of 2020, particularly affecting those working on a self-employed basis, either full or part time.

2.2 Responding to the advice of Government scientists, on 7 March any person with symptoms of Covid-19 was asked to isolate for 7 days. On 16 March, the Government introduced shielding for the most vulnerable and called on the public to cease all non-essential contact and travel. On 18 March, the Government announced that schools would close from 20 March.

2.3 On 20 March entertainment, hospitality and indoor leisure venues were asked to close and on 23 March the Government took steps to introduce the “Stay at Home” guidance and in doing so required all non-essential businesses to close.

2.4 The timing of this ‘lockdown’ coincided with the planned second phase of evidence gathering with the self-employed sector directly.

2.5 Given the unprecedented nature of the events unfolding nationally and the effects on the self-employed sector specifically, many of whom were no longer able to work, a decision was made to postpone engagement with the self-employed until a more appropriate time.

3. INTRODUCTION

3.1 This report provides an overview of the Post Implementation Review (“PIR”) of [The Health and Safety at Work etc Act 1974 \(General Duties of Self-Employed Persons\) \(Prescribed Undertakings\) Regulations 2015](#) (S.I. 2015/1583) (“SE 2015”).

3.2 Section 1 of the [Deregulation Act 2015](#), which came into force on 1 October 2015, amended Section 3(2) of the Health and Safety at Work etc. Act 1974 (“HSWA”) such that only those self-employed persons who conduct an undertaking of a prescribed description will continue to have a duty to conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that they themselves and other persons who may be affected, are not exposed to risks to their health and safety.

3.3 SE 2015, which were made on 3 August 2015, and which came into effect on 1 October 2015, prescribe those undertakings where the self-employed continue to have duties under HSWA.

3.4 These Regulations set out the ‘prescribed descriptions of undertakings’ by reference to:

(a) a short list of high-risk activities where there should clearly be no exemption from section 3(2) HSWA (set out in Regulation 2 (a) and the Schedule to); and

(b) a “catch-all” (or risk based) provision to ensure that those self-employed who may pose a risk to others are not exempt from section 3(2) HSWA (set out in Regulation 2 (b)).

3.5 These regulations are domestic in origin and are not derived from any EU or international law and they apply to Great Britain. Northern Ireland did not seek a Legislative Consent Memorandum (LCM) for corresponding changes to their national legislation.

3.6 These regulations are substantive and create positive health and safety duties on those self-employed workers falling under them. They apply to all sectors of the economy and all work activities undertaken on a self-employed basis be they either full time or part time.

3.7 Regulation 3 requires the Secretary of State to review the operation and effect of SE 2015 to assess whether its intended objectives have been achieved. The Secretary of State must consider whether these objectives remain appropriate and conclude whether SE 2015 should remain as it is, be revoked or be amended. These considerations and conclusions must be published in a report, the Post

Implementation Review report (“PIR”), within five years of SE 2015 coming into force.

3.8 This PIR report sets out the objectives intended to be achieved by the regulatory system established by SE 2015; assesses the extent to which those objectives have been achieved (i.e. has SE 2015 achieved what it originally set out to do?); and assesses whether those objectives remain appropriate, and if so, the extent to which they could be achieved with a system that imposes less regulation (i.e. do the objectives of SE 2015 still remain appropriate? Is SE 2015 still the most appropriate approach?).

4. LEGISLATIVE BACKGROUND AND POLICY CONTEXT

4.1 One of the key recommendations made by Professor Löfstedt in his report [“Reclaiming health and safety for all: An independent review of health and safety legislation,”](#) was to exempt from health and safety law those self-employed people whose work activities pose no potential risk of harm to others.

4.2 The following extract from Professor Löfstedt’s report explains the reasons for this recommendation *“There is a case for following a similar approach to other countries and exempting from health and safety law those self- employed people (i.e. those that do not have any employees) whose workplace activities pose no potential risk of harm to others. This would benefit approximately 1 Million people. 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 will complement HSE’s recently revised guidance on home-workers. I therefore recommend exempting from health and safety law those self-employed whose work activities pose no potential risk of harm to others. This change should not affect the duties that others have towards a self-employed person. It is vital that this change is accompanied by clear guidance to ensure that the limited scope of the change is clearly understood and that not all the self-employed will be exempt”*.

4.3 In response to Professor Löfstedt’s recommendations, the Government asked HSE to draw up proposals for changing the law *“to remove health and safety burdens from the self-employed in low risk occupations, whose activities represent no risk to other people. This will bring Britain into line with other European countries, who have taken a more proportionate approach when applying health and safety law to the self-employed and will free around one million people from red tape without impacting on health and safety outcomes”*.

4.4 The policy objective was therefore to exempt from Section 3(2) HSWA those self-employed whose work activities pose no risk to the health and safety of others, excluding those undertaking specified high risk activities. The intended effect was to remove the burden of implementing health and safety legislation for those self-employed and to remove the fear of inspections and possible prosecutions.

4.5 Subsequently, SE 2015 came into force on 1 October 2015. This followed two public consultation exercises, one in 2012 (on options for implementing the recommended change) and one in 2014 (on the clarity of the definitions where the self- employed would continue to have duties).

4.6 SE 2015 set out the ‘prescribed descriptions of undertakings by reference to a short list of high risk activities where there should clearly be no exemption from

section 3(2) HSWA (set out in Regulation 2 (a) and the Schedule to SE 2015) and a “catch-all” (or risk based) provision to ensure that those self-employed who may pose a risk to others are not exempt from section 3(2) HSWA (set out in Regulation 2 (b)).

4.7 The short list of high risk activities set out in the Schedule to SE 2015 (where no exemption would apply) included Agriculture & Forestry, Asbestos, Construction, Gas, Genetically Modified Organisms and Railways. These high risk activities include those where there was an EU requirement which imposed a specific duty on the self-employed person (e.g. those working in construction) or where there should be no question over their exemption- either because the activities were conducted by high numbers of self-employed persons who create risks to themselves or others and/ or which statistically result in high numbers of injuries/fatalities to self-employed persons.

4.8 A self-employed person who is an employer will continue to be bound by section 3(1) of HSWA (the duty of every employer to conduct their undertaking in such a way as to ensure, so far as reasonably practicable, that persons not in their employment who may be affected are not exposed to risks to their health and safety) and section 2 (general duties of employers to their employees).

4.9 A self-employed person who does not conduct an undertaking prescribed in SE 2015 and who is not an employer will have no duties under HSWA in relation to themselves or other persons in how they conduct their undertaking.

5. SELF-EMPLOYED WORKERS IN THE ECONOMY

5.1 Section 53 of HSWA provides a broad definition of a self-employed person. It states a “*self-employed person means an individual who works for gain or reward otherwise than under a contract of employment, whether or not he himself employs others*”.

5.2 Self-employment can therefore take many forms - entrepreneurs, freelancers, sole traders, contractors etc.

5.3 For the purpose of the review, the term ‘self-employed’ includes both those who are full time self-employed workers and also those who work part time on a self-employed basis.

5.4 ONS official statistics show that there has been a growth in self-employment over the years. In 2001 the numbers of self-employed were estimated to be around 3.3 Million.

5.5 More people are now self-employed than before and the types of people who are likely to be self-employed are different to those in the past. While the underlying trends differ, self-employment has become more prevalent among both men and women since 2001.

5.6 Among male workers, part-time self-employment grew the fastest between 2001 and 2016, while the growth in full-time employees and self-employment remained broadly flat. In comparison, both full-time and part-time self-employment grew strongly among females over the same period.

5.7 The increase in self-employment has also varied considerably among different age groups. While self-employment has been moving upwards for all age groups, the economic downturn saw a sharp rise in the number of those aged 65 and above moving into self-employment, with both full-time and part-time self-employment growing strongly among this group. The 16 to 24 age group also saw relatively strong growth between 2001 and 2016. While full-time self-employment among the 16 to 24 age group saw a gradual increase from 2001 to 2006, since then it has remained broadly flat while the growth in part-time self-employment has continued to grow.

5.8 The largest number of self-employed workers overall are aged 45 to 54, but the largest increase has occurred in self-starters aged 65 and above, where numbers have grown from 159,000 to 469,000 between 2001 and 2016.

5.9 At the time of SE 2015 coming into force on 1 October 2015, it was estimated in the [Impact Assessment](#) that there were approximately 3.8 Million self-employed

jobs in the labour market where the self-employed worker did not have employees. This estimate accounted for individuals self-employed in their main undertaking (3.4 Million) in addition to those self-employed in a second undertaking (0.4 Million). It was estimated that around 1.8 Million self-employed jobs would fall out of scope of Section 3 (2) HSWA as a result of the legislative change. This was based on an assessment of the proportion of self-employed in each sector likely to be exempt (by standard industrial classification (SIC)).

5.10 The current number of exempted self-employed is more uncertain and difficult to establish. ONS data for January to March 2020 shows there to be around 5 Million self-employed individuals, compared with 3.8 Million at the time SE 2015 came into effect.

5.11 Even though the numbers of self-employed have increased from 3.3 Million in 2001 to around 5 Million more recently, the upward trend in self-employment started prior to 2015 and there is no evidence to suggest that this growth can in any way be attributed to SE 2015.

6. SCOPE AND SCALE OF THE POST IMPLEMENTATION REVIEW (PIR)

6.1 In line with Government guidance in the ‘Better Regulation Framework Manual’ and ‘Guide for conducting PIRs’, consideration was given to the scope and scale of the review. ‘Scope’ refers to whether the PIR should consider the impact of the specific legislative changes or whether it should consider the appropriateness of the overarching legislative framework in which the changes sit. ‘Scale’ considers the wider importance of the PIR in terms of its political visibility, predicted economic impact, number of affected duty holders etc. and therefore the level of resource required (high, medium or low).

6.2 In the case of SE 2015, the ‘scope’ was considered to be wide i.e. that the prescribing of undertakings should be considered in the context of the wider regulatory objective (to exempt those self-employed whose work activities pose no potential risk of harm to others).

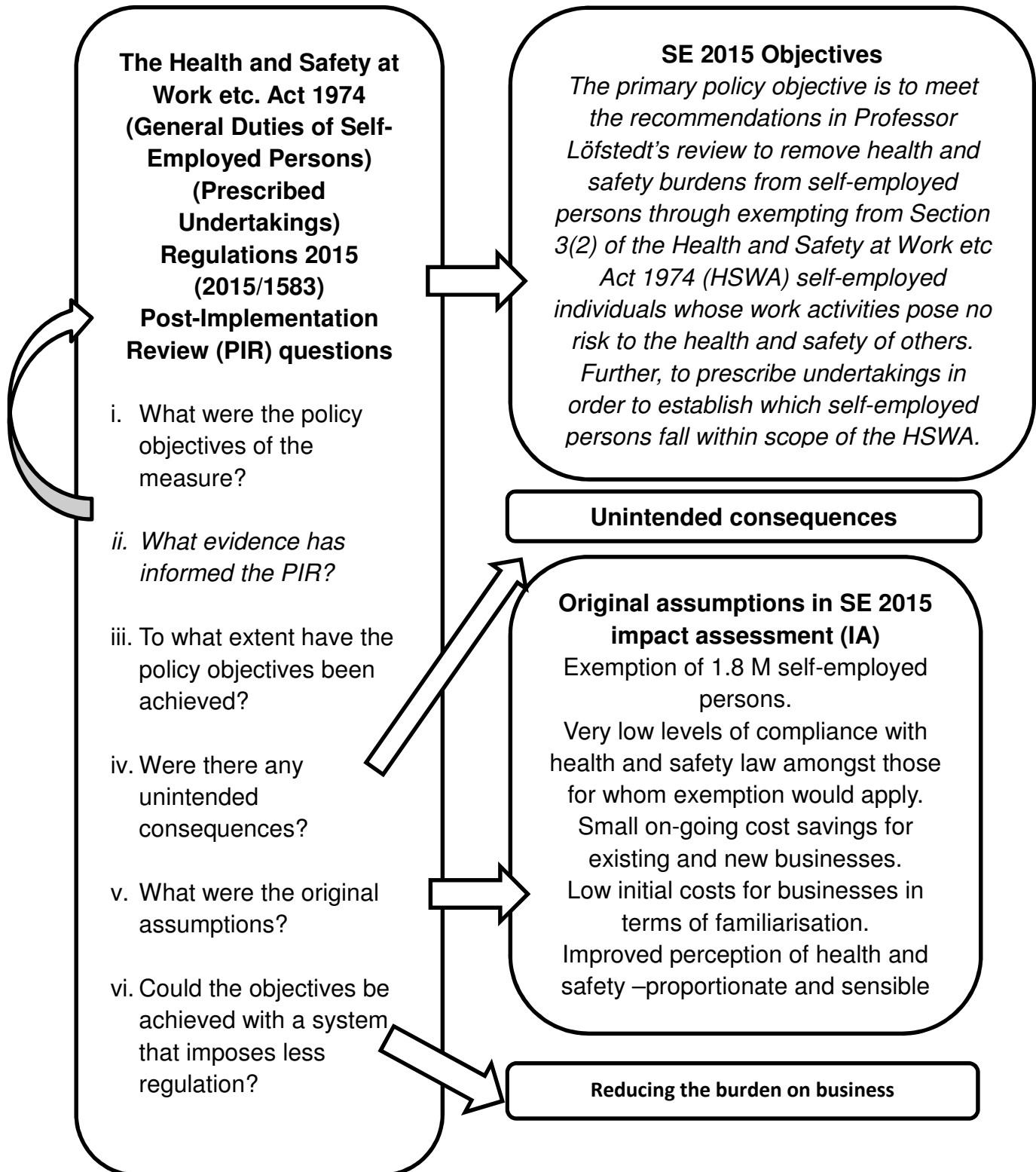
6.3 The ‘scale’ of the review was considered to be ‘low’ due to:

- SE 2015 being a deregulatory measure which removed burdens on business;
- Net savings to the self-employed of £4.7 Million over the 10 year appraisal period, equivalent to Annual Net Costs to Business (expressed in 2009 prices) of -£0.41 Million.
- The low expected impact of SE 2015 on the self-employed. Initial consultation evidence suggested that the low risk individuals in scope of SE 2015 were unaware of their health and safety duties, hence the profile and risk of SE 2015 is considered to be “low”.

6.4 Evidence to support the review was intended to be gathered in a two phased approach to ensure that the review was proportionate.

7. STRUCTURE OF THE EVIDENCE REVIEW

7.1 The structure of the evidence review, which supports this PIR, is detailed in Diagram 1 (below)



8. SUMMARY OF THE EVIDENCE REVIEW

8.1 This section summarises the evidence gathered to support the review findings, a full analysis of which can be found in Appendix 2 evidence review.

8.2 The evidence was intended to be gathered in a phased approach. The first phase included a range of data collection methods: analysis of existing data and evidence sources, interviews with external stakeholders (trade unions, trade associations, professional bodies and a health and safety consultant), engagement with external regulators (LAs and ORR) and HSE's regulatory, sector and policy colleagues operating across a wide industry spectrum.

8.3 This structured approach considered the changes brought about by the introduction of SE 2015 in terms of the following questions:

- i. What were the policy objectives of the measure?*
- ii. What evidence has informed the PIR?*
- iii. To what extent have the policy objectives been achieved?*
- iv. Were there any unintended consequences?*
- v. What were the original assumptions?*
- vi. Has the evidence identified any opportunities for reducing the burden on business?*

8.4 *What were the policy objectives of the measure?*

8.4.1 The primary policy objective was to meet the recommendations in Professor Löfstedt's review to remove health and safety burdens from self-employed persons through exempting from Section 3(2) of HSWA self-employed individuals whose work activities pose no risk to the health and safety of others. Further, to prescribe undertakings in order to establish which self-employed persons fall within scope of the HSWA.

8.5 *What evidence has informed the PIR?*

8.5.1 The evidence is detailed more fully in Appendix 2, but in summary included:

- An online survey of LAs in their role as regulators.
- Telephone interviews with key external stakeholders (2 trade associations, 2 trade unions, 1 health and safety consultant, 1 professional body) and a written submission.

- A survey of HSE staff in both operational and policy roles. This also included engaging with ORR in their capacity as co-regulators of one of the prescribed categories in SE 2015.
- A review of existing sources of evidence (including research evidence from the two public consultation exercises, key published literature, analysis of hits on HSE's website and data from HSE's Concerns and Advice Team (CAT))
- Analysis of statistical data on accident/ injury rates amongst the self-employed (in comparison with those for employees)

8.6 ***To what extent have the policy objectives been achieved?***

8.6.1 The majority of stakeholders expressed the view that SE 2015 had made no difference to the self-employed because there was no substantive regulatory burden felt by them in the first place.

8.6.2 The majority of LA respondents were of the view that the exemption had no effect on the burdens experienced by the businesses they regulate. There was a sizeable minority who thought that the self-employed were finding the exemption harder to understand. They expressed the view that the self-employed had very little understanding of health and safety legislation before the exemption was introduced and the majority felt that the introduction of the exemption had had a mainly neutral effect. Most had seen no change in their number of contacts with the self-employed.

8.6.3 There was a clear divide in the views of the external stakeholders as to whether or not SE 2015 had reduced regulatory burdens. For a trade association whose members are small and micro businesses there was a positive response in favour of the exemption. This contrasted with the trade union views that the exemption hadn't reduced burdens but rather created confusion and lack of clarity. Some were of the opinion that there was no regulatory burden in the first place, either because the self-employed weren't aware of legislation or they would not have been doing anything prior to the exemption. Although some benefits were mentioned, the overriding theme was that SE 2015 had made very little difference and had led to negative impacts including confusion, an adverse impact on safety culture, lowering protections for the self-employed and increasing 'bogus' self-employment to avoid regulatory duties. The written response from the professional body echoed the trade union views and felt the exemption removed a 'non-existent burden' which was described in Professor Löfstedt's review as '*not particularly significant*'.

8.6.4 The internal survey of HSE's regulatory; sector and policy staff concluded that the outcome of the exemption had been fairly neutral. Responses from the prescribed sectors (where no exemption exists) stated that there had been no

change to the self-employed in terms of the requirements on them to comply with health and safety legislation. Amongst the sector and policy areas subject to the risk-based exemption, there was also a view that there had been little change in terms of regulatory burdens for the self-employed mainly due to the exemption not applying to those whose activities pose a risk to the health and safety of others.

8.6.5 ORR were of the opinion that the inclusion of railways as a prescribed undertaking in SE 2015 remains essential to ensure that all those engaged in activities related to railway safety are protected by health and safety controls.

8.6.6 The review of existing evidence sources (including the two public consultations and qualitative research with the self-employed) was consistent with the view that there is likely to be a low level of awareness and understanding of health and safety legislation amongst the self-employed working in low risk occupations.

8.6.7 Analysis of HSE internal data on web hits were reviewed to establish the level of engagement by the self-employed sector and whether or not this had changed following the exemption. Since October 2015, the number of hits on HSE's self-employed webpages has remained relatively static at around 5,000 'hits' per quarter which suggests relatively little interest when compared with over 2.5 Million 'hits' on the risk management pages of the website over the same period.

8.6.8 Data from CAT was analysed to look at the level and nature of enquiries from the self-employed pre and post exemption. In 2015 /16 the CAT team responded to approx. 1500 enquiries from the self-employed - this has since fallen to less than 1000 in 2018 /19. Out of 4716 advice calls from the self-employed over this period, none related specifically to the exemption.

8.6.9 Statistical analysis of accident/ incident rates for the self-employed pre and post exemption showed that employee and self-employed rates for over 7 day absence injuries, averaged over a three year period prior to 2015 and post 2015 were not statistically significantly different.

8.6.10 The available evidence therefore suggests that the exemption is unlikely to have had a significant impact on the self-employed given that they are low risk and are unlikely to be actively following health and safety regulation in the first place. This is consistent with the assumptions made in the Impact Assessment.

8.7 ***Were there any unintended consequences?***

8.7.1 External stakeholders expressed mixed views - three stated that there had not been any unintended consequences. The other three outlined a range of possible

unintended consequences - increase in complexity and confusion, growth in self-employment, negative messaging around health and safety being a burden, adverse impact on health and safety culture, reduced standards of protection for the self-employed etc.

8.7.2 Some of the LAs mentioned unintended consequences, these included the exemption creating confusion and an increase in 'bogus' self-employment to avoid health and safety responsibilities.

8.8 *What were the original assumptions?*

8.8.1 The [Impact Assessment](#) (IA) for the exemption, completed in May 2015, estimated the following impacts (total net present value over a 10 year appraisal period):

- Time savings for exempt self-employed (new and existing) who no longer need to keep up to speed with health and safety regulation - £8.0 Million
- Additional time spent by existing self-employed to determine if they are exempt or not - £3.4 Million.

This gave total net estimated savings of £4.7 Million over 10 years, or £540,000 equivalent annual cost.

8.8.2 The main assumptions used in the IA calculations were:

- 1.8 Million self-employed would be exempted, based on an assessment of the proportion of self-employed in each sector likely to be exempt
- Those exempted would not change their risk management behaviour as qualitative research with the self-employed in 2012 found the regulatory requirements were not a driver for their behaviour
- There would be no adverse impact on health and safety protections or outcomes
- There would be no cost-savings due to risk management changes- the primary saving would come from time no longer spent familiarising or keeping up to date with regulations
- Only a small minority of the self-employed were aware of their health and safety duties (around 10%), therefore only 10% would benefit from time savings
- 180,000 exempted self- employed (10% of 1.8 Million) would save an average 15 minutes per year no longer keeping up to date
- 10% of all self- employed (3.8 Million at the time of the IA) i.e. 380,000 would need to spend between 15 minutes and 1 hour on average determining their exemption status.

8.8.3 The Impact Assessment estimated a very low impact from the exemption. The £8 Million familiarisation saving over 180,000 self-employed represents less than £5 per self-employed each year. Given the low expected impact, a detailed review of the IA assumptions was deemed disproportionate. However, the following can be drawn from the PIR evidence:

The exemption has had limited impact on actual regulatory burdens, either in terms of time and cost savings or additional confusion/ complexity leading to greater costs.

There is little evidence that the self-employed have changed their risk management practices or of an adverse impact on health and safety.

The number of exempted self-employed is more uncertain. Current ONS data suggests there are now around 5 Million self-employed compared with 3.8 Million in the IA, suggesting that the actual number of self-employed exempted may be higher than estimated. This would, however, still give a small impact.

8.8.4 The PIR evidence therefore broadly supports the estimates in the 2015 IA.

8.9 *Has the evidence identified any opportunities for reducing the burden on business?*

8.9.1 SE 2015 is a deregulatory measure which was intended to reduce burdens on business by exempting certain self-employed from Section 3 (2) of HSWA. The evidence collected as part of the first phase suggests that in practice the exemption is unlikely to have made a significant difference to the actual burdens experienced by the self-employed. As such, the evidence has not identified any opportunities for reducing burdens.

9. CONCLUSIONS AND RECOMMENDATIONS

9.1 In terms of meeting the objectives and the likely impact of SE 2015 on the self-employed, evidence from stakeholders during the first phase, was mixed. There was a divide between the views of organisations representing small businesses who were in favour of measures which reduce regulatory burdens on their members and trade unions who felt that any reduction in health and safety legislation sends the wrong messages to businesses, lowers the protection for self-employed workers and leads to a growth in companies moving towards de-centralised models. A written response was received from a professional body expressing similar views to that of the trade unions.

9.2 External stakeholders (LAs, a professional body, a trade association and a health and safety consultant) also expressed the view that SE 2015 had made very little difference to the self-employed and therefore hadn't achieved the objective of reducing regulatory burdens either because there was no regulatory burden in the first place or because the self-employed are unlikely to be aware of the exemption.

9.3 Some stakeholders expressed the view that SE 2015 should be amended as health and safety legislation should apply to all, some of those expressing this view felt SE 2015 had made little difference to the self-employed whereas others felt that SE 2015 had reduced the protection for the self-employed.

9.4 There is limited data available from the first phase as to the actual impact of SE 2015 on the self-employed. However, no evidence was provided by stakeholders of any actual adverse impacts. Results from the LFS show that employee and self-employed injury rates, pre and post 2015 were not statistically significantly different.

9.5 Due to the inconclusive nature of the evidence gathered during the first phase and the unexpected consequences of the Covid-19 outbreak on the second phase, this review makes only one recommendation and that is for SE 2015 to remain unchanged until such time as further research with the self-employed sector is undertaken to enable evidence based conclusions and recommendations to be made. This second phase research will be undertaken and a report will be published by 1 October 2021.

<p>Title: The Health and Safety at Work etc Act 1974 (General Duties of Self-Employed Persons) (Prescribed Undertakings) regulations 2015</p> <p>PIR No: PIR009</p> <p>Original IA/RPC No: HSE0071/ RPC12-HSE 1418(3)</p> <p>Lead department or agency: Health and Safety Executive</p> <p>Other departments or agencies:</p> <p>Contact for enquiries:</p> <ul style="list-style-type: none"> Nick Johnson – nick.johnson@hse.gov.uk Tanya Stewart – tanya.stewart@hse.gov.uk 	Post Implementation Review
	Date: 27/08/2020
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force:
	RPC Opinion: Choose an item.

1. What were the policy objectives of the measure? (Maximum 5 lines)

The objectives of the Regulations are to exempt from Section 3(2) of the Health and Safety at Work etc Act 1974 (HSWA) self-employed workers whose work activities pose no risk of harm to the health and safety of others; whilst prescribing undertakings so it is clear that the duty still extends to self-employed persons who undertake high risk activities (listed in the schedule to the regulations) or whose activities may pose a risk to the health and safety of others.

2. What evidence has informed the PIR? (Maximum 5 lines)

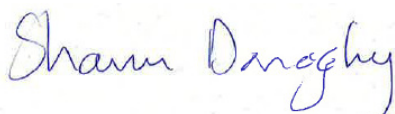
- Survey of Local Authorities in their role as co-regulators
- External stakeholder interviews
- Survey of colleagues across HSE in both operational and policy roles
- Review of existing sources of evidence (consultations, research and LFS data)
- RIDDOR statistics were analysed along with data from HSE's Concerns and Advice Team (CAT)

3. To what extent have the policy objectives been achieved? (Maximum 5 lines)

The objectives were met in terms of exempting low risk self-employed individuals from Section 3(2) of HSWA. However, in practice the exemption appears to have made very little difference. The majority of stakeholders expressed the view that the Regulations had made no substantive difference to the self-employed because there was no regulatory burden felt by them in the first place.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister: I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed:



Date: 27/08/2020

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?(Maximum 5 lines)

- 1.8 Million Self-employed would be exempted.
- Those exempted would not change their health and safety risk management behaviour
- As a consequence, there would be no adverse impact on health and safety protections
- There would therefore be no cost-savings due to changes in risk-management or compliance practices, and the primary saving would arise from time no longer spent familiarising or keeping up-to-speed with the regulations

5. Were there any unintended consequences? (Maximum 5 lines)

- Creating confusion and the potential for misunderstanding was mentioned in both the telephone interviews and by Local Authority responders
- Moving to devolved employment models or becoming self-employed to avoid health and safety responsibilities, termed 'bogus self-employment' was also highlighted in both the telephone interviews and in the Local Authority survey as potential unintended consequences.

6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)

- The self-employed exemption was in itself a de-regulatory measure aimed at reducing burdens on business
- The evidence collected so far suggests that in practice the exemption is unlikely to have made a significant difference to the actual burdens experienced by the self-employed

7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business? (Maximum 5 lines)

Not applicable

APPENDIX 2

Evidence Review (Phase 1)

Author(s): Alison Higgins, Michael Zand and Rachel Wilson

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SUMMARY

- Regulation 3 of the Health and Safety at Work etc. Act 1974 (General Duties of Self-Employed Persons) (Prescribed Undertakings) Regulations 2015 (SI 2015/1583) ('SE 2015') requires a review of SE 2015 to take place before 1st October 2020.
- The review – known as a post-implementation review (PIR) – requires that the objectives of SE 2015 be set out, assessed to see whether they have been achieved and whether they can be achieved with less regulation.
- The objective of SE 2015 was to exempt self-employed individuals who pose no risk to the health and safety of others and prescribe undertakings where the self-employed continue to have duties under health and safety legislation.
- A phased approach to data collection was agreed to ensure that the review was proportionate and light touch. This report provides the review of evidence from the first phase of data collection (Phase 1).
- A range of approaches to data collection were used to gather initial evidence from both external and internal stakeholders including analysis of existing data/ evidence sources and a survey of internal stakeholders. An on-line survey of Local Authorities and telephone interviews with 6 external organisations also formed part of Phase 1.
- In terms of meeting the objectives of SE 2015 and the likely impact of the regulations on the self-employed, mixed views were expressed by stakeholders. There was a divide between the views of organisations representing small businesses who were in favour of measures which reduce regulatory burdens on their members and trade unions who felt that any reduction in health and safety legislation sends the wrong messages to businesses, lowers the protection for self-employed workers and leads to a growth in companies moving towards de-centralised models. A written response was received from a professional body expressing similar views to that of the trade unions.
- External stakeholders (Local Authorities, a professional body, a trade association and a health and safety consultant) also expressed the view that the regulations had made very little difference to the self-employed and therefore hadn't achieved the objective of reducing regulatory burden either because there was no regulatory burden in the first place or because the self-employed are unlikely to be aware of the exemption.
- Internal stakeholders also felt that the exemption had made very little difference in the areas/ sectors they covered.
- Some stakeholders expressed the view that the regulations should be amended as health and safety legislation should apply to all, some of those expressing this view felt the regulations had made little difference to the self-employed whereas others felt that the regulations had reduced the protection for the self-employed.

- There is limited data available from Phase 1 on the actual impact of the regulations on the self-employed. However, no evidence was provided by stakeholders of any actual adverse impacts. Results from the Labour Force Survey show that employee and self-employed injury rates, pre and post 2015 were not statistically significantly different.
- Given the inconclusive nature of the evidence collected during Phase 1, further data collection with the self-employed is recommended when timing is considered to be appropriate- this data collection was put on hold due to impacts on the self-employed sector associated with the Covid-19 outbreak.

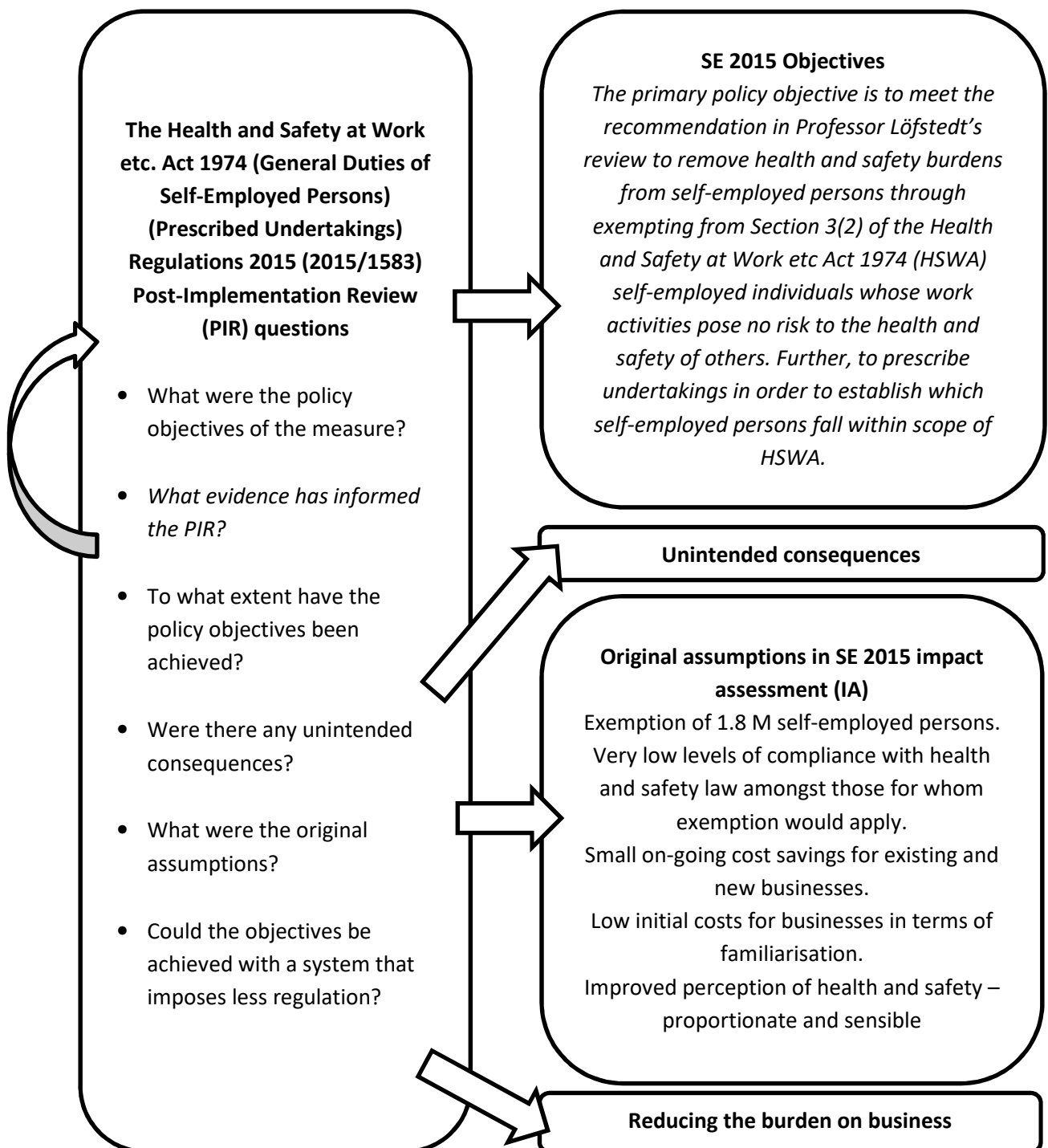
INTRODUCTION

1. This Evidence Review has been undertaken by the Health and Safety Executive (HSE) to accompany and support the Post-Implementation Review (PIR) of The Health and Safety at Work etc. Act 1974 (General Duties of Self-Employed Persons) (Prescribed Undertakings) Regulations 2015 (SI 2015/1583) ('SE 2015').
2. SE 2015 regulations exempt from Section 3(2) of the Health and Safety at Work etc Act 1974 (HSWA) those self-employed individuals who pose no risk to the health and safety of others. The Regulations prescribe undertakings where the self-employed continue to have duties under Section 3(2) HSWA such that those self-employed persons who carry out a work activity which is either set out in the Schedule to the Regulations or which may pose a risk to the health and safety of another person, are not exempt under HSWA.
3. The PIR, and the corresponding report, must meet the legislative requirements set out in Regulation 3 of SE 2015 to "*carry out a review of these regulations*" within five years of the regulations coming into force (so 1st October 2020). Regulation 3 specifies that the PIR report must:
 - (a) set out the objectives intended to be achieved by the specified regulations;
 - (b) assess the extent to which those objectives are achieved (*i.e. has SE 2015 achieved what it originally set out to?*); and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation (*i.e. does SE 2015 still remain appropriate? Is SE 2015 still the most appropriate approach?*).
4. As background, one of the key recommendations made by Professor Löfstedt in his report "Reclaiming health and safety for all: An independent review of health and safety regulation," was to exempt from health and safety law those self-employed people whose work activities pose no potential risk of harm to others. In response to Professor Löfstedt's recommendations the Government asked HSE to draw up proposals for changing the law "to remove health and safety burdens from the self-employed in low risk occupations, whose activities represent no risk to other people. This will bring Britain into line with other European countries, who have taken a more proportionate approach when applying health and safety law to the self-employed and will free around one million people from red tape without impacting on health and safety outcomes."
5. As part of the PIR planning process, HSE's Regulation Committee assessed the SE 2015 PIR in terms of its scope and scale. 'Scope' refers to whether the PIR needs to look at the impact of the specific legislative changes or, alternatively, whether it should consider the appropriateness of the overarching legislative framework in which the changes sit. Alongside this, 'scale' considers the wider importance of the PIR in terms of its political visibility, predicted economic impact, number of duty-holders it affects, etc. and therefore the level of resource which is required (high, medium or low). In the case of the SE 2015, the scope was considered to be wide i.e. the prescribing of undertakings to be considered in the context of the wider regulatory objective (to exempt those self- employed whose

work activities pose no potential risk of harm to others). The scale was considered “low” due to:

- SE 2015 being a deregulatory measure which removed burdens on business;
 - Net savings to the self-employed of £4.7 million over the 10 year appraisal period, equivalent to Annual Net Costs to Business (expressed in 2009 prices) of -£0.41 million.
 - The low expected impact of SE 2015 on the self-employed. Initial consultation evidence suggested that the low risk individuals in scope of the regulations were unaware of their health and safety duties, hence the profile and risk of the Regulations is considered to be “low”.
6. While Regulation Committee determined scope and scale, HSE’s Evaluation Governance Group (EGG) considered whether the proposed research approach was proportionate and sensible. To this end, EGG assessed whether the suggested data collection methods were appropriate to obtain the required evidence but not so onerous as to place an undue burden on duty-holders. The EGG agreed that the proposed research approach lent itself to a low-level, or ‘light-touch’, PIR and that there should be a phased approach to data collection with the initial phase seeking to establish the views of key stakeholders and to determine whether or not the measure remained contentious. EGG agreed that, depending on the outcome of Phase 1, a further phase would collect data on the actual impact on the self-employed.
7. To answer the specific questions within Regulation 3, a range of proportionate approaches to data collection were used. This included:
- A review of existing sources of evidence (including research evidence from consultation exercises, key published literature, analysis of hits on HSE’s website and enquiries processed through HSE’s Concerns and Advice team (CAT));
 - Analysis of statistical data on accidents/injury rates amongst the self-employed (in comparison with employee accident/ injury rates);
 - An internal survey of stakeholders within HSE covering policy leads and operational colleagues for exempt and non-exempt activities;
 - An on-line survey of Local Authorities;
 - 6 telephone interviews with organisations representing the self-employed. A professional body submitted a written reply in response to HSE’s request for stakeholder views on the regulations.
8. The structure of the PIR Evidence Review is detailed in Diagram 1 (below), with the numbered sections directly mapping onto headings within the main evidence review document (e.g. *i. What were the policy objectives ...*’ in the diagram equates to the *i. What were the policy objectives ...*’ headed section in the main evidence review document).

Diagram 1: Structure of the PIR evidence review



POST- IMPLEMENTATION REVIEW (PIR) QUESTIONS

9. The PIR therefore considers the legislative changes made by SE 2015 in terms of the following questions:

- i. **What were the policy objectives of the measure?**
- ii. **What evidence has informed the PIR?**
- iii. **To what extent have the policy objectives been achieved?**
- iv. **Were there any unintended consequences?**
- v. **What were the original assumptions?**
- vi. **Has the evidence identified any opportunities for reducing the burden on business?**

i. What were the policy objectives of the measure?

10. The objectives of the SE 2015 regulations were to *exempt from Section 3(2) of the Health and Safety at Work etc Act 1974 (HSWA) self-employed individuals whose work activities pose no risk to the health and safety of others, by prescribing undertakings so it is clear that the duty still extends to self-employed persons who undertake certain high risk activities (listed in the schedule to the regulations) or whose activities may pose a risk to the health and safety of others.*

11. As to whether these stated policy objectives of SE 2015 have been achieved, this will be covered below in section '*iii. To what extent have the policy objectives been achieved?*'.

ii. What evidence has informed the PIR?

12. The evidence which has informed the SE 2015 PIR is detailed in this document, the 'Evidence Review' and associated annexes.

ii. a) On-line survey of Local Authorities

13. Local Authorities are a key stakeholder for the implementation of the regulations as they enforce them jointly with HSE. Low risk occupations are also more likely to be covered by local authority enforcement. In order to capture their views a survey was developed using the online survey tool SurveyMonkey¹. The questions were hosted online, with a web-link generated which was sent out to Local Authorities via the HELex extranet forum. The survey asked questions about stakeholders views on the regulations and the impact of the regulations on the self-employed such as in terms of reduced burdens and understanding of health and safety regulation. The question set is provided at Annex 1.

14. Local Authorities were e-mailed with the web-link to the survey and asked to complete the survey online. In total, there were 42 completed responses to the survey.

¹ <https://www.surveymonkey.co.uk/>

Title of survey	Date undertaken	No. of respondents
SE 2015 Local Authority survey	4 th February – 6 th March 2020	n = 42 (full responses to survey)

15. Respondents were initially given 2 weeks to complete the survey, which was extended from the 18th February to the 6th March to give respondents further time to complete the survey. Two reminders were issued via the forum. Further details of the responses to the survey are provided below:

Table 1: Has the exemption reduced the burdens on the Self-Employed?

	Q 1. What effect do you think the exemption has had on burdens on self-employed businesses that you regulate? Has there been....
No change?	29 (69%)
Significant reduction?	3 (7%)
Slight reduction?	10 (24%)
Grand Total	42

16. Among the Local Authorities who responded to the survey, the majority (29) expressed the view that the exemption of some self-employed workers and business people from some health and safety legislation had no effect on the burdens experienced by the businesses they regulate. A sizeable minority (13) felt that the exemption had reduced the burdens on these businesses. No respondents indicated that they thought the exemption had increased burdens for the self-employed.

Table 2: Has the exemption affected understanding of health and safety legislation amongst the self-employed?

	Q 2. What effect do you think the exemption has had on how the self-employed understand health and safety legislation and/or guidance? Do they find it...
Easier to understand?	1 (2%)
Harder to understand?	12 (29%)
No easier or harder to understand?	29 (69%)
Grand Total	42

17. Most responses to question 2 (29) were neutral, expressing the opinion that the regulations were neither easier nor harder to understand. A sizeable minority (12) thought that the self-employed were finding the new exemptions harder to understand.

18. Among respondents answering ‘harder to understand’ and ‘no easier or harder to understand’ and supplying explanations for their answers, the majority expressed the view that the self-employed had very little understanding of health and safety legislation, even before the exemption was introduced. A couple of further contributions expressed a need for greater guidance as to whom the exemptions applied, and more for the self-employed than just a website. A minority made no additional comment due to their having so little contact with the self-employed.

Table 3: Have the outcomes from the introduction of the self-employed exemption been mainly neutral, negative or positive?

	Q 3. Have the outcomes from the introduction of the self-employed exemption been mainly...
Negative	10 (22%)
Neutral	31 (74%)
Positive	1 (2%)
Grand Total	42

19. Most responses (31) to question 3 indicated that Local Authorities feel that the introduction of the self-employed exemption has had a mainly neutral effect. A minority (10) expressed the view that the exemption has had a negative effect on the self-employed.

Table 4: Has your number of contacts with the self-employed changed following the exemption?

	Q 4. Has your number of contacts with the self-employed following this exemption.....
Decreased?	13 (31%)
Increased?	1 (2%)
Stayed the same?	28 (67%)
Grand Total	42

20. Most responses (28) to question 4 indicated that Local Authorities had seen no change in their number of contacts with the self-employed, following the exemption. A sizeable minority (13) asserted that their contacts had decreased since the exemption was introduced.

Table 5: Have you experienced any difficulty applying the exemption?

	Q 5. As a regulator, have you experienced any difficulty in determining whether health and safety legislation applies to a specific self-employed person, or self-employed people working in certain industries or sectors?
No	32 (76%)
Yes	10 (24%)
Grand Total	42

21. Most of the Local Authorities responding to question 5 (32) expressed the view that they had no problems determining which sectors or self-employed workers were subject to health and safety legislation. Almost a quarter of responding authorities (10) indicated that they found this problematic. There were very few specific supplementary comments given for question 5; the only sectors or professions receiving more than one mention were ‘beauty and hairdressing’ and ‘gas and/or electrical contractors’.

Table 6: Do you think any changes to this legislation are necessary?

	Q 6. As a regulator of self-employed business people, do you think any changes to this legislation are necessary?
No	24 (57%)
Yes	18 (43%)
Grand Total	42

22. Among responses to question 6, opinion was less clearly divided. Just over half of the responders (24) expressed the opinion that no changes to the current legislation are needed, compared to just under half (18) who indicated that changes to the legislation are necessary.

23. Most of the responders who felt that changes to the regulation were needed provided explanatory comments. The majority of the comments held that health and safety legislation should apply to all workers and workplaces, regardless of self-employed status. 4 responders went as far as stating that the exemption should be removed. Smaller proportions of comments concerned the need for further guidance for the self-employed and expressed the view that legislative change wasn’t needed in the first place (see Table 7).

Table 7: What changes would you like to see to the Regulations?

Q6 As a regulator of self-employed business people, do you think any changes to this legislation are necessary? If Yes, what changes would you like to see?	
Comment	Theme
Some way of informing regulators that the businesses exist	Regulators need to know self-employed (SE) businesses exist
Health and safety needs to apply to all employed people. If a garage states they only have self-employed staff the owner is exempt and so are the staff. They also won't report accidents, why should they no-one enforces them.	H&S regulation must apply to all
Additional guidance about what is deemed to affect others (e.g. clients of service sector injured by beauty treatments incorrectly applied) and about what is regarded as employment (e.g. directed but 'self employed', family members and 'friends' helping out)	Additional guidance needed for SE
I feel they should be included the same as employed people	H&S regulation must apply to all
I don't think they should be exempt. The law should apply to all equally. Obviously the previously exempt groups would need minimal H&S documentation etc, but as a regulator we are unlikely to be in contact with them unless there has been a serious accident, as this type of business is considered low risk.	H&S regulation must apply to all
Only that it was a misguided intervention in the first instance. I did not understand this group to face any additional burden that was not already catered for in the existing legislative structure and imposition has only opened up potential for greater misunderstanding.	Change wasn't needed
Regulations related to keeping premises safe should still apply because we can then encourage them to make their work premises safer for them and those that have to visit them.	H&S regulation must apply to all
Remove all exemptions and return to the status quo ante	Remove exemption for SE
If there is an accident by a self-employed person who decides if their work is exempt...e.g. grocer at a market stall...whose work is very very low risk but puts up a gazebo that is not weighted and after an accident is exempt??	Additional guidance needed for SE
Revocation of the Regulations.	Remove exemption for SE
This change was not required in the first place	Change wasn't needed
I think the exemption will generally lead to more people being inured through work activities.	Negative impact
Abolish	Remove exemption for SE

Table 7 Continued: If Yes, what changes would you like to see?	
We have served a Prohibition Notice on a mixer for lack of a bowl guard. The owner got round the PN by only allowing himself as a self-employed person to use the unguarded machine and ensuring his employees did not go in to the area whilst the mixer was in use. I am not sure if this was the intention of the legislation and as such does an amendment need to be made so that PNs applied to all persons in the business not just employees and non-workers that may be affected.	H&S regulation must apply to all
The legislation has no impact; the only time we tend to see self-employed businesses are when they submit a RIDDOR. If the accident is to themselves we are unlikely to take formal action as not in public interest and if accident has occurred to a member of the public then automatically (by definition) has affected the public therefore not exempt.	No impact
Emphasize they still have to understand H&S, and comply with the law, especially if their work activity involves and affects others. At the moment they believe they don't need to worry about it, and that includes employing ad hoc zero hours staff, who they do not consider to be their employees...	Additional guidance needed for SE
Reinstatement of application of HSWA74 to all workers / self-employed or not	Remove exemption for SE

24. Respondents were also asked whether they had any additional comments (question 7). Eight responses were received (details are provided in Table 8 below²).

25. Several comments (3) indicated that there is a need for greater understanding of health and safety at work in general among the self-employed and one commented that the exemption had created confusion. Several responses (3) also expressed the view that the exemption had made very little impact or had led to no negative impact. Three comments were received under the 'not applicable' theme which are not recorded in the table, either no comment or unable to comment due to very little dealings with the self-employed.

² One respondent's answer had more than one theme within it. As such, both themes were recognised and recorded. This means that while there are 8 respondents, there are 9 comments noted

Table 8: Have you any further views or comments that have not already been covered?

Q7. Have you any further views or comments related to the exemption that have not been covered by these questions?	
Comment	Theme
Health and safety has dropped out of sight for small self-employed staff in businesses. Most have no idea about RIDDOR. If staff don't know they won't complain. Good for the statistics but not good for employees.	Greater understanding of health and safety needed among SE
Aside from the confusion created by the many exceptions..	Created Confusion
..There has been very little impact of this legislation positive or negative. Those who are really not intended to be covered were never targeted for proactive interventions anyway.	Very little impact
I do think in line with the policy then those where work does not affect others is sensible in managing risk and health and safety, we have seen no significant increases with accidents or complaints.	No negative impact
I do not think that this change in health and safety law has made it cheaper or easier for self-employed people to operate. This is a group of workers that would benefit from a better understanding of their own health and welfare needs....	Greater understanding of health and safety needed among SE
There is a perception that employers are being undercut by the self-employed and are driving standards for the industry down.	Lowers standards/ unintended consequence
As a regulator I was not aware of these...and will now review and cascade...	Lack of regulator awareness
HASWA only requires safety measures where significant risks exist making these regulations unnecessary ..	No negative impact
How can a small "jobbing" business be allowed to employ a younger person/ apprentice etc and then find that person has an accident. Is the Legislation then debatable in Court as to whether that law applied to that business or not... that is not the right question. This law creates an uncertainty around "a business that presents no risk"... there is always some risk, for which an individual CAN be held accountable even if it reverts to common law.	Greater understanding of health and safety needed among SE

ii. b) Telephone interviews with external stakeholders

26. Six qualitative telephone interviews were completed with external stakeholders between 5th February 2020 and 27th February 2020. Lists of organisations who had commented on the previous HSE “self- employed” consultations were used to select organisations. Stakeholders were grouped into categories to cover the range of responding organisations. These categories were: trade associations, health and safety consultants, trade unions, professional bodies, employers and Local Authorities. A couple of organisations were selected from each category, generally this was through non-random selection methods in order to speak to those who were felt to represent the interests of the self-employed or who covered the largest number of self-employed persons. Where there was no rationale for this, organisations were selected at random (e.g. employers).
27. Stakeholders were sent an email asking them to assist HSE with the PIR through taking part in short telephone interviews. The email explained the purpose of the interview and included the question set. Of the 10 organisations asked to participate in the interviews (not including Local Authorities), 6 organisations agreed to participate and 1 organisation provided a written response (2 trade associations, 2 trade unions, 1 health and safety consultant, 1 professional body). No interviews were undertaken with employers, one was a nil response and the other declined to be interviewed as they had retired and the business had ceased operating. The views of Local Authorities were sought separately in order to reach a much larger number of authorities. The analysis of the interviews is provided below.

Table 9: Have the regulations achieved the objective of reducing regulatory burdens?

Q1. Have the regulations achieved the objective of reducing regulatory burdens for those who are now exempt from the Health and Safety at Work Act?	
Comments	Theme
No regulatory burden in the first place. SE affected by exemption wouldn't have bothered with the regs in the first place. Don't have requirements because less than 5 employees e.g. statement of health and safety policy. (H&S Consultant)	Made no difference - no regulatory burden
Yes, because they are now exempt from H&S legislation. Health and safety regulation was found to be the most burdensome for our members (SMEs and micro businesses in a survey of membership). Membership can be happy with regulation if it's proportionate. Not much of a distinction is made in regulatory requirements for SMEs and micros but micros are distinct, often 7 or less employees. (Trade Association)	Yes – reduced regulatory burdens

Table 9 Continued. Have the regulations achieved the objective of reducing regulatory burdens?	
Don't know. Corporate membership organisation/no contact SE. (Professional Body)	Don't know
..Suspicious if regulatory burdens in the first place. (Professional Body)	Made no difference - no regulatory burden
Don't know.. (Trade Association)	Don't know
...If I wasn't NEBOSH qualified I wouldn't have known that it applies to me and therefore wouldn't have known that it no longer applies to me. Those for whom exemption applies don't realise that a burden has been lifted because it isn't not a burden.. (Trade Association)	Made no difference - no regulatory burden
No don't think so. Everyone needs to make an assessment to see if they comply with the law and have to do that anyway.... SE increasing, potential for greater confusion and of greater importance. (Trade Union)	No
..Change to the law has created confusion, previous position was simple and clear and that simplicity and clarity was very much welcomed.. New scenario (with exemption) not clear and not widely understood. SE increasing, potential for greater confusion and of greater importance. (Trade Union)	Created confusion
...In terms of providing guidance, difficult to describe scenario that exists so that SE and employers know what responsibilities they have, previous scenario simplicity and clarity, SE increasing, potential for greater confusion and of greater importance. (Trade Union)	Negative Impact - Difficult to provide guidance
...Accident rate amongst SE higher than non SE. For a specific view on the impact on SE persons working in specific sectors suggest you speak to TU organisations working in sectors e.g UNITE, BECTU.	Negative Impact - SE higher accident rate
SE increasing , potential for greater confusion and of greater importance. (Trade Union)	Growing significance – more SE
Difficult to answer. Haven't undertaken any consultation with SE. Don't have a great deal of members who are SE & very difficult to reach. Generally dealing with fully employed within workplaces. (Trade Union)	Don't know

28. There was a clear divide between the views of some stakeholders as to whether or not they thought that the regulations have met their objective around reducing regulatory burden. For a trade association whose membership are small and micro businesses there was a very positive response to the exemption and in their opinion any regulatory change which reduces burdens on their members is very much welcomed. This contrasts with the views of a trade union who felt that the exemption hadn't reduced regulatory burdens as everyone needs to consider whether or not the regulations apply to them and had created negative impacts in terms of confusion, making it difficult to provide clear guidance to the self-employed and could lead to increasing accidents amongst the self-employed.

29. The most frequently mentioned themes were that the regulations had made no difference to the regulatory burdens of the self-employed or that they weren't able to say as they hadn't consulted with the self-employed. For those who felt that there was no burden in the first place, this was either because the self-employed weren't aware of the regulations or that they would not have been doing anything prior to the exemption and this would not have changed.

Table 10: Do you think there are any benefits of the de-regulation?

Q2. Do you think there are any benefits of the de-regulation? (to self-employed persons)?	
Comments	Theme
Benefits are extremely limited. Perceived relaxation doesn't actually exist in the way described on HSE website very few jobs where there is no risk to others e.g. hairdresser whether using chemicals or not could still hurt someone. SE web designer could have same injury e.g. dropping laptop on foot but exempt from regulations and reporting under RIDDOR. (Health and Safety Consultant)	Benefits - very limited
Don't know. In a direct way don't think that there has been any. I don't think it's made much of a difference Don't think that there was much of a burden beforehand so lifting this not really made any difference. (professional body)	Made no difference – no regulatory burden
...Messaging, H&S sensible and proportionate may have had benefits – positive (professional body)	Benefit – positive messaging
When de-regulation happened there may have been benefits as people may have looked at whether they are in or out of scope. (Trade Association)	Benefit – short term increase in awareness of legislation
...May have taken b or f word - out of association with health and safety legislation. (Trade Association)	Benefit – positive messaging
..Not had massive effect because burdens not really felt. Not burdensome burdens as they are burdens that aren't felt. (Trade Association)	Made no difference – no regulatory burden
Benefits to SE as a lot of membership don't have access to advice. Greatest barrier to dealing with regulation is access to advice services. Compounding effect, they see regulation as complex, they see it as even more burdensome than it actually is. Seldom go to law firms for advice, tend to use a particular source they use for other things. Benefits to small/micro businesses as they would have been most burdened by regulation	Benefit – reduced regulatory burdens

Table 10. Continued: Do you think there are any benefits of the de-regulation?	
(Continued)... (Trade Association)	
No not from where we're sitting. Still need to be aware of the law and potentially undertake risk assessments. When the change to regulation was muted business organisations were not supportive because of the potential for confusion. Less administration could be argued as a benefit but the gains from this are minor and outweighed by the resulting lack of clarity. (Trade Union)	Negative impact – created confusion
No. Can't see that they would have done. Already exposed to risks. (Trade Union)	No benefits
...Issue of bogus self-employment, gives people a reason to exclude them from H&S legislation. (Trade Union)	Negative impacts - increase in bogus SE
...Businesses will try to avoid duties, particularly on small projects e.g. don't have to provide PPE, provide their own and might not be of right quality. SE (exempt) sit outside of H&S management structure. (Trade Union)	Negative impacts - health and safety protection for SE

30. Some benefits were mentioned and for one organisation this was very much in terms of the reduced regulatory burden on their members. They described the compounding effect that the lack of access to advice services has on their membership which together with the view of regulation as complex, means that they see regulation as more burdensome than it actually is. Other benefits were mentioned such as a potential initial increase in awareness of health and safety legislation from businesses checking whether or not they are exempt and positive messaging in terms of health and safety being seen as sensible and proportionate.
31. However although some benefits were mentioned, the overriding theme was that the regulations had made very little difference to the self-employed. For both the trade unions who were interviewed, the exemption had resulted in negative impacts which were seen as outweighing any potential minor benefits.
32. Similar responses were given in response to question 3 on the negative impacts of the regulation (see Table 11). Views were fairly evenly spread between those who felt the exemption had made little difference and those, particularly the trade union responders, who felt that the exemption had resulted in negative impacts. Negative impacts included creating confusion (the position prior to the exemption was described as 'simple and clear' in Table 9), giving negative messages around health and safety being a burden and leading to what was described as a negative spiral in terms of the development of a strong health, safety and welfare culture. It was felt that this could impact on accident rates amongst the self-employed, lower the regulatory protections provided and lead to an increase in 'bogus' self-employment where work is undertaken by the self-employed rather than employees in order for businesses to avoid regulatory duties.

Table 11: Do you think there are any negative impacts of the de-regulation?

Q3. Have there been any negative impacts of the de-regulation?	
Comments	Theme
Risk of people perceiving themselves as exempt when they could put others at risk. (Health and Safety Consultant)	Negative Impact - confusion
Possible that there has been a negative impact on messaging on H&S. Sense of H&S being a burden if de-regulation needed.	Negative Impact – negative messaging
. ...I think that the de-regulatory agenda has had a negative impact but not specifically the exemption for the self-employed. (professional body)	Made no difference
Some self-employed people working in riskier environments may think that they are not in scope. May think that they don't need to consider SE people because they are not in scope. Could have resulted in mixed messaging but don't think that this has happened. Not had any enquiries from self-employed asking if they are in scope. Nobody has come to us and said H&S regulations no longer apply to us what do you think? Think that messaging has been correctly applied. (Trade Association)	Made no difference – no evidence of confusion
Not from what we've found. Do surveys of membership periodically. However don't know about nuances of what is happening in particular sectors. (Trade Association)	No negative impacts
We find from our perspective that there is widespread confusion... (Trade Union)	Negative impacts –created confusion
.. Possible impact on accident and death rates	Negative impacts – SE accident rates
. Impact on general culture around health and safety. If narrative is around gold plated practices and H&S equals bureaucracy then this is anti- health and safety for businesses narrative that's negative for development of strong health, safety and welfare culture. Possible that this narrative entered population and the press at about the same time as plateau in deaths at work. The fourth element to developing good H&S culture is through building and sharing good practice/ information between organisations.	Negative impacts – negative messaging
....Changes to legislation have created a negative circle which leads to a downwards spiral e.g. don't go	Negative impacts –health and safety

Table 11 Continued. Have there been any negative impacts of the de-regulation?	
Continued.. searching for advice, looking for good practice etc. (Trade Union)	Culture
...No evidence HSAWA harmful so was it worth sacrificing. (Trade Union)	No need for Change
Bogus SE & businesses will try to avoid duties. Only problem is backing this up with evidence. Difficult to survey this group, most members employed, difficult to reach. (Trade Union)	Negative impacts – Bogus SE (businesses avoiding duties)
...sit outside of H&S management structure, purchase own PPE. Maybe employed at a slightly higher rate but without H&S benefits. Who is undertaking risk assessments on behalf of this group. (Trade Union)	Negative impacts – health and safety protection for SE

Table 12: Do you think the regulations have had any impact on the self-employed?

Q4. Do you think the regulations have had any impact on the self-employed?	
Comments	Theme
Had no impact on the self-employed. Those likely to be effected by the exemption wouldn't have been doing anything anyway. Possible incorrect perception that they are exempt when they are not. Never came across anyone that's so low risk that bothered about H&S legislation. Reporting (<i>RIDDOR</i>) doesn't apply for death of self-employed person. (Health and Safety Consultant)	Made no difference - no regulatory burden
No don't think they have.. (Professional Body)	Made no difference
...Don't know for sure. (Professional Body)	Don't know
..People not in scope (exempt) didn't realise so wouldn't have had any impact so what's the point. (Trade Association)	Change not needed
Don't think so, no. People in scope – risks are managed in workplace. Won't have made any improvements to those not well managed previously, not about that. Only designed to take people out of scope that wouldn't have felt any impact anyway. (Trade Association)	Made no difference – no regulatory burden
Yes. It has removed burdens. However not asked membership about specifics/ nuances. (Trade Association)	Positive Impact – removed regulatory burdens
Self-employed higher accident rate, change in regulations could be a contributory factor. (Trade Union)	Negative Impact – SE accident rates
Based on my opinion – no consultation with SE. Bogus self-employment...(Trade Union)	Negative Impact- Bogus SE

Table 12. Continued.. Do you think the regulations have had any impact on the self-employed?	
..Changes in labour market – more SE people .. (Trade Union)	Negative impact – growth in SE
..Labour market is confused, self-employed don't understand employment status and further confusion around health, safety and welfare rights and responsibilities. Universal coverage of HSWA super simple, the change has led to complication and confusion rather than less bureaucracy. (Trade Union)	Negative impact – created confusion
..Not made much difference, not in a good position in the first place. SE carrying on as normal so exemption neither here nor there but watering down is not a good thing. (Trade Union)	Made little difference –not in a good position in first place/ SE carrying on as normal
.. Exemption is supposed to help SE but any dilution of H&S regulation actually makes things worse. Total time spent in work is not being assessed by anyone. Working in safety critical jobs e.g. railways, taking more jobs on...(Trade Union)	Negative impact – health and safety protection for SE
..Change in relationship with increase in SE, people employing people now farming it out. (Trade Union)	Negative impact – growth in SE

33. Mixed views were again expressed by stakeholders with the same themes emerging in response to question 4. There was a divide between some organisations who felt the regulations had made little impact on the self-employed, one organisation who felt that there had been a positive impact in terms of reduced regulatory burdens and the trade union responders who felt the exemption had led to a range of negative impacts (as described above).

34. The written response from a professional body hasn't been included in the tables as it didn't relate specifically to the questions asked in the interviews. However it does express similar views to that of the trade union responders in relation to the negative messaging around health and safety being a burden. It does also indicate that in their opinion the exemption removed a 'non-existent burden' which was described in Professor Löfstedt's (2011) review as 'not particularly significant'³

“Announcing the removal of a non-existent ‘burden’may simply reinforce any negative stereotypes and perceptions that may continue to exist. We also note that a study in 2012 into business perceptions of regulatory burden suggested that large deregulatory exercises (such as this) can *themselves* increase perception of burden”⁴ (professional body: written response)

³ Professor Löfstedt's (2011) *Reclaiming health and safety for all*

⁴ Peck, F., Mulvey, G., Jackson, K, and Jackson, J. (2012). *Business Perceptions of Regulatory Burden*. University of Cumbria. http://insight.cumbria.ac.uk/id/eprint/2017/1/Mulvey_BusinessPerceptionsOfRegulatoryBurden.pdf

Table 13: Have there been any unintended effects (by unintended we mean any outcomes or impacts which were not anticipated or intended at the outset of the regulations?)

Q5. Have there been any unintended effects?	
Comments	Theme
No direct experience of any. Possible unintended consequence of those capable of putting others at risk thinking they are exempt. (Health and Safety Consultant)	No experience of any unintended consequences
Made things more complex than it seems at first e.g. what is low risk? What do we mean by SE. (Professional Body)	More complex
..Added more complexity around something that was alright in the first place. (Professional Body)	No change needed
Can't really think of any which is great. (Trade Association)	No unintended consequences
..All that it has done is take people out of scope that wouldn't have realised that they were in scope. Potential that people who are in scope and think they aren't but really don't think that has happened. (Trade Association)	Made no difference
Can't speak authoritatively for membership take this question back to membership. (Trade Association)	Don't know
Created a high degree of confusion amongst SE. (Trade Union)	Negative impact – created confusion
..Downward spiral of bad practice less likely to be challenged & good practice not built on & cascaded (Trade Union)	Negative impact – health and safety culture
..Will have sector specific implications e.g. haulage firm with direct employment model moves to a model giving out work to drivers to get around responsibilities (condition of vehicles, terms & conditions of drivers).. Cascading responsibilities down to SE, change in legislation gives people that option so no surprise that they take it. (Trade Union)	Negative impact – growth in SE
..Results in far more complex scenario to build health, safety and welfare practices which can have a public impact. Businesses atomise & cascade responsibilities to drivers, more complex for state to mediate... Narrative supports decentralisation, so much harder to enforce because of fragmentation. (Trade Union)	Negative impact – more complex/ difficult to enforce
.. Fragmentation makes building good health, safety & welfare practices more difficult & harder for enforcement agencies to monitor & support businesses. Culture in Royal Mail and culture in Hermes interesting to do a comparison, direct employment model vs fragmented model.	Negative impact –health and safety culture

Table 13. Continued.. Have there been any unintended effects?	
.. Negative narrative around health, safety & welfare being a burden on business. (Trade Union)	Negative impacts – negative messaging
Increase in SE could be due to change in regulation.	Growth in SE

35. Similarly, there was mixed views expressed as to whether or not the regulations had resulted in unintended consequences. Some felt that the regulations had made very little difference or were unable to say and others felt that there had been unintended consequences in terms of a growth in self-employment and movement towards decentralised models of employment. A couple of responders mentioned that they thought the exemption had actually made regulation more complex and one of those also mentioned that it had created confusion. Other unintended consequences as described in other responses as negative impacts include sending the message that health and safety is a burden and the impact on developing a strong health and safety culture.

Table 14: Do the regulations remain appropriate?

Q6. Do the regulations remain appropriate?	
Comments	Theme
Depends on what you want to say e.g. less bureaucratic. Politically helpful as remove suggestion unduly bureaucratic. Don't think self-employed will even recognise that there has been a change unless they happen to read it in the paper or see it on the HSE website (Health and Safety Consultant)	Made no difference
Yes it does on balance ...(Professional Body)	Yes
...But would have left things as they were SE increasing -keep an eye on it to ensure not leaving people behind (Professional Body)	No change needed
In general yes. Looked at it and thought about it and it still applies to us so carrying on as normal. (Trade Association)	Yes
Yes (Trade Association)	Yes
See previous comments negative impacts (Trade Union)	No
No (Trade Union)	No

36. Responders were slightly more likely to say that the regulations remained appropriate, but some comments also indicated that the change wasn't needed in the first place. The trade union responders disagreed that the regulations remain appropriate. This view was also shared by a professional body who submitted a written response, indicating that in their opinion the regulations should be revoked.

“.. ..it is unnecessary, unhelpful and unwise to exempt certain self-employed from health and safety law and believe the previous requirements should be restored, given that they were not onerous and made good business sense”. (professional body: written response)

This view was also supported by a number of Local Authorities in response to a question around whether they would like to see any changes to the legislation. Nine Local Authorities stated that health and safety legislation should apply to all or that the exemption for the self-employed should be removed (see Table 7).

ii. c) HSE Regulatory and Policy Survey

37. The review engaged with colleagues across HSE in both operational and policy/sector roles to establish whether there were any emerging concerns in relation to SE 2015 and its effect on compliance within the self-employed sector. The review considered both the prescribed sectors (where no exemption applies) and those in the risk- based category of the exemption and engaged with the following sectors, industries and policy areas:

- Prescribed sectors: Agriculture and Forestry, Construction and Design, Asbestos, Gas, Railways and Genetically Modified Organisms.
- Risk based sectors and policy areas: Health and Social Care, Diving, Offshore, Control of Substances Hazardous to Health (COSHH), Explosives, Biological Agents, The Dangerous Substances and Explosive Atmospheres Regulations (DSEAR), Electricity, Biocidal Products, Control of Major Accident Hazards (COMAH), Ionising Radiation, Nuclear, Mining and Quarrying, Boreholes, Pipelines, Amusement, Carriage of Dangerous Goods, Dangerous substances in harbour areas, Waste and Recycling, Provision and Use of Work Equipment Regulations (PUWER), Pressure Systems, Acetylene, Lead.
- Operational divisions: Field Operations Division (FOD), Energy Division (ED), Construction Division (CD), Chemical Regulation Division (CRD).

38. The question set and table of responses to the survey are provided at Annex 2. Overall, the outcome of the exemption was generally felt to be neutral, with few mentions of positive or negative outcomes. One negative was mentioned in relation to the diving industry, where it was felt that there had been initial confusion around how to apply the exemption, until this was clarified by HSE guidance. One positive which was mentioned was that there would be some reduction in regulatory burdens for those where the exemption applied. Responses from the prescribed sectors (where no exemption applies) stated that there had been no change to the self-employed in terms of the requirements on them to comply with health and safety legislation. Amongst the sectors/ policy areas where the risk-based exemption applies, there was also a view that there had been little change in terms of the regulatory burdens experienced by the self-employed which was mainly due to the exemption not applying to most of the self- employed workers in these sectors because their activities may pose a risk to the health and safety of others.

39. ORR submitted a written response to the review which stated:

‘ORR’s view is that the inclusion of railways as a prescribed undertaking in the 2015 Regulations remains essential. In particular, it ensures that all those who are engaged in activities related to railway safety are protected by health and safety controls. That was ORR’s view during the development of the 2015 Regulations, and since that time nothing in the structure, operation or any other circumstances of the railway industry suggests a different view should now be taken. Britain’s railways, whilst being one of the safest in the world, remain an industry with inherent health and safety risks. People with a self-employed status often perform important inspection, maintenance or other safety critical work in areas of railway operations with a potential for catastrophic harm involving the travelling public.’

ii d) Review of existing sources of evidence

40. Existing sources of internal and external evidence were reviewed to inform the approach to the PIR. This involved an initial review of existing evidence to see what we already know about the views of stakeholders and the likely impact of the regulation on the self-employed. This was not intended to be a systematic literature review but to bring together existing evidence sources. The review is attached at Annex 3 and summarised below.
41. Key sources of evidence reviewed included the two public consultation exercises that were undertaken by HSE to inform development of the regulations (2012 and 2014) and follow-up qualitative research with the self-employed. In 2012 HSE undertook a 12 week consultation which focused on the general policy of exempting self-employed who posed no potential risk of harm to others. 176 responses were received from employers, employees, self-employed persons and trade union officials across a variety of organisations. The majority of those who supported change favoured HSE’s preferred option but a significant number preferred no change to the law. The main concern expressed, whether they agreed with the method of exemption or not, was the complexity and confusion that any proposals to change legal requirements would introduce. A number of responses from Local Authorities pointed out that the LA and HSE did not target low risk self-employed so the benefit would be minimal.
42. The consultation did not elicit the volume of replies desired from the self-employed cohort and therefore supplementary qualitative research was undertaken with the self-employed. 60 telephone interviews, with self-employed people in occupations expected to be exempt, were undertaken. Half of those interviews were with individuals in office-based occupations and the remaining half with self-employed manual workers. Self-employed persons were asked about whether they had any legal obligations regarding their own health and safety. Only 5 out of the 60 people interviewed thought they had any health and safety obligations. The remaining 55 either said that they did not (the majority), or that they were not sure. A small number reported taking actions in relation to health and safety. Their motivations were to protect their own health and safety and their livelihood, or because it was “common sense”. No respondents said that regulatory requirements were a factor. There was a consensus that being exempt from requirements would make no difference to them. The research concluded that there was little or no awareness and understanding of health and safety requirements amongst those interviewed.

43. A further eight week consultation exercise on the descriptions of prescribed undertakings was undertaken in 2014. One of the key concerns expressed by respondents was that the proposal would lead to some self-employed persons who do pose a risk to the health and safety of others falling exempt from the law. The regulations were amended to retain section 3(2) HSWA duties on all self-employed persons who may expose others to risks to their health and safety, as well as to retain a duty on all those self-employed persons who conduct specified high risk work activities.
44. Other evidence reviewed included qualitative research with small and medium sized enterprises (SMEs) that was commissioned by HSE in 2017. This found that only the most engaged kept up to date with health and safety developments and checked the HSE website ‘from time to time’, the less engaged rarely had time. SMEs were categorised as being time poor and generally health and safety wasn’t part of their core role or interests but the prominence afforded varied with the level of risk and size of businesses. The findings are consistent with the previous HSE qualitative research which found a low level of awareness and understanding of health and safety regulation amongst ‘low risk’ self-employed who were targeted by the exemption.
45. Studies commissioned by BEIS on SMEs were also reviewed. One study explored motivations of small businesses to comply with regulation. The research found that businesses ‘see through the lens of risk’ and take a pragmatic approach to prioritisation of regulations according to risk. Motivations were related to 4 co-dependent factors: business leaders’ attitudes to regulation, business trading environment, measures taken to be aware of regulation, and how businesses organise capabilities. A co-dependent relationship was reported between motivation and awareness; the unaware are also unmotivated (or less motivated), and compliance requires both awareness and motivation. This study also reported findings from the BEIS 2016 Business Perception Survey which found that only a minority of small businesses see complying with regulations as their key challenge (13-16% in the 2016 BPS survey).
46. All the evidence reviewed was consistent with the view that there is likely to be a low level of awareness and understanding of health and safety regulation amongst the self-employed working in low risk occupations.
47. In addition to existing literature, HSE internal data on web hits and enquiries from the self-employed were reviewed to look at the level of engagement by the self-employed and whether or not this had increased since 2015. Since its introduction in October 2015, the number of hits on HSE’s self-employed webpages has remained relatively static at around 5,000 hits per quarter which suggests relatively little interest when compared with over 2.5 million hits on the “risk management” pages of the website over the same period.
48. Data from HSE’s Concerns and Advice Team (CAT) was also reviewed to look at the level and nature of enquiries from the self-employed. In 2015/16 the CAT team responded to just under 1500 enquiries from the self-employed and this has since fallen to less than 1000 in 2018/19. Out of 4716 advice calls from the self-employed over this period, there were no queries relating specifically to the effect of the exemption. Only 37 of the calls asked if the law applied to them, what they needed to do and if they needed a health and safety policy.

49. The review didn't find any evidence to suggest that the exemption has had a huge impact on the self-employed.

ii. e Statistical evidence

50. Statisticians in HSE were asked to provide evidence around whether or not the accident/ incident rate was different for the self-employed as opposed to those in employment and whether or not there appeared to be any change in rates following the introduction of the self-employed exemption in 2015. A number of years of Labour Force Survey data was combined in order to increase sample sizes and then compared before the introduction of the regulations in 2015 and post 2015. Results show that employee and self-employed rates for over seven day absence injuries, averaged over the three-year period prior to 2015 (2011/12-2013/14) and post 2015 (2016/17-2018/19), were not statistically significantly different. The full analysis is provided at Annex 4.

iii. To what extent have the policy objectives been achieved?

51. A number of evidence sources referred to above involved asking for stakeholder views on whether the policy objectives had been achieved. Stakeholders expressed mixed views, but the most common theme was either that it had made no difference because there was no regulatory burden in the first place or that they couldn't say because they hadn't consulted with the self-employed. A small minority agreed that the regulations had achieved their objective of reducing regulatory burden (expressed by one organisation). One organisation felt that it hadn't achieved its objectives as everyone needs to make an assessment to see if they comply with the law and would need to do that regardless of the exemption. Illustrative quotes chosen to cover the range of views on this question are provided in the tables below.

Table 15: Have the objectives of SE 2015 been achieved? Evidence from external stakeholders

Research instrument	No. of respondents	Evidence
Telephone Interviews	n = 6	Mixed views on whether it had reduced regulatory burdens split between: Made no difference, don't know, no and yes

Comments:
<i>Don't Know. Corporate membership organisation/no contact SE. Suspicious if regulatory burdens in the first place.</i>
<i>Yes, because they are now exempt from H&S legislation</i>
<i>Those for whom exemption applies don't realise that a burden has been lifted because it isn't not a burden</i>
<i>No don't think so. Everyone needs to make an assessment to see if they comply with the law and have to do that anyway</i>

Table 16: Have the objectives of SE 2015 been achieved? Evidence from Local Authority survey

Research instrument	No. of respondents	Evidence
Local Authority Survey	<i>n</i> = 42	The majority of Local Authority responders thought that the exemption had not changed the burdens felt by the self-employed (29), whereas a sizeable minority felt that there had been some reduction in burdens (13). No responders felt that the exemption had increased regulatory burdens.

52. The majority view amongst Local Authority responders is consistent with the main theme from the telephone interviews, that there has been little change to the burdens experienced by the self-employed as the burden is unlikely to have been felt by the self-employed. This was also supported by the evidence review (see Annex 3)

53. Reflecting on the objectives of SE 2015, the available evidence suggests that the exemption is unlikely to have a significant impact on the self-employed given that they are low risk and are unlikely to be actively following health and safety regulation in the first place. This is consistent with the assumptions that were made in the original IA.

iv. Were there any unintended consequences?

54. Stakeholders were directly asked this question in the telephone interviews. Stakeholders expressed mixed views, three of the six respondents felt that there hadn't been any unintended consequences whereas three respondents outlined a range of possible unintended consequences. No evidence was provided by stakeholders in support of the suggested unintended consequences.

Table 17: Were there any unintended consequences? Evidence from external stakeholders

Research instrument	No. of respondents	Evidence
Telephone Interviews	n = 6	Mixed views were expressed as to whether or not the regulations had resulted in unintended consequences. Some felt that the regulations had made very little difference or were unable to say. 3 responders mentioned a range of unintended consequences which were: <ul style="list-style-type: none"> More complex – no need for change Growth in SE to avoid health and safety responsibilities Created confusion Negative messaging, health and safety as a ‘burden’ Negative impact on health and safety culture
Comments (for all comments in response to this question see table 13):		
<i>Added more complexity around something that was alright in the first place.</i>		
<i>...haulage firm with direct employment model moves to a model giving out work to drivers to get around responsibilities (condition of vehicles, terms & conditions of drivers)</i>		
<i>Negative narrative around health, safety & welfare being a burden on business will have sector specific implications</i>		
<i>Downward spiral of bad practice less likely to be challenged & good practice not built on & cascaded</i>		

Table 18: Were there any unintended consequences? Evidence from Local Authority survey

Research instrument	No. of respondents	Evidence
Local Authority Survey	n = 42	3 comments were received by Local Authority responders which relate to unintended consequences. These can be categorised under the following themes: <ul style="list-style-type: none"> Created confusion/potential for misunderstanding Avoiding health and safety responsibilities/ Bogus self-employment
Comments (for all comments in response to this question see table 7 and 8):		
<i>...If a garage states they only have self-employed staff the owner is exempt and so are the staff...</i>		
<i>Only that is was a misguided intervention in the first instance. I did not understand this group to face any additional burden that was not already catered for in the existing legislative structure and imposition has only opened up potential for greater misunderstanding.</i>		

.. We have served a Prohibition Notice on a mixer for lack of a bowl guard. The owner got round the PN by only allowing himself as a self-employed person to use the unguarded machine and ensuring his employees did not go in to the area whilst the mixer was in use. I am not sure if this was the intention of the legislation...

.. There is a perception that employers are being undercut by the self-employed and are driving standards for the industry down.

55. Although Local Authorities weren't asked this question directly, they were given an opportunity to provide any further comments. A few of the responses provided relate to unintended consequences and are included in the table above. Creating confusion and the potential for misunderstanding was mentioned in both the telephone interviews and by Local Authority responders.

56. Moving to different employment models rather than a direct employment model or becoming self-employed to avoid health and safety responsibilities, termed 'bogus self-employment' was also highlighted in both the telephone interviews and in the Local Authority survey as potential unintended consequences. ONS official statistics⁵ show that there has been a growth in self-employment. In 2001 the numbers of self-employed were 3.3 million and by 2020 they had risen to around 5 million. However the upward trend in self-employment started prior to 2015 and there is no evidence to suggest that this growth can be attributed to SE 2015.

v. What were the original assumptions?

57. The final impact assessment (IA) for the exemption, completed in May 2015, estimated the following impacts (total net present value over a 10-year appraisal period):

- Time savings for self-employed (new and existing) who will now be exempt and no longer need to keep up to speed with H&S regulations - £8.0 million
- Additional time spent by all existing self-employed to determine exemption status - £3.4 million

The impact assessment is at Annex 5.

58. This gave total net estimated savings of £4.7 million over a 10-year appraisal period, or around £540,000 equivalent annual cost.

59. The main assumptions and estimates used in the IA calculations were:

- 1.8 million self-employed would be exempted, based on an assessment of the proportion of self-employed in each sector likely to be exempt (by standard industrial classification (SIC) – see Annex 2 of the IA).

⁵ ONS statistics are available here:

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/employmentintneuk/june2020>

- Those exempted would not change their health and safety risk management behaviour, based on qualitative research with the self-employed undertaken by HSE in 2012 and 2014, which found that regulatory requirements were not a driver of behaviour for those interviewed.
- As a consequence, there would be no adverse impact on health and safety protections or outcomes.
- There would therefore be no cost-savings due to changes in risk-management or compliance practices, and the primary saving would arise from time no longer spent familiarising or keeping up-to-speed with the regulations.
- Only a small minority of self-employed are aware of their H&S duties (around 10%) and keep abreast of the regulations, based on the qualitative research described above. Therefore, only 10% would benefit from any time savings.
- Consequently, 180,000 exempted self-employed (10% of the total 1.8 million exempted) would save on average 15 minutes per year no longer checking for any changes in legal H&S duties.
- Set against this, 10% of all self-employed (3.8 million at the time of the IA, giving 380,000) would need to spend between 15 minutes and 1 hour on average determining their exemption status.

60. Both in aggregate and per affected business, the IA estimated a very low impact from the exemption. The £8 million familiarisation saving over 180,000 self-employed represents less than £5 per self-employed individual each year. This saving is then offset to some degree by the one-off familiarisation cost in determining exemption status (approximately £10 per self-employed person in the first year only). There is a high degree of uncertainty around the estimates, due to the challenges in conducting large-scale research with the affected group, and only small changes in time assumptions would be required to give a net cost rather than cost-saving. However, it was clear from the IA evidence that any impact would be small.

61. Given the low expected impact, in line with PIR guidance, a detailed review of the IA assumptions and re-estimation of the costs and benefits was deemed disproportionate (doing so would in any case have been precluded by the impact of COVID-19 on research). However, we can make a qualitative assessment based on the PIR evidence:

- Overall, the PIR evidence supports the finding that the exemption has had limited impact on actual regulatory burdens, either in terms of time- and cost-savings, or additional confusion / complexity leading to greater costs.
- There is little evidence that the self-employed have changed their health and safety risk management practices, or of an adverse impact on health and safety.
- The number of exempted self-employed is more uncertain and difficult to establish. Current ONS data (for January to March 2020) shows around 5.0 million self-employed individuals, compared with 3.8 million used in the IA, suggesting that the actual number exempted may be higher than estimated. However, this would still give a small impact, both in the aggregate and per self-employed.

62. We can therefore conclude that the PIR evidence broadly supports the estimates in the 2015 IA.

vi. Has the evidence identified any opportunities for reducing the burden on business?

63. SE 2015 is a deregulatory measure which is intended to reduce burdens on business through exempting from section 3(2) of the Health and Safety at Work etc Act 1974 (HSWA) those self-employed individuals who pose no risk to the health and safety of others. The evidence collected as part of Phase 1 of the PIR suggests that in practice the exemption is unlikely to have made a significant difference to the actual burdens experienced by the self-employed.

Post Implementation Review (PIR) of the Health and Safety at Work etc. Act 1974 (General Duties of Self-Employed Persons) (Prescribed Undertakings) Regulations 2015: Question Sets

a) Question set for regulators (Local Authority Survey and HSE regulatory & policy survey)

As a regulator of workplace health and safety, we are keen to hear your views in relation to the questions below:

Q1. What effect do you think the exemption has had on burdens on self-employed businesses that you regulate? Has there been...

- Significant increase*
- Slight increase*
- No change*
- Slight reduction*
- Significant reduction?*

Q2. What effect do you think the exemption has had on how the self-employed understand health and safety legislation and/or guidance? Do they find it..

- Easier to understand*
- No easier or harder to understand*
- Harder to understand.*

Q3. Have the outcomes from the introduction of the self-employed exemption been mainly..

- Positive*
- Neutral*
- Negative*

Q4. Has your number of contacts with the self-employed following this exemption..

- Decreased*
- Stayed the same*
- Increased?*

Q5. As a regulator, have you experienced any difficulty in determining whether health and safety legislation applies to a specific self-employed person, or self-employed people working in certain industries or sectors? Yes/No

- If 'Yes', please provide details of which industries/sectors have been problematic.*

Q6. As a regulator of self-employed business people, do you think any changes to this legislation are necessary? (Yes/No)

- *If 'Yes', what changes would you like to see?*

Q7. Have you any further views or comments related to the exemption that have not been covered by these questions?

- *If so, please briefly outline them here.*

Thank you for taking part in the review, we would be grateful if you could respond with your views on the above questions by the 6th March.

b) Question Set for Telephone Interviews (to be sent in advance)

Q1. Have the regulations achieved the objective of reducing regulatory burdens for those who are now exempt from the Health and Safety at Work Act?

Q2. Do you think there are any benefits of the de-regulation? (to self-employed persons)?

Q3. Have there been any negative impacts of the de-regulation?

Q4. Do you think the regulations have had any impact on the self-employed?

Q5. Have there been any unintended effects (by unintended we mean any outcomes or impacts which were not anticipated or intended at the outset of the regulations?)

Q6. Do the regulations remain appropriate?

Q7. Is there anything else you want to add that we haven't covered?

Self-employed PIR - HSE Regulatory and Policy Survey

No	Sector / Division	Q1 What effect do you think the exemption has had on burdens on self-employed businesses that you regulate?	Q2 What effect do you think the exemption has had on how the self-employed understand health and safety legislation and / or guidance?	Q3 Have the outcomes from the introduction of the self-employed exemption been mainly positive, neutral or negative?	Q4 Has your number of contacts with the self-employed following this exemption decreased, stayed the same or increased?	Q5 As a regulator, have you experienced any difficulty in determining whether health and safety legislation applies to a specific self-employed person, or self-employed people working in certain industries or sectors?	Q6 As a regulator of self-employed business people, do you think any changes to this legislation are necessary?
1	Agriculture and Forestry	No Change - Agriculture is a prescribed activity.	No Change - Agriculture is a prescribed activity.	Neutral - There has been no industry lobbying to remove agriculture from the prescribed schedule.	Stayed the same.	No	No
2	Construction and Design	We are not aware of any examples where this legislation has had any effect on the behaviours of our dutyholders – there has been no general controversy about a self-employed exemption.					
3	Asbestos	No Change - All answers below relate to the application of duties on the self-employed in relation to the Control of Asbestos Regulations 2012 (CAW 2012) (SI 2012/632). The exemption has had no effect on burdens on the self-employed. The Regulations list the circumstances under which the self-employed are required to comply with section 3(2) of HSWA 1974. The result of this is that there has been no change to the self-employed in relation to the requirement on them to comply with duties under CAW 2012, as all activity which involves management or disturbance of asbestos is: <ul style="list-style-type: none"> • within the scope of the “Prescribed descriptions of undertaking” under regulation 2(b) as it may” pose a risk to the health and safety of another person”; or • the activities are listed under the “Asbestos” heading in Schedule 2. 			No	No	No

Annex 2

4	Gas	No change - Self-employed gas engineers (and others working on gas) were captured under HSWA and GSIUR prior to the introduction of these regulations, and the effect of these regulations is that they continue to have these H&S duties.	No change	No change	Remained the same.	No	No
5	Railways	ORR's view is that the inclusion of railways as a prescribed undertaking in the 2015 Regulations remains essential. In particular, it ensures that all those who are engaged in activities related to railway safety are protected by health and safety controls. That was ORR's view during the development of the 2015 Regulations, and since that time nothing in the structure, operation or any other circumstances of the railway industry suggests a different view should now be taken. Britain's railways, whilst being one of the safest in the world, remain an industry with inherent health and safety risks. People with a self-employed status often perform important inspection, maintenance or other safety critical work in areas of railway operations with a potential for catastrophic harm involving the travelling public.					
6	Genetically Modified Organisms	No Change - The 2015 Regulations exclude the GMO (Contained Use) Regulations (GMO (CU)) from the self-employed exemption. Effectively, there's been no change for any self-employed persons working under the GMO (CU).	No Easier or harder to understand	Neutral	Stayed the same	No	No
7	Health and Social Care	No change					
8	Diving	No change – the regulations do not generally exempt self employed businesses in the diving industry as they generally have employees as part of the dive team, or if they operate using volunteers, such as in the	Harder to understand in the diving industry – when the regulations were introduced there was confusion across the industry about how they applied to diving. Diving was not one of the	Neutral - No change to the ways in which legislation applies in the diving industry	No change to the ways in which legislation applies in the diving industry	Yes - Initial understanding of the way the exemption would apply in the diving industry caused some difficulties, however we were able to reach a clear understanding and consistency once we had	Yes - Initial understanding of the way the exemption would apply in the diving industry caused some

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	recreational sector, their activities may pose a risk to the health and safety of another person (generally a member of the public who is diving as a paying student)	industries listed in the Schedule of Activities, many diving contractors are self-employed (particularly in the recreational 'at work' sector), and so many people thought that the Diving at Work Regulations 1997 would no longer apply to them. We carried out work with the various industry groups to ensure there was a clear understanding of the application of the exemption.		reviewed the wording of the regulations in detail	difficulties, however we were able to reach a clear understanding and consistency once we had reviewed the wording of the regulations in detail
9	Offshore	Self-employment in the Offshore industry is pretty much non-existent.			
10	COSHH	No change - Whilst an exemption exists for those self-employed persons working with biological agents in contained use under COSHH this exemption would cover a very small proportion of our biological agents' dutyholders, if any. To the best of our knowledge, we have not received one query around this exemption.		No	No
11	Explosives	No change			
12	Biological Agents	No change			
13	DSEAR	No change - Those who work with electricity or DSEAR are prescribed undertakings under regulation 2(b) so there should be no change to the burden. I have no evidence either way.	No knowledge, experience or evidence on this.	Stayed the same for both electricity and DSEAR - Those who work with electricity or DSEAR are prescribed undertakings under reg 2(b)	No - Those who work with electricity or DSEAR are prescribed undertakings under regulation 2(b). However sector/ policy teams do not enforce the regulations.
14	Electricity		No knowledge, experience or evidence on this.		

Annex 2

15	Biocidal Products	No change							
16	COMAH	No change							
17	Ionising Radiation	No change							
18	Nuclear	No change							
19	Mining and Quarrying	No change - Work in mining will not be covered by the Exemption. Whilst Quarries are not a prescribed undertaking there is potential in most cases for the work of self employed persons to impact on the H&S of others and therefore the exemption from s3 HSWA does not apply.	No Easier or harder to understand	Neutral	Stayed the same	No	No		
20	Boreholes	No change							
21	Pipelines	No change							
22	Amusement	No change							
23	Carriage of Dangerous Goods	No change	No Easier or harder to understand	Neutral	Stayed the same	No	No		
24	Dangerous substances in harbour areas	No change							
25	Waste and Recycling	No change							
26	PUWER	No change. None of my stakeholders have had cause to raise any issues with me on this issue over the last 4 years.	Not able to comment on this.	No idea.	Stayed the same, I did not have much interaction with them to start with.	No	No		
27	Pressure Systems								
28	Acetylene	No change							
29	Lead	If a self-employed person is exempt, then there will be a reduced regulatory burden as they will not be required to comply with the law. However, due to the	Although reducing burdens on some self-employed persons, additional information and guidance has been introduced that dutyholders must	Again, although reducing burdens on some self-employed persons, additional information and guidance has been introduced that	I joined CLAW policy after the exemption was introduced. However, as far as I am aware there have been no enquiries from self-employed persons	No	No		

Annex 2

		widespread use and effects of lead, there are still many examples of self-employed persons whose work activities pose potential risks to others (and therefore are not exempt). Consequently, there is a slight overall reduction on burdens on self-employed businesses regarding CLAW.	familiarise themselves to understand the exemption which has added some complexity to the previous health and safety legislative framework.	dutyholders must familiarise themselves to understand the exemption which has added some complexity to the previous health and safety legislative framework. In conclusion, there were positive and negative outcomes, which ultimately made the impact on CLAW mainly neutral.	regarding the exemption so contacts with the self-employed have stayed the same.	
30	Field Operations Division	No Change				
31	Energy Division	Self-employment across our various sectors is pretty much non-existent.				
32	Chemicals, Explosives and Microbiological Hazards Division (CEMHD)	No Change				
33	Construction Division	No change				
34	Chemicals Regulation Division	No change				

Summary of existing evidence

1. This annex summarises what we already know from available evidence about the views of stakeholders towards SE 2015 and the likely impact of the regulation on the self-employed. This evidence was collated in order to inform the data collection strategy for the PIR.

Key findings:

- The main concern expressed by respondents to HSE's public consultation exercises was that any proposed change to the existing legal requirements would cause confusion.
- Available evidence suggests a low level of awareness of health and safety requirements amongst self-employed persons and that exemption under the regulations would make no difference to their behaviour.
- HSE insight research with SMEs found a low level of engagement with health and safety requirements. Only the most engaged kept up to date with health and safety developments and checked the HSE website on a regular basis.
- Confusion, misunderstanding and a lack of interest in employment status amongst the self-employed was found to be a factor in explaining non-compliance with regulatory schemes.
- Compliance with regulatory requirements doesn't appear to be a key driver or challenge for the self-employed persons or small businesses.
- The key regulatory concern for small businesses was the volume and complexity of regulation rather than just the presence of regulation per se.
- The key regulatory barrier for small businesses is monitoring, recording and reporting requirements, followed by the costs of buying in external advice.
- Research identified 4 co-dependent factors which influence the motivation of businesses to engage with regulation: business leaders' attitudes to regulation, business trading environment, measures taken to be aware of regulation, and how businesses' organise capabilities. Those who are unaware will also be unmotivated or less motivated to comply with regulation.

Approach

2. This literature was selected for inclusion where it provides insights into the attitudes and behaviours of the self-employed in relation to regulation. Systematic searches were not used to source evidence and the evidence is therefore likely to exclude grey literature (other than where this was known to HSE). Given the general lack of evidence on the attitudes and behaviours of the self-employed, insight has also been sought from research with SMEs as this should be relevant to a significant proportion of the self-employed who own small businesses. Further details of the evidence included can be found in Table 1.

1. HSE Public consultation exercises 2012 - 2014¹

3. Two public consultation exercises were undertaken by HSE in 2012 and in 2014 to inform SE 2015. In 2012 HSE undertook a 12 week consultation which focused on the general policy of exempting self-employed who posed no potential risk of harm to others. 176 responses were received from employers, employees, self-employed persons and trade union officials across a variety of organisations. The majority of those who supported change, favoured HSE's preferred option but a significant number preferred no change to the current law. The main concern expressed, whether they agreed with the method of exemption or not, was the complexity and confusion that any proposals to change existing legal requirements would introduce. A number of responses from Local Authorities pointed out that the LA and HSE do not presently target low risk self-employed so the benefit would be minimal.

4. Just under a quarter of respondents stated that they were self-employed (40) and around half of them felt that the proposed change could cause confusion and lead to them wrongly classifying themselves as exempt.

5. Respondents were also asked about whether the exemption would cause a change of behaviour. Responses were evenly split between those answering 'yes' to this question (68) and those answering 'no' to this question (65). Trade unions expressed the view that the exemption would lead to deterioration in health and safety standards. A third of local government respondents also believed there would be a change in self-employed person's behaviour leading to a decrease in standards and cutting corners to give them a competitive edge. However this wasn't supported by the responses received from the self-employed. 28 respondents who classed themselves as self-employed replied "No" to this question and of those who classed themselves as self-employed businesses all replied "No" that it wouldn't change their behaviour.

6. There was under-representation amongst the responses from self-employed persons posing no risk to others and as a result supplementary qualitative research was conducted with this group (see below).

7. During August 2014, HSE undertook a further eight week consultation exercise on the clarity of definitions where the self-employed will continue to have duties under section 3(2) Health and Safety at Work Act (HSWA).

8. 246 responses were received in total, 50 of which were in a narrative format. Views were received primarily from health and safety consultants (50% of respondents), businesses, trade associations, trade unions and local authorities. Again the consultation exercise did not elicit many responses from the self-employed.

¹ Consultation documents are kept for 2 years on the HSE website. A summary of the analysis is included in the final Impact Assessment which can be accessed here:
<https://www.legislation.gov.uk/ukdsi/2015/9780111136980/impacts>

9. The key concern expressed by respondents was that the proposal would lead to some self-employed persons who do pose a risk to the health and safety of others falling exempt from the law. In light of responses, the regulations were amended to retain section 3(2) HSWA duties on all self-employed persons who may expose others to risks to their health and safety, as well as to retain a duty on all those self-employed persons who conduct specified high risk work activities.

2. HSE Qualitative interviews with the self-employed 2012²

10. In order to gather more first-hand information about the views of the self-employed HSE commissioned the Health and Safety Laboratory (HSL) to conduct qualitative research with low risk self-employed persons who would be in scope of the exemption. It was expected that responses amongst this group to the formal consultation would be low and therefore supplementary qualitative research would be needed.

11. 60 telephone interviews, with self-employed people in occupations expected to be exempt, were undertaken. Half of those interviews were with individuals in office-based occupations and the remaining half with self-employed manual workers. A small number reported taking actions in relation to health and safety. Their motivations were to protect their own health and safety and their livelihood, or because it was “common sense”. No respondents said that regulatory requirements were a factor. Interviewees who took part in the qualitative research were asked directly whether they thought the removal of health and safety obligations would make any difference to their working practices. The response was unanimous, with all participants stating it would not. Many respondents indicated that they would just continue to work as they always did. Several said that they would not change their behaviour because they thought they did not have any obligations in the first place, and that the precautions they took were just “common sense practice”.

12. The research concluded that there was little or no awareness and understanding of health and safety regulations amongst those interviewed.

3. HSE SME insight research 2017³

13. Jigsaw Research conducted work to understand the needs, attitudes and behaviours of SMEs in the UK. The research involved a robust qualitative exercise and discussions with 120 SME organisations. A combination of focus groups and in-depth qualitative interviews were undertaken with a mix of types of SMEs in terms of risk, size, tenure, sector and geography.

14. SMEs felt that they are operating in a challenging business environment which may impact on their perceptions of health and safety. They also felt ‘time poor’

² The research was published as part of the Impact Assessment for the regulations which can be found here: <https://www.legislation.gov.uk/ukdsi/2015/9780111136980/impacts>

³ Research summary can be accessed from <https://www.hse.gov.uk/research/insight/sme-communications-research-2016.pdf>

and are required to juggle numerous roles and responsibilities which impacts on the time they have available to dedicate to health and safety. SMEs did however take health and safety seriously and recognised the value of health and safety but the prominence varied with the level of risk and the size of businesses.

15. The research found a general lack of understanding of HSE's role, only the most engaged proactively keep up with developments such as changes to regulation and check the HSE website from time to time, less engaged audiences rarely have time.

4. Regulation Returned: Federation of Small Businesses 2017⁴.

16. FSB conducted research to look at members' experiences of regulation and its impact on their business. The research combined data gathered through a series of focus groups and a survey of members conducted by Verve research agency.

17. Two thirds (62%) of small businesses believe the burden of regulation outweighs the benefits. The felt burden was lower for sole traders, 43% perceive that the burden of regulation outweighs its benefits. The reported overall burden of regulation also varies between different sectors. Those in manufacturing appear to feel the most burdens, with 73% believing the burden of regulation outweighs the benefits, whereas in the arts, entertainment and recreation sector, just 37% feel the burden of regulation outweighs the benefits.

18. The top regulatory concern was not the existence of individual regulation per se but rather the quantity and quality of the regulation overall. However small businesses also reported that there are benefits of regulation (70%) such as helping to build trust among customers (51%), creating a level playing field with competitors (36%) and enabling productivity and innovation (34%). Health and safety was viewed as 'particularly important' for small business (higher than all other areas of regulation). The key regulatory barrier cited for health and safety is monitoring, recording and reporting requirements, followed by costs of buying in external advice. The impact of this was felt to be reduced profitability and the mitigation suggested is simplified requirements for small businesses.

5. BEIS Longitudinal Case Studies: The Relationship between Small Business and Regulation 2017⁵

19. The research aimed to produce insight into policy considerations on how the relationship between small businesses and regulation might be improved to facilitate growth; of particular interest was the focus on how small businesses discover and respond to changes in regulation. The research involved qualitative case studies with 10 businesses over the course of a year.

⁴The report can be accessed here: <https://www.fsb.org.uk/resources-page/regulation-returned---what-small-firms-want-from-brexit-pdf.html>

⁵ The report can be accessed here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/712009/sme-growth-regulation-case-studies-north-west.pdf

20. The research explored reasons for motivation to engage with regulation and outlines 4 co-dependent factors which influence the motivation of businesses: business leaders' attitudes to regulation, business trading environment, measures taken to be aware of regulation, and how businesses organise capabilities. Therefore for those where the health and safety risk is low there will be less motivation to comply.

21. The research highlights that there is a relationship between motivation and awareness, in that those who are unaware will be unmotivated or less motivated to comply with regulation), and compliance requires awareness and motivation.

22. The findings are also consistent with other research in that the volume and complexity of regulations was found to create challenges for small businesses, particularly amongst those with new and/or less experienced business leaders; who found information can be overwhelming.

23. Only businesses at the larger end of the small business size definition (i.e. those with 25-49 employees) and those in heavily regulated sectors (e.g. health care, manufacturing and data protection) had dedicated staff in-house to ensure regulatory compliance.

24. The research reported evidence from the BEIS Business perception Survey (BPS), that only a minority of small businesses (13% -16% in the 2016 BPS) see complying with regulation as their key challenge⁶.

6. *DSS Research Report, Self-Employed People: A Review of the Literature for the Contributions Agency, 1997*⁷

25. The Department of Social Security commissioned this literature review of the characteristics of self-employed people in order to gain useful insights into explanations for under-collection of Class 2 contributions. The review provides detailed information about the demographics and characteristics of the self-employed. The report describes the various forms of self-employment as a spectrum with traditional small business owners at one end and subcontracted workers or home workers working for a single employer organisation at the other end. These findings are not reported in Table 1 given the focus on the attitudes and behaviours of the self-employed in relation to regulation.

⁶ The 2016 BPS report can be accessed here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/547891/beis-16-21-business-perception-survey-2016.pdf

⁷ The report can be accessed here: <http://eprints.whiterose.ac.uk/73433/1/Document.pdf>

26. Although the research is now dated, the research concluded that confusion, misunderstanding and a lack of interest in employment status will be contributing to non-compliance with regulatory schemes.

7. Regulation and Small Business Growth: Case Studies From North West England, BEIS (2018)⁸

27. The research commissioned by BEIS examined the relationship between business and growth in eight case study small and micro businesses (SMBs) in the North West of England. Businesses were selected where there was evidence of recent growth and evidence of innovation in terms of business development or business processes.

28. The research reported that owner-managers are well aware of the costs associated with compliance with regulation but also acknowledged, the benefits of regulation such as fairness and protection of product-markets. Regulation was not regarded as a major barrier to growth nor a significant reason to adjust plans but could influence and in some cases, stimulate business growth.

29. Owner-managers in the case studies varied in the extent to which they actively seek regulatory knowledge. Regulatory knowledge is recognised as a key competitive advantage for SMBs engaged in product innovation in new and emerging markets/technologies. Growth plans sometimes lead entrepreneurs to adopt quite pro-active approaches to regulatory learning. However, this was not apparent in all cases and others, tended to be reactive to regulatory issues.

⁸ The report can be accessed here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/712009/sme-growth-regulation-case-studies-north-west.pdf

Table 1: Evidence Sources

Title	Author(s)	Approach	Key Findings
<p>HSE Public Consultation 2014: Proposals to exempt self-employed persons from section 3(2) of the Health and Safety at Work etc. Act 1974, except those undertaking activities on a prescribed list (CD273)</p>	<p>HSE</p>	<ul style="list-style-type: none"> • 9 week public consultation exercise. • 246 responses in total, received from health and safety consultants (50% of respondents), businesses, trade associations, trade unions and local authorities. Few responses were received from the self-employed cohort, who will be affected by this change. 	<p>The main comments received with respect to the general principle of the exemption were as follows:</p> <ul style="list-style-type: none"> • The proposals are based on a misconception that health and safety regulation is unnecessary and burdensome. • The proposed change goes way beyond Professor Löfstedt's recommendation. • The self-employed are unlikely to research the cross-referenced regulations. • The definitions are open to interpretation and misunderstanding- they are complex and will not achieve the simplification required. • The self-employed might have duties for some activities but not for others, creating confusion. • The self-employed would need assistance to understand the regulations, for example, they would need to pay for advice. • The self-employed will assume they are exempt. • There will be additional burdens on business to communicate the changes. • The list of prescribed activities will never be fully inclusive, with activities causing risk to others missing from the list, for example, transport and fishing.
<p>HSE Public Consultation 2012: Proposals to exempt from health and safety law those self-employed whose work activities pose no potential risk of harm to others (CD 242)</p>	<p>HSE</p>	<ul style="list-style-type: none"> • 12 week public consultation exercise. • 176 responses were received from employers, employees, self-employed persons and trade union officials across a variety of organisations. 	<ul style="list-style-type: none"> • Most respondents who expressed views on which of the options for amending the law should be implemented agreed that HSE's preferred option was the best approach. • The main concerns for the majority of respondents, whether they agreed with the recommendation or not, is the complexity and confusion that any proposed change to the existing legal requirements would introduce. • Respondents were evenly split on whether the exemption would cause a change of behaviour, 68 saying 'No' and 65 saying 'Yes'. 28 respondents who classed themselves as self-employed replied "No" to this question and all of those who classed themselves as self-employed businesses replied "No" that it wouldn't change their behaviour.

<p>HSE qualitative research with the Self-Employed (published as part of evidence for the regulatory impact assessment) (2012)</p>	<p>Health and Safety Laboratory</p>	<ul style="list-style-type: none"> 60 telephone interviews with self-employed in low risk occupations, 30 in office based occupations and 30 in manual occupations. 	<ul style="list-style-type: none"> Regulatory requirements were not a factor in influencing health and safety responses. Motivations were to protect their own health and safety and their livelihood, or because it was “common sense”. There was a consensus amongst respondents that the removal of health and safety obligations would make no difference to their working practices because they weren’t aware of any obligations in the first place, and that the precautions they were taking were just “common sense practice”. The research concluded that there was little or no awareness and understanding of health and safety regulations amongst those interviewed.
<p>SME Communications Research (2016)</p>	<p>Jigsaw Research</p>	<ul style="list-style-type: none"> Qualitative in in-depth conversations with a representative mix of SMEs (sample was structured to ensure a range of risk, SME size, tenure, sector and geography); Data collected through a mix of both focus groups in-depth interviews Discussions took place with the person responsible for H&S in 120 SME 	<ul style="list-style-type: none"> The prominence of H&S within SMEs is highly variable and linked primarily to risk level and also to size of the SME. The majority of SMEs take H&S seriously and are willingly put in place the necessary policies and procedures required to create and maintain a safe working environment. Their ability to do so effectively and the time they are able to dedicate to this is more variable. SMEs feel that they operate in a challenging business environment: they feel under pressure and time poor. This ultimately impacts on their perceptions of H&S, as only dedicated H&S staff (for whom H&S is a source of professional pride) are able to devote all their time to this. H&S is something they are fitting in around other activities and can feel outside of their core expertise and their main professional focus. SMEs tend to focus on the here and now, guarding against immediate harm, and therefore the focus is more on ‘safety’ than on ‘health’. Understanding of HSE’s role is variable and often not the main driver of H&S compliance in their business. The research found that only the most experienced and expert stakeholders feel confident interpreting the current guidance. Only the most engaged proactively keep up with developments such as changes to regulation and check the HSE website from time to time, less engaged audiences rarely have time.

Regulation Returned; what small firms want from Brexit (Federation of Small Businesses) July 2017	Hyde, R; Poole, A and Smith. J	<ul style="list-style-type: none"> Focus groups with FSB members in the South East, the West Midlands and the North (Dec. 2016 – February 2017). A survey of 1,635 FSB members in Jan 2017. The survey findings are weighted according to FSB membership to reflect the demographic balance of FSB members throughout the UK 	<ul style="list-style-type: none"> Two thirds (62%) of small businesses believe the burden of regulation outweighs the benefits. The perceived burden was lower for sole traders (43%). Quantity and quality of regulation is more a problem for small business than the regulation itself; inconsistent and complex drafting can be problematic. Smaller businesses experience disproportionately higher negative impact of regulation; higher costs per employee. 70% reported positive impacts of regulation: consumer trust (51%); level playing field for competition (36%), productivity, innovation and efficiency (34%). The perception of regulation as 'burdensome' increases with the size of small businesses' workforce. Health and safety was reported as being 'particularly important' (higher than all other areas of regulation) for small businesses by 71% of participants, but health and safety regulations ranked 4th (by 15% of responders) among types of regulation that create barriers to business. The business sectors with the highest perceived health and safety regulatory burdens were; agriculture, forestry and fisheries; manufacturing; motor vehicle repair; accommodation and food; and arts, entertainment and recreation. Perceived burdens were much higher in Manufacturing (73%) than arts, entertainment and recreation (37%). Small firms reported that health and safety regulation has above average impacts; 69% cited reduced profitability; 50% stated it inhibits workforce expansion; and 44% described reduced productivity and innovation. The key regulatory barriers cited for health and safety are monitoring, recording and reporting requirements, followed by costs of purchasing external advice. Impact is reduced profitability. Mitigation suggested is simplified requirements for small businesses.
Longitudinal Case Studies; The relationship between small business and regulation. (BEIS, 2017)	Quadrangle	Longitudinal case study of 10 small businesses over one year. Qualitative methods with findings reflecting the participating businesses, rather than broader small businesses	<ul style="list-style-type: none"> Discovery of, and response to, regulatory change; small businesses engaged with regulation driven by 'business motivation'; 'motivation to engage' and conform depended on 4 issues; leaders' attitudes to regulation, trading environments, awareness of regulation/change, and how they adapted to comply- regarded regulation as a consequence of business professionalism; offering them protection - quality of compliance depended on leaders' experience, but amount and complication of regulation/change could present challenges - businesses

<p>Self-employed people; A literature review for the Contributions Agency (1997) Department of Social Security.</p>	<p>Corden, A, Hutton, S and Sainsbury, R, et al</p>	<p>Literature Review</p>	<p>compiled to minimise risk, not for administrative reasons.</p> <ul style="list-style-type: none"> • Impact of regulation on business performance and growth; most regarded regulation positively but some instances when regulation regarded as producing unforeseen circumstances or consequences (extra costs/time) disproportionate to the risk presented. • Recommended Policy Levers; design, enforcement and review; a 'small business panel' to anticipate impacts of regulatory change - a set of 'business value metrics' (pre- and post-implementation) quantify impact and efficacy of regulations – consistent enforcement to maintain sense of fairness - reasonable exemptions/mitigations for small businesses. • Targeted interventions, communication and support; support packages for small business to prevent information overload and exploitation by third parties.
			<p>Attitudes and understanding of personal financial responsibilities - comprehension and understanding</p> <ul style="list-style-type: none"> • Some self-employed people have difficulty identifying themselves as 'workers' or as 'employees'; this may be exacerbated in transitional situations, for homeworkers, labour-only subcontractors, women and the lowest paid. • Some self-employed people may not comprehend the National Insurance scheme, or its requirements. • Possible reasons for non-registration include; failure to identify liability, problems in accomplishing registration, and disinclination. • There are significant knowledge gaps about self-employed peoples' perceptions and understanding of National Insurance. • Confusion, misunderstanding and a lack of interest in employment status will be contributing to non-compliance with regulatory schemes.

<p>Regulation And Small Business Growth: Case Studies From North West England; BEIS Research Paper Number 11(May 2018)</p>	<p>Peck, F & Mulvey, G. and Jackson, K (University of Cumbria)</p>	<ul style="list-style-type: none"> • Eight case studies with small and micro businesses (SMBs) in the northwest, findings reflect participating businesses rather than SMBs as a whole. 	<ul style="list-style-type: none"> • Owner-managers of growth SMBs recognise the costs and burdens of compliance with regulatory requirements. • The majority are positive about regulation, with exceptions such as in case of public contracts. • Owner-managers vary in the extent to which they actively seek regulatory knowledge. • Regulatory knowledge recognised as a key competitive advantage for SMBs engaged in product innovation associated with new and emerging markets/technologies. • Understanding of regulatory requirements also a key asset for firms involved in complex supply chains. • Cases show that regulation can influence and, in some cases, stimulate business growth. • Inconsistent enforcement of regulation can frustrate growth plans. • While regulation can influence growth, the reverse may also be true – that growth changes attitudes to regulation. • In emerging markets or technologies, regulation may lag behind practice. <p>Implications:</p> <ul style="list-style-type: none"> • The assumption that deregulation will automatically reduce burden and stimulate growth should be questioned. • Sometimes the absence of regulation or inconsistent enforcement inhibits growth. • Rapid regulatory change, even simplification, can create uncertainty and familiarisation costs. • Emphasises the need for regulators to engage with businesses of all sizes particularly in innovative new markets and emerging technologies.
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Employment Status and Workplace Injury Rates

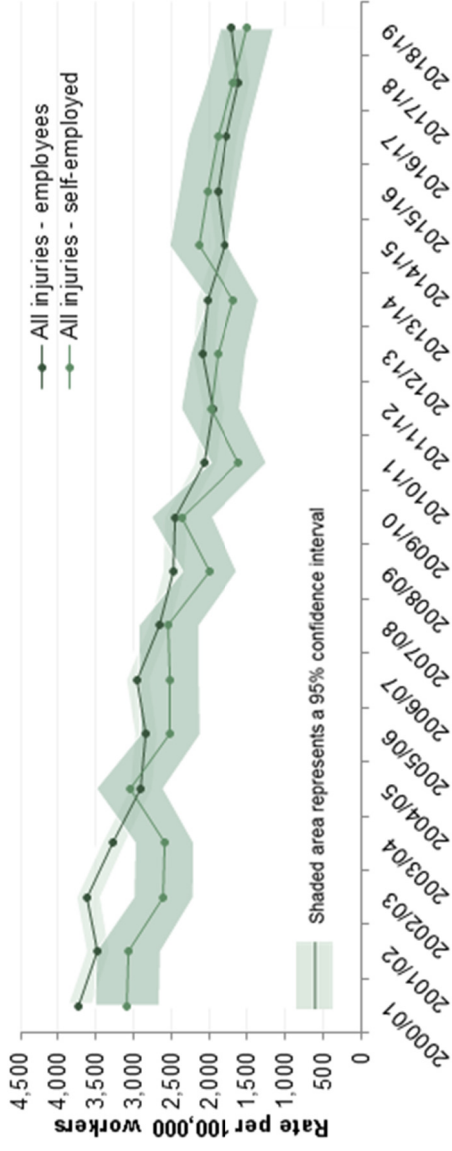
Information below is based on results from the Labour Force Survey where employment status ('self employed' and 'employee') is **defined by the individual**.

Self-reported workplace injury

In the years leading up to 2015¹, and post 2015 (see Figure 1) self-reported workplace injury rates for employees and self-employed were generally of a similar order (not statistically significantly different). However, sample numbers are quite small for the self-employed leading to wide confidence intervals around the annual self-employed specific rates. One way of increasing the reliability of survey data is to increase the sample size on which it is based. Whilst the annual sample size is fixed, several years' worth of data can be pooled to produce estimates for the average of the combined years.

Figure 1: Estimated incidence rates of self-reported workplace non-fatal injury, sustained in current or most recent job, for people working in last 12 months, by employment status Great Britain

Source: Labour Force Survey



¹ From 1 October 2015 **self-employed** persons whose work activity pose no potential risk to the **health and safety** of other workers or members of the public were **exempted** from having to comply with Section 3 of the **Health and Safety** at Work Act 1974 ("HSWA").

Table 1 and Figure 2 compare employee and self-employed workplace injury rates averaged over a three-year period prior to 2015 (2011/12-2013/14) and post 2015 (2016/17-2018/19).

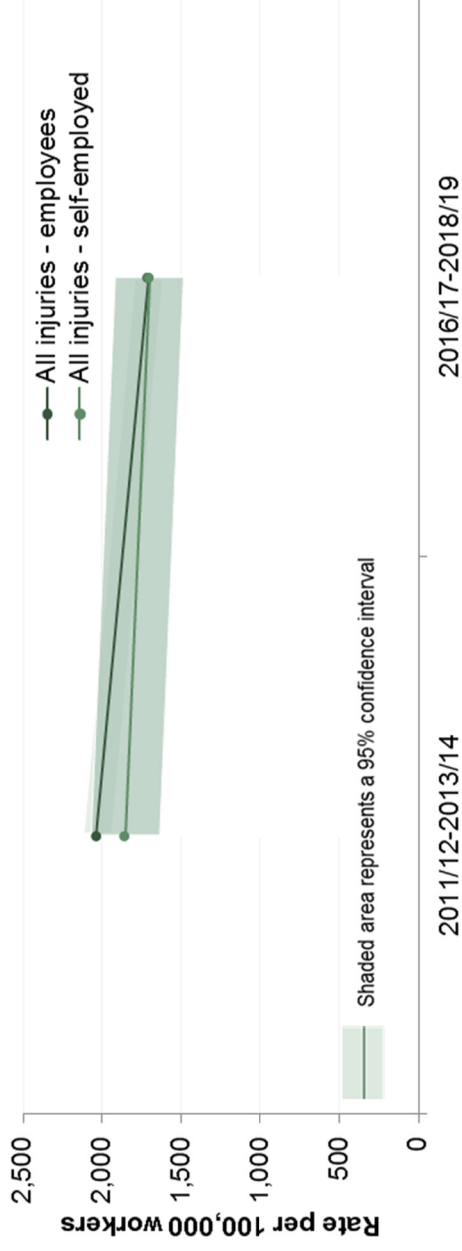
Estimated incidence and rates of self-reported workplace non-fatal injury sustained in current or most recent job, by employment status, for people working in the last 12 months, averaged three-year time periods Great Britain

Table 1

Three-year average	Injury sustained in their current/most recent job						Whether rates statistically significantly higher/lower for employees than self-employed
	Averaged estimated incidence (thousands)		Averaged rate per 100,000 workers				
	central	95% C.I. lower	upper	central	95% C.I. lower	upper	
Employment Status (in current/most recent job)							
2011/12-2013/14							
Employees	503	480	527	2040	1940	2130	No
Self-employed	78	69	87	1850	1640	2070	..
2016/17-2018/19							
Employees	457	432	482	1710	1620	1800	No
Self-employed	79	69	89	1700	1490	1920	..

Source: Labour Force Survey

Figure 2



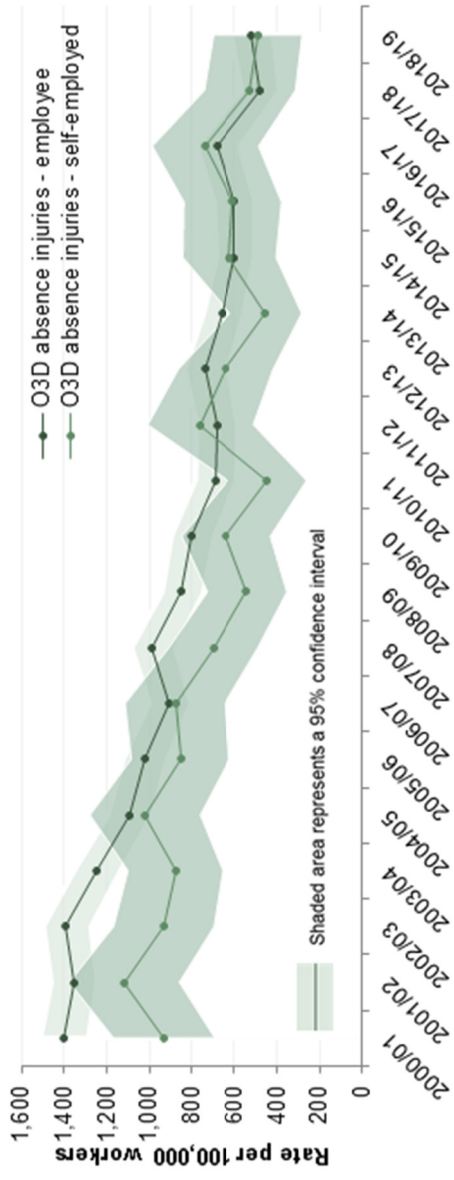
Source: Labour Force Survey

Results show that employee and self-employed injury rates, averaged over the three-year period prior to 2015 (2011/12-2013/14) and post 2015 (2016/17-2018/19), were of a similar order (not statistically significantly different).

Self-reported workplace injury with over three day absence

Similar to rates for all injuries, annual rates for over three days absence injuries (Figure 3) were generally of a similar order for employees and the self-employed (not statistically significantly different).

Figure 3: Estimated incidence rates of self-reported workplace non-fatal injury with over three days absence sustained in current or most recent job, for people working in last 12 months, by employment status Great Britain



Source: Labour Force Survey

Table 2 and Figure 4 compare employee and self-employed workplace injury rates with over three days absence averaged over a three-year period prior to 2015 (2011/12-2013/14) and post 2015 (2016/17-2018/19).

Estimated incidence and rates of self-reported workplace non-fatal injury with over three days absence sustained in current or most recent job, by employment status, for people working in the last 12 months, averaged three-year time periods Great Britain

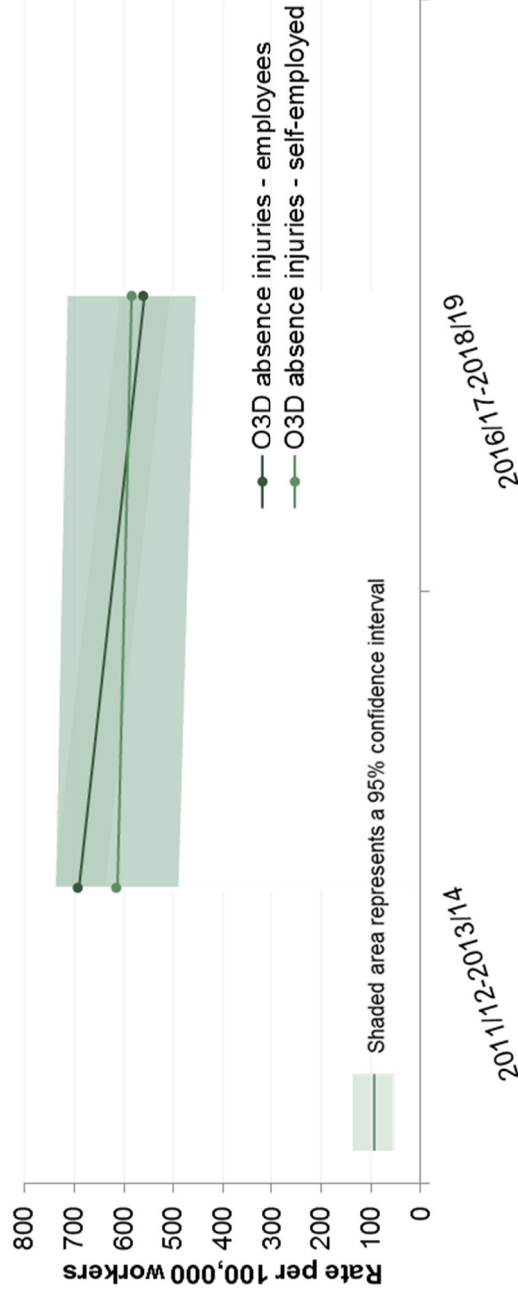
Table 2

Three-year average	Injury sustained in their current/most recent job		Whether rates statistically significantly higher/lower for employees than self-employed	
	Averaged estimated incidence (thousands)	Averaged rate per 100,000 workers	Yes	No
2011/12-2013/14	central	central		
	95% C.I. lower	95% C.I. lower		
Employees	171	690		
	157	640		
2016/17-2018/19	central	central		
	95% C.I. upper	95% C.I. upper		
Employees	185	750		
	171	750		

Self-employed	26	21	31	610	490	740	..
2016/17-2018/19							
Employees	149	135	163	560	510	610	No
Self-employed	27	21	33	580	450	710	..

Source: Labour Force Survey

Figure 4



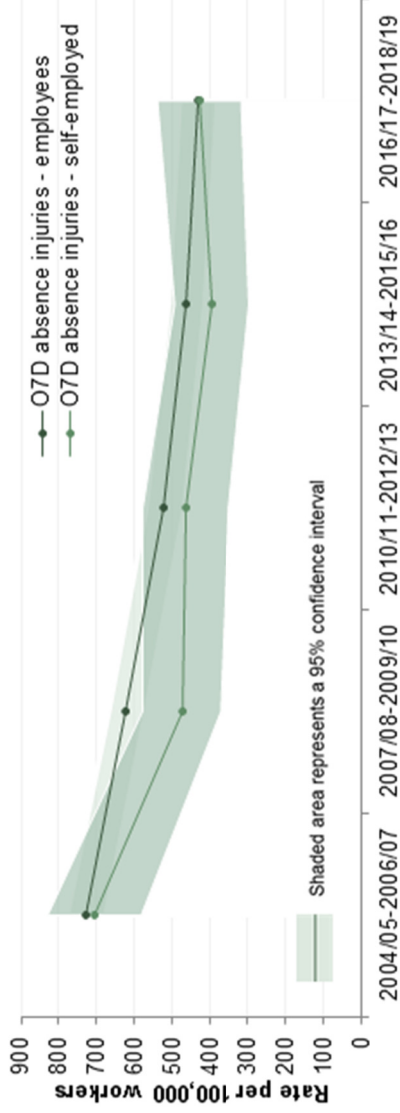
Source: Labour Force Survey

Results show that employee and self-employed rates for over three day absence injuries, averaged over the three-year period prior to 2015 (2011/12-2013/14) and post 2015 (2016/17-2018/19), were of a similar order (not statistically significantly different).

Self-reported workplace injury with over seven day absence

As sample numbers are too small to provide annual rates for some years, three-year average rates are presented in Figure 3 for years where data is available for self-reported workplace injuries with over seven days absence.

Figure 5: Estimated incidence rates of self-reported workplace non-fatal injury with over seven days absence, by employment status, averaged three-year time periods Great Britain



Source: Labour Force Survey

Table 3 and Figure 6 present three-year average rates prior to 2015 (2011/12-2013/14) and post 2015 (2016/17-2018/19) for over seven day absence injuries. **Note:** The three-year average rate for the period 2011/12-2013/14 is not included in Figure 3 above.

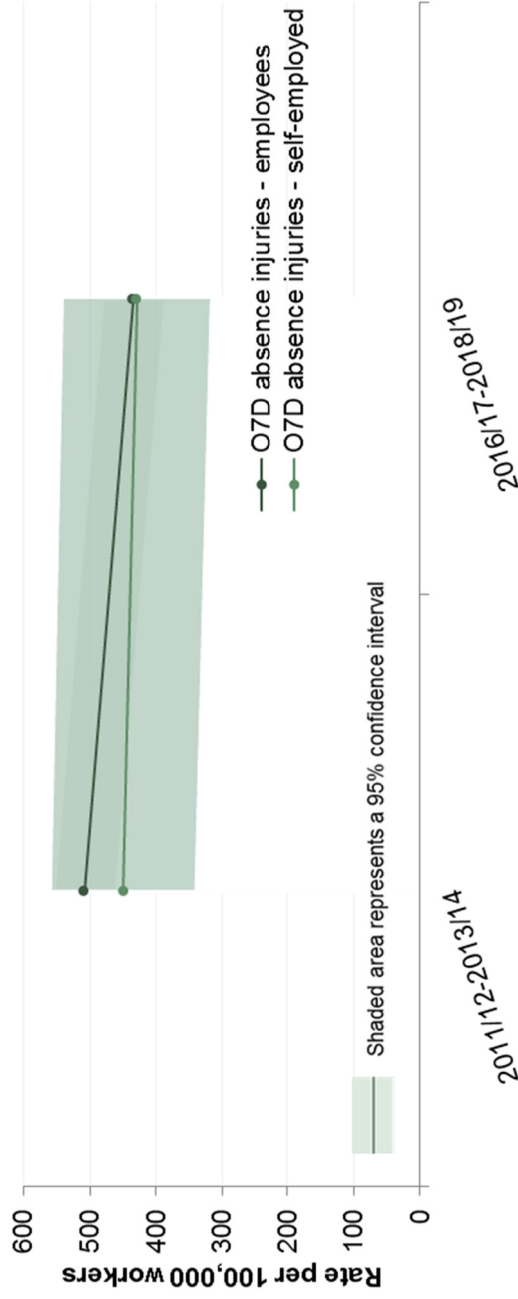
Estimated incidence and rates of self-reported workplace non-fatal injury with over seven days absence sustained in current or most recent job, by employment status, for people working in the last 12 months, averaged three-year time periods Great Britain

Table 3

Three-year average	Injury sustained in their current/most recent job			Whether rates statistically significantly higher/lower for employees than self-employed
Employment Status (in current/most recent job)	Averaged estimated incidence (thousands)	Averaged rate per 100,000 workers		
	95% C.I. central lower upper	central	95% C.I. lower upper	

2011/12-2013/14		2016/17-2018/19		2011/12-2013/14		2016/17-2018/19		2011/12-2013/14		2016/17-2018/19	
Employees	126	114	137	510	460	560	No	..	..	..	..
Self-employed	19	14	23	450	340	560	..	..	..	..	..
Employees	116	103	128	430	390	480	No	..	..	..	..
Self-employed	20	15	25	430	320	540	..	..	..	..	..

Figure 6



Results show that employee and self-employed rates for over seven day absence injuries, averaged over the three-year period prior to 2015 (2011/12-2013/14) and post 2015 (2016/17-2018/19), were of a similar order (not statistically significantly different).

Footnotes for data tables

95% C.I.: 95% confidence interval.

.. Not applicable

Explanatory notes

The Labour Force Survey (LFS)

The LFS is a national survey run by the Office for National Statistics of currently around 37,000 households each quarter. HSE commissions annual questions in the LFS to gain a view of work-related illness and workplace injury based on individuals' perceptions. The analysis of these data presented is the sole responsibility of HSE. See [LFS technical note](#) for more details.

Self-reported workplace injuries: Workplace injuries sustained as a result of a non-road traffic accident in the last 12 months, as estimated by the LFS. Over three day and over seven day absence injuries include all those with more than three and more than seven consecutive (working and non-working) days away from work (not counting the day on which the accident happened). Estimates are based on the most recent workplace injury, if the individual has more than one.

All workplace injuries and over three day absence injuries are available annually on a consistent basis from 2000/01 and over seven day absence injuries annually from 2003/04. However, some results are presented as three-year averages to provide more robust estimates.

95% confidence interval (C.I.): The range of values which we are 95% confident contains the true value, in the absence of bias. This reflects the potential error that results from surveying a sample rather than the entire population.

Statistical significance: A difference between two sample based estimates is described as 'statistically significant' if there is a less than 5% chance that it is due to sampling error alone.

Results in the charts and tables are restricted to injuries caused or made worse by the current or most recent job as employment status is not available for previously held jobs.

Employment status: Defined by the individual