

Health and Safety Commission Paper		MISC/07/08	
Meeting Date:	15 March 2007	Open Gov. Status:	Fully Open
Type of Paper:	Below the line	Paper File Ref:	
Exemptions:	None		

## HEALTH AND SAFETY COMMISSION

### Update on initiatives as part of the Better Regulation agenda

A paper by Helen Smart, Julian Cooper and Gill Kiy

Advisers: Jenny Eastabrook / Elizabeth Hodkinson

Responsible Board Member: Giles Denham

Cleared by Jonathan Rees on 27 February 2007

#### Issue

1. To inform the Health and Safety Commission of progress on work taking place as part of the government's Better Regulation Agenda.

#### Timing

2. Routine.

#### Recommendation

3. For information.

#### Background

4. The Government accepted all recommendations from both the Better Regulation Task Force and Hampton Review Reports in 2005, initiating a better regulation agenda across departments designed to make regulation and enforcement more risk-based and to reduce paperwork and duplication of effort wherever possible.
5. HSE has engaged proactively with the better regulation agenda and the Commission has been updated regularly on various workstreams connected with it. Over the past year this has included:
  - HSE's Hampton Programme: Update - HSC/06/21, March 2006
  - HSE's Hampton Programme: HSE's nomination as the Adventure Licensing Authority - HSC/06/47, May 2006
  - Better Regulation Executive (BRE) – Macrory Penalties Review Consultation Document: *Regulatory Justice Sanctioning in a post-Hampton World* - HSC/06/30, July 2006
  - Delivering the better regulation agenda, HSE's Simplification Plan - HSC/06/68, September 2006
  - Options for the merger of the Gangmasters Licensing Authority with HSE, - HSC/06/81, October 2006
  - William Sargent, Executive Chair of Better Regulation Executive (BRE) - presentation on delivering the better regulation agenda, October 2006
  - Better Regulation, Recent Developments - MISC/06/27, December 2006
  - Evaluation of the Enforcement Policy Statement - HSC/06/78, January 2007

## **Argument**

6. This paper outlines progress on specific better regulation initiatives, including the new issues mentioned in the Pre-Budget report (PBR) such as the Regulators assessment framework and the Local Better Regulation Office. We will report further in the Summer on developments on the compliance code and the BRE/National Audit Office proposed performance assessment of regulators (see below).

## Mergers

7. The health and safety functions of the Engineering Inspectorate transferred to HSE in October 2006. This involved four staff moving from DTI to HSE, which became the sole regulator for all safety issues associated with electricity transmission and distribution.
8. The Commission agreed a consultation document on the merger of the Gangmasters' Licensing Authority (GLA) in October, and this is now with Defra for action.
9. The proposed transfer of inspection functions from the Coal Authority in fact amounted to less than one staff year of activity. It has been agreed with other government departments that the same result is best achieved by formalising co-ordination of inspections between HSE and the Coal Authority.

## Simplification plan

10. HSC/E published its simplification plan on the HSE website on 11 October 2006, the first department/non-departmental public body (NDPB) to do so.
11. The milestones in the simplification plan are such that it is generally too early to give a definitive view of whether the projects included will deliver to timetable; however monitoring of the key initiatives indicates that most are progressing as planned.
12. The plan will be updated annually and the second version is due to be published in November 2007. This will detail progress to date and include additional initiatives to help achieve the 25% administrative burdens reduction target HSC/E are committed to working towards. The draft revised plan will be submitted to the Commission in October 2007, for comment and agreement before publication.
13. Even with additional projects, the administrative burdens reduction target is challenging. This is particularly so given the reliance on HSE initiatives that depend on culture change, such as Embedding Sensible Risk Management, where the involvement of others can have a significant effect. In addition, the plan includes reviews of regulations, such as the Landlords' Gas Safety Check, which is due to report its findings this Summer. These could reveal that no significant reduction in administrative burden is possible without reducing health and safety standards, which would be inconsistent with the provisions of the Health and Safety at Work Act on maintaining or raising standards.

## National Audit Office (NAO) examination of administrative burdens reduction

14. NAO has been commissioned by the Chancellor to report to Parliament the extent to which the intended 25% administrative burden reduction planned by departments/NDPBs are being realised. In order to do so, they will be reviewing achievements in reducing regulatory burdens. The centrepiece of this work will be an annual survey to track business perceptions of how the burden of regulation is changing.
15. NAO is beginning with baseline research this year. It will cover broad areas of legislation that fall under the responsibility of DTI, HMRC, HSE and DCLG. The rationale for focussing on these four departments is that this provides broad coverage of legislation that affects virtually all businesses and imposes the highest costs as estimated in the Administrative Burdens Measurement Exercise.
16. This year will have a wider scope than the research in future years – when NAO will focus in more depth on specific areas of legislation. No decision has yet been made on the focus of future years but HSE has met the NAO examination team to discuss their project. NAO has offered to consider what areas of investigation it might be mutually useful for them to focus on, for example measuring business perception of risk assessment.

## Regulators' Compliance code

17. As reported in MISC/06/27, the Legislative and Regulatory Reform Act 2006 came into force on 8 January 2007. Part 2 of the Act contains provisions for a statutory code of practice (the Regulators' Compliance Code), with which regulators will need to comply. In March 2006 BRE published a draft Compliance Code but it was couched in overly prescriptive language about how regulators should behave in order to comply with regulatory principles. HSE responded to BRE supporting the broad intent of the Code but setting out a number of concerns. In particular, we would like to see the Code framed as simply as possible, around the regulatory principles on the face of the Act; proportionality, transparency, accountability and consistency, which HSE has long followed.
18. BRE currently plans to publish the draft Code for formal public consultation on 14 May. Assuming BRE is able to achieve this timescale the paper submitted to HSC in June/July will include the Compliance Code consultation. The Code is expected to come into force on 1 April 2008 and, as discussed in HSC/06/78, we will need to consider whether a modification to the HSC's enforcement policy statement is needed.

## Regulators assessment framework

19. In the pre-budget report on 6 December 2007, the Chancellor made a commitment to develop a framework for peer review of regulators, in particular, their adherence to the Hampton principles on effective enforcement and inspection, and the Macrory characteristics of regulatory penalties. (See annex for BRE's initial thinking of what the assessment is likely to cover.)
20. The framework is currently being developed by BRE with the help of NAO and the expertise of the regulators. It is possible that the assessment will be a one-off audit rather than a regular checkpoint, however, the exact approach is yet to be finalised. In the first year five major regulators will be assessed. In addition to HSE, these are

the Financial Services Authority, the Food Standards Agency, the Environment Agency and the Office of Fair Trading.

21. HSE involvement in developing the assessment criteria is important to ensure that review delivers an intelligent outcome and considers HSE's perspective. To this end, HSE policy, HID and FOD staff are attending workshops to provide expert advice on how best to carry out the assessment and what the criteria for the assessment should be. Following these workshops BRE intend to publish the assessment framework for consultation in March/April 2007. It will of course be important to ensure the framework captures views from those HSC protects, as well as business stakeholders.
22. The Commission may wish to have a substantive discussion in June/July on the assessment, given that BRE are planning to advance fairly rapidly to ensure completion of assessments for all five major regulators by December 2007. The expectation is that the process would culminate in an agreed action plan for improvements in key areas.

#### Rogers Review

23. The Rogers Review was set up by the Chancellor to identify around five national priorities for enforcement for Local Authorities (LAs) from the 60+ areas they enforce. An initial sift to 25 retained the three main health and safety priorities, which broadly reflect the Fit3 areas. The review team has been consulting and obtaining evidence from regulators, businesses, citizens and LAs themselves, to help form its conclusions. A first draft of the review report is expected in early March. The final recommended priorities are due in time for the Budget, although they will not be applied until 2008 at the earliest. HSE is working with the review team to provide the strongest case for including health and safety priorities in the Review's final list.

#### Local Better Regulation Office (LBRO)

24. As raised in MISC/06/27, LBRO is being established to work in partnership with local authorities and regulators to reduce burdens on business without reducing regulatory outcomes. As also announced by the Chancellor, responsibility for LBRO has moved from DTI to the Cabinet Office.
25. In the longer term, following on from the Rogers Review, LBRO will be the body that sets the priorities on an annual basis. Its other functions are to provide:
  - statutory guidance, which Local Authorities will be required to have regard to, and
  - advice to Ministers on both enforcement and regulatory issues associated with local government.

#### **Consultation**

26. HSE is working closely with BRE on all the initiatives outlined above and, where appropriate, with relevant stakeholders both within and outside of government. We are actively engaging with other regulators to identify mutual interests and common concerns (particularly on the Compliance Code and the Regulators' Performance Assessment) and so maximise our influence on BRE.

#### **Action**

27. This paper is for information.

28. HSE aims to update the Commission on Hampton and better regulation developments in the Summer when we expect there to be issues for substantive discussion.

## **BRE's Proposal for the Regulators' Assessment Framework**

### What the tool is likely to include:

Best practice examples of, and methods to investigate, the following:

- enforcement strategies;
- approach to risk;
- interaction with local authorities (where appropriate);
- advice & guidance;
- openness & transparency;
- consultation;
- performance measures;
- forms and data;
- penalties and sanctions approach;
- views of business.

### Envisaged benefits of the framework:

It should:

- enable regulators to improve performance;
- provide a mechanism for the spreading of best practice;
- provide evidence to help regulators demonstrate that they are acting with regard to the compliance code (but not be explicit on whether regulators are 'code compliant');
- help build a case for the award of Macrory powers.