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My evidence to Lord Young [1]

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The Prime Minister has appointed Lord Young of Graffham to undertake a review of health and safety regulations. Lord Young has promised to restore "common sense" over regulation, saying "We need a system that is proportionate and not bureaucratic."

I will be giving evidence to Lord Young's review. My approach will be unusual, in that most evidence will be concerned with which regulations might be abolished as unnecessary and over-bureaucratic, whereas mine will deal with the way in which regulation is made.

Regulation has largely been done by statute, with detailed laws setting out the rules to be complied with. Sometimes these emerge from Parliament, but more often from civil service departments putting the letter to Parliament's intent. A very large number come as directives from the EU.

I will urge the replacement of statute law by case law, the principle which underlies English common law. I will suggest that Parliament's intent be not spelled out in detail, but decided by a series of tribunals and juries setting out a body of precedent. A typical one might require employers to provide "reasonable" toilet facilities for their staff, but instead of spelling out line by line what is "reasonable," would allow a series of tribunal decisions to build up a body of precedent. This brings the commonsense views of ordinary people into the process.

With the EU, Britain will have to plead "vital national interest," as allowed. We will say that English common law is a vital part of our national identity. We will take EU directives and apply them in our own way, not accepting the pages of detail, but accepting the principle and allowing juries to interpret through a series of cases how it is to be applied in practice.

Furthermore, I shall urge Lord Young's review to apply this principle to much current regulation as well as to future ones. Common sense will then be incorporated into existing regulation as well as to the process itself.

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