

## How HSC and HSE meet the obligations in the statutory Regulators' Compliance Code

HSC/E already have policies in place which ensure we carry out our regulatory responsibilities, including firm but fair enforcement, in accordance with the principles of good regulation and the provisions of the [Regulators' Compliance Code](#)<sup>1</sup>.

Our key high-level policies that enable us to meet the obligations in the Code are:

- our [Strategy for workplace health and safety in Great Britain to 2010 and beyond](#)<sup>2</sup>
- [Sensible Health and Safety at Work: the Regulatory methods used in Great Britain](#)<sup>3</sup>
- our [Enforcement Policy Statement](#)

These high-level policies are supplemented in many contexts by other policies and by more detailed guidance and operational procedures.

The **Regulators' Compliance Code** is a statutory code of practice intended to encourage regulators to achieve their objectives in a way that minimises the burdens on business. The purpose of the Code is to embed a risk-based, proportionate, targeted and flexible approach to regulatory inspection and enforcement among the regulators to which it applies. This approach will ensure that regulators are efficient and effective in their work, without imposing unnecessary burdens on those they regulate..

HSC and HSE are committed to better, smarter regulation. Since the early 1990s, HSC/E have followed the five principles of good regulation: proportionality, accountability, consistency, transparency and targeting. These principles are integral to our [Enforcement Policy Statement](#)<sup>4</sup>, which formed the basis of the Government's voluntary Enforcement Concordat introduced in March 1998. They are now enshrined in the Legislative and Regulatory Reform Act 2006, and regulators must have regard to them when exercising a regulatory function, including taking enforcement action.

From 6 April 2008 regulators such as HSC/E must also have regard to the provisions of the **Regulators' Compliance Code**. The Code applies when regulators determine their general policies or principles about how they exercise their regulatory functions, and when they set standards or give general guidance. It does not apply at the regulatory decision-making level – ie not to individual enforcement decisions. The Code is based on the seven principles of inspection and enforcement identified in the Philip Hampton report [Reducing administrative burdens: effective inspection and enforcement](#)<sup>5</sup>.

### Specific Obligations of the Code

Below is a summary of how, by applying our key policies, we ensure that we already act in accordance with the obligations of the Code. Links from each heading show in more detail how the policies relate to the Code's requirements. These short statements reflect [draft] findings of the National Audit Office/Better Regulation Executive Review of HSC/E's progress in implementing

<sup>1</sup> [http://bre.berr.gov.uk/regulation/documents/compliance\\_code/compliance\\_code\\_071217.pdf](http://bre.berr.gov.uk/regulation/documents/compliance_code/compliance_code_071217.pdf)

<sup>2</sup> <http://www.hse.gov.uk/aboutus/hsc/strategy.htm>

<sup>3</sup> <http://www.hse.gov.uk/aboutus/hsc/sensiblehealthandsafety.pdf>

<sup>4</sup> <http://www.hse.gov.uk/pubns/hsc15.pdf>

<sup>5</sup> <http://www.hm-treasury.gov.uk/media/7/F/bud05hamptonv1.pdf>

the recommendations of the Hampton report: [Reducing Administrative Burdens: Effective Inspection and enforcement](#)

### **Economic progress**

We seek to publicise the positive economic benefits of effective health and safety management.

### **Risk assessment**

Our focus is on tackling the key causes of injury and ill-health at work. Our regulatory activities are risk-based, informed by evidence about what industries and activities pose the greatest risk to health and safety outcomes. We have used this evidence-base to build strategic programmes to target areas of highest risk.

### **Advice and guidance**

We put a lot of emphasis on providing advice and guidance that is clear and concise, and this process is particularly effective when we work with business stakeholders.

### **Inspections and other visits**

Surveys show business has a positive view of HSE inspection. We want to maintain and improve the way we work - for example, in 2007/08 we are conducting a 'Fine Tuning' review of our programmes to improve the use of intelligence. HSE and local authority inspectors are involved in various initiatives to ensure a joined-up approach and allow greater flexibility in resourcing.

### **Information requirements**

We have rationalised the data returns required from business, and we are 'e-enabling' our stock of existing forms.

### **Compliance and Enforcement actions**

We have developed tools and policies which encourage a consistent and proportionate approach to enforcement. Research shows business generally views HSE enforcement as fair.

### **Accountability**

HSC/E is a transparent and accountable regulator. We have good internal challenge processes in place to scrutinise new regulation and policies. We undertake robust Impact Assessments, consult effectively with business groups, and consider using alternative regulatory approaches such as educational campaigns. We review regulation after it has been implemented.

The Code explicitly recognises that there will be circumstances where its provisions need not be followed because they are either not relevant or are outweighed by other relevant considerations. This guide provides examples of the limited circumstances HSE considers fall into this category.

The Code also makes clear that the duty to have regard to the Code is subject to any other legal requirement affecting the exercise of the regulatory function, including EC law obligations.

## Supporting economic progress

**Hampton Principle:** Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

We seek to publicise the positive economic benefits of effective health and safety management.

Our key high-level policies reflect this Hampton principle by committing us to:

- achieve higher levels of recognition and respect for health and safety as an integral part of a modern, competitive business and public sector;
- forge strategic partnerships to improve our contribution to employment and productivity – by keeping those at work healthy and in work;
- find ways to demonstrate the moral, business and economic cases for health and safety. Appropriate health and safety management is an integral part of effective business management and, as such, is an enabler not a hindrance;

***Strategy for workplace health and safety in Great Britain to 2010 and beyond***

- develop and apply a better understanding of how to measure the costs and effects of our interventions;
- maintain our efforts to understand and promote the positive business case for sensible health and safety;
- pave the way for specific initiatives by putting the case to the organisations we are seeking to influence;

***Sensible Health and Safety at Work: the Regulatory methods used in Great Britain***

- make clear to duty-holders not only what they have to do but, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory;

***HSC's Enforcement Policy Statement***

- avoid unduly compromising industry's ability to operate in areas where doing so is conditional on public confidence in high levels of health and safety, by developing permissioning regimes to secure systematic management of hazardous activities;
- we will propose such a regime only as a last resort, where the normal forms of regulation are not sufficient and where the extra demands imposed by the regime are justified by the benefits it brings.

***Reducing risks, protecting people – HSE's decision-making process***

and

***HSC's Policy Statement – Our approach to permissioning regimes***

### ***Circumstances where the Code's provisions are either not relevant or are outweighed by other relevant considerations***

In carrying out its statutory functions in particular cases, HSE must take account of interpretations of its duties given by the courts –

"... the duty of enforcing authorities, whether inspectors or local authorities, is to have regard to the health and safety of members of the public. If steps which they think should be taken to improve safety would have an adverse economic effect on the business enterprise in question, so be it." (Harris v HSE & Evans)

Therefore HSE cannot set policies that would rule out taking action in accordance with such interpretations.

## Risk Assessment

**Hampton Principle:** Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.

Our focus is on tackling the key causes of injury and ill-health at work. Our regulatory activities are risk-based, informed by evidence about what industries and activities pose the greatest risk to health and safety outcomes. We have used this evidence-base to build strategic programmes to target areas of highest risk.

However, we interpret this requirement as also continuing to allow HSE and other parts of Government to apply the precautionary principle in the rare circumstances where there is good reason to believe that people will be harmed, but where the level of scientific uncertainty is such that the risk cannot be assessed with confidence.

Our high-level policies and principles reflect this Hampton principle by committing us to:

<ul style="list-style-type: none"> <li>concentrate on activities directly related to work where we have the skills, expertise and evidence and where we, rather than others, can be the principal driver for change. We will gather and use evidence to inform and evaluate these activities and to persuade others;</li> <li>develop a clear evidence-based interventions strategy. This will reduce duplication and fully recognise the contributions of workplace safety representatives, insurance, guidance, design, the training and competence of managers, the supply chain, new mechanisms of support, inspection and enforcement;</li> <li>continue to identify those circumstances that require investigation and possible enforcement using both proactive means, such as inspections, and reactive means, including responding to complaints or incidents;</li> </ul>	<p><b><i>Strategy for workplace health and safety in Great Britain to 2010 and beyond</i></b></p>
<ul style="list-style-type: none"> <li>focus our attention onto poor performers and large organisations where health and safety priorities suggest there might be significant levels of risk, or indeed of actual harm;</li> <li>maintain credibly large programmes of inspection and other frontline activity aimed at finding out how well organisations which have the risks associated with our priority topics control them, and we will concentrate our inspection effort on those whose performance is poor;</li> </ul>	<p><b><i>Sensible Health and Safety at Work: the regulatory methods used in Great Britain</i></b></p>
<ul style="list-style-type: none"> <li>have systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a duty holder's operations;</li> <li>direct enforcement action against duty holders responsible for a breach. This may be employers in relation to workers or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; designers or clients of projects; or employees themselves;</li> </ul>	<p><b><i>HSC's Enforcement Policy Statement</i></b></p>
<ul style="list-style-type: none"> <li>Open to scrutiny our approach to the assessment, management and regulation of risk and the philosophy underpinning it;</li> <li>make transparent the factors that inform our decisions on risks and show how these shape the form and content of our regulations and guidance;</li> <li>help reassure the public that risks to people from work activities are properly addressed, taking account of the benefits of the activities giving rise to the risks.</li> </ul>	<p><b><i>Reducing risks, protecting people – HSE's decision-making process</i></b></p>

An example of how our regulatory efforts and resources are targeted where they would be most effective is our Strategic Programme ***Fit for Work, Fit for Life, Fit for Tomorrow*** (Fit3), which enables HSE to work in partnership with local authorities to:

- target the main causes of injury, ill-health and days lost on the basis of evidence;

- allocate resources on the basis of risk and local knowledge to particular industries and regions;
- monitor performance and adapt plans in the light of progress.

***Circumstances where the Code's provisions are either not relevant or are outweighed by other relevant considerations***

For certain very high hazard sites an important regulatory outcome is public assurance that risks are properly controlled. Therefore these sites will receive regular inspections so that enforcing authorities can give this public assurance. (***HSC's Enforcement Policy Statement***)

**Advice and Guidance**

***Hampton Principle:*** Regulators should provide authoritative, accessible advice easily and cheaply.

We put a lot of emphasis on providing advice and guidance that is clear and concise, and this process is particularly effective when we work with business stakeholders.

Our high-level policies and principles reflect this Hampton principle by committing us to:

- provide more and better advice, for small firms in particular;
- maintain programmes of contact with small firms, including inspections, and increase the contact that we achieve through other means such as large-scale awareness events;
- offer duty holders information, or advice, face to face or in writing, including any warning, and tell the duty holder what to do to comply with the law, and explain why. Inspectors will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice;
- examine how HSE is developing and improving its existing services, particularly where there is a perceived fear of enforcement at the point of delivery;
- share what we learn with Local Authorities (LA) so that they too can continue to develop their respected role as givers of advice and guidance;
- work with others to develop and improve other channels of advice and guidance.

***Sensible Health and Safety at Work: the regulatory methods used in Great Britain***

***HSC's Enforcement Policy Statement***

***HSE statement on providing accessible advice and support***

**Inspections and other visits**

***Hampton Principle:*** No inspection should take place without a reason.

Our understanding is that the Code requirement to have regard to this principle when determining general policies or principles should not hamper our ability to mount targeted proactive inspection campaigns – such as in construction – which have proved effective in focusing attention on poor standards.

Surveys show business has a positive view of HSE inspection. We want to maintain and improve the way we work [- for example, in 2007/08 we are conducting a 'Fine Tuning' review of our programmes to improve the use of intelligence]. HSE and local authority inspectors are involved in various initiatives to ensure a joined-up approach and allow greater flexibility in resourcing.

Our high-level policies and principles reflect this Hampton principle by committing us to:

<ul style="list-style-type: none"> <li>• continue to identify those circumstances that require investigation and possible enforcement using both proactive means, such as inspections, and reactive means, including to complaints or incidents;</li> </ul>	<p><b><i>Strategy for workplace health and safety in Great Britain to 2010 and beyond</i></b></p>
<ul style="list-style-type: none"> <li>• maintain risk-rating systems to guide our choice of organisations to inspect and develop a system for openly rating the performance of organisations;</li> <li>• move towards a position where every intervention has a clearly stated reason and in general forms part of a broader planned approach (such as an industry-wide campaign);</li> <li>• work together with LAs to apply these regulatory methods in a consistent way;</li> <li>• eradicate any wasted or duplicated effort that arises from insufficient coordination between HSE and LAs, or between individual LAs;</li> </ul>	<p><b><i>Sensible Health and Safety at Work: the regulatory methods used in Great Britain</i></b></p>
<ul style="list-style-type: none"> <li>• have systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a duty-holder's operations.</li> </ul>	<p><b><i>HSC's Enforcement Policy Statement</i></b></p>
<p><b><i>Circumstances where the Code's provisions are either not relevant or are outweighed by other relevant considerations</i></b></p> <p>On the principle of no inspection without a reason, an important focus of effort for the major hazards sector (eg nuclear and chemical industries) is in preventing rare but catastrophic events. We all recognise the need for public reassurance and this is a fundamental consideration for major hazards inspection regimes.</p> <p>We interpret the requirement to collaborate with other regulators as allowing a common-sense and fit-for-purpose approach: it does not seek to have general policies requiring staff to collaborate with non-homogeneous regulators, otherwise the diversion of resources would be disproportionate.</p>	

## Information Requirements

**Hampton Principle:** Businesses should not have to give unnecessary information or give the same piece of information twice.

We have rationalised the data returns required from business, and we are 'e-enabling' our stock of existing forms.

We are currently updating our policies on information gathering. Examples of how we currently organise our regulatory work so as to rationalise information requirements and minimise burdens, in accordance with this Hampton principle, include:

Impact Assessment - the Government's Impact Assessment process builds on our long-standing approach to cost benefit analysis in policy development.

The Impact Assessment procedure provides a continuous process to help policy makers fully think through and understand the consequences of possible Government interventions (whether domestic or internationally based). This process includes analysis of the costs and benefits of potential information requirements on regulated entities.

A long-standing Forms Gatekeeper function in our Business Efficiency Unit whose role is to support HSE and Government policy objectives by maintaining measures to:

- approve the use and design of new forms;
- conduct regular reviews of all existing forms for simplification or abolition. (HSE currently has 54 forms - a reduction from 127 following a recent review, and a further 8 are currently being considered for removal);
- maintain a register of forms sent to business;
- ensure forms are designed and controlled by experts;
- ensure all forms are tested on a sample of users before being introduced.

HSE reports to Ministers annually on the number of forms removed and issued.

All HSE Forms are currently available on HSE's web site in pdf format providing a "fill-in and print" or fill-in and e-mail capability. A programme of work is currently underway to provide enhanced features to the forms. This will include auto-population of user profile details where appropriate and direct update to HSE's internal databases.

Discussions have been held with relevant industrial groups to ensure their needs are met and to promote involvement.

HSE's forms service will migrate to the Government's business support, information and advice website [Business Link](#) as that enhancement programme unfolds.

## Compliance and Enforcement actions

**Hampton Principle:** The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.

We have developed tools and policies which encourage a consistent and proportionate approach to enforcement. Research shows business generally views HSE enforcement as fair.

Our high-level policies and principles, whilst recognising that it is for the courts to decide whether someone is guilty and what penalty, if any, to impose on conviction, reflect this Hampton principle by committing us to:

- secure proportionate compliance with the law and ensure that those who have duties under it may be held to account for failures to safeguard health safety and welfare. The scope of these activities will continue to be evidence-based;

***Strategy for workplace health and safety in Great Britain to 2010 and beyond***

- use our enforcement powers to hold rogue businesses to account and promote a just and fair society in our area of responsibility;
- follow up all enforcement actions we take, and make sure that the circumstances and causes have been dealt with;

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- when selecting complaints or reported incidents to investigate, taking account of knowledge of the duty-holder's past health and safety performance;
- normally prosecuting, or recommending prosecution, in the public interest, where (inter alia):-
  - the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
  - there has been reckless disregard of health and safety requirements;
  - there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
  - false information has been supplied wilfully, or there has been intent to deceive, in relation to a matter which gives rise to significant risk; or
  - inspectors have been intentionally obstructed in the lawful course of their duties;
- when appropriate, drawing to the court's attention all the factors which are relevant to the court's decision as to what sentence is appropriate upon conviction;

***HSC's Enforcement Policy Statement***

"In line with our published commitment to seek heavier penalties for 'rogue' businesses, inspectors focus their investigations on appropriate evidence collection. Victim impact statements are often included and inspectors routinely highlight aggravating features to ensure the courts are properly informed before sentencing and issuing fines. The *Work Related Deaths Protocol* also supports joint working with the police in cases involving fatalities."

***HSE Position Statement on 'Rogues'***

## Accountability

**Hampton Principle:** Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

HSC/E is a transparent and accountable regulator. We have good internal challenge processes in place to scrutinise new regulation and policies. We undertake robust Impact Assessments, consult effectively with business groups, and consider using alternative regulatory approaches such as educational campaigns. We review regulation after it has been implemented.

Our high-level policies and principles reflect this Hampton principle by committing us to:

<ul style="list-style-type: none"> <li>• examining our institutions and ways of working and changing them where they militate against effective partnership working;</li> <li>• concentrating on activities directly related to work where we have the skills, expertise and evidence and where we, rather than others, can be the principal driver for change;</li> </ul>	<p><b><i>Strategy for workplace health and safety in Great Britain to 2010 and beyond</i></b></p>
<ul style="list-style-type: none"> <li>• making our reasons for intervening explicit, so that everyone who has contact with us understands why, and what we want to achieve; aiming for as few interventions as are necessary to achieve the results we seek;</li> <li>• moving towards a position where every intervention has a clearly stated reason and in general forms part of a broader planned approach;</li> <li>• maintaining risk-rating systems to guide our choice of organisations to inspect and developing a system for openly rating the performance of organisations;</li> <li>• making greater use of campaign techniques, using a wide range of the methods available to us, and strengthening the intelligence on which we base our campaigns;</li> <li>• engaging in partnership with carefully chosen organisations, professional bodies and institutions, that have been identified through our corporate stakeholder engagement strategy, our priority topics or our pilot work with large organisations as being capable of making major contributions to improved health and safety (either directly, or by the influence they wield over others);</li> <li>• listening to the informed judgements of our consultees, and not relying solely on the other evidence that we gather;</li> </ul>	<p><b><i>Sensible Health and Safety at Work: the regulatory methods used in Great Britain</i></b></p>
<ul style="list-style-type: none"> <li>• having policies and standards against which we can be judged, and an effective and easily accessible mechanism for dealing with complaints – in particular:             <ul style="list-style-type: none"> <li>○ describing a complaints procedure in the case of decisions by officials, or if procedures have not been followed; and</li> <li>○ explaining about the right of appeal to an Employment Tribunal in the case of statutory notices.</li> </ul> </li> </ul>	<p><b><i>HSC's Enforcement Policy Statement</i></b></p>

Examples of effective consultation and feedback opportunities that enable continuing cooperative relationships with regulated entities and other interested parties:

- We are a tripartite Health and Safety Commission with representation from business, industry, employees and Local Authorities which delivers continuous two-way dialogue with those affected by health and safety regulations.
- Most of our work is developed and delivered in close co- operation with industry and other stakeholder partners. As a result we are much more selective with our intervention mix - choosing the appropriate intervention for both the level of risk and size/nature of the audience we are trying to influence.
- We have a stakeholder management system at corporate level that encourages regular planned and coordinated contacts with senior personnel of regulated organisations or their representative bodies, including CBI, Chemical Industries Association, Local Authorities, Federation of Small Businesses, NHS Employers.
- We have industry advisory committees for specific sectors and hazards that provide regular opportunities for business and employee representatives to report on the impact of regulations.
- HSE's website raises awareness of consultations and promotes dialogue between business, employees and HSE on important issues - a redesign during 2008 will make it even easier to get involved and improve how results are communicated.
- Google results for 'HSE- complaint' produce HSE Infoline and HSE's 'how to complain' page as 1st and 2nd results.
- A 'contact HSE' message theme encourages people to get in touch by phone, online, email, fax, minicom, or HSE office visit and is very popular, with daily checks on feedback.
- A regular (normally annual) survey of employers, employees and citizens tracks attitudes to health and safety requirements; it provides information on attitudes to the burdens and benefits of health and safety requirements and helpfulness of HSE staff.
- A survey of MPs tracks views on the effectiveness of HSE as an organisation.

### **Standards and Performance**

We will:

- be polite and considerate;
- give you our name when we speak to you;
- either wear a name badge, give you a business card or show you a warrant if we meet you.

We also aim to:

- reply to all enquiries or complaints, or let you know what we are doing about them, within ten working days;
- consult our users regularly about the services we provide;
- provide services that are accessible to everyone; and
- use our resources effectively.

If we fail to meet these standards we will apologise and aim to put things right.

- We measure performance against our standards. The HSC/E Annual Report provides full details, including numbers of enquiries and customer satisfaction levels. We aim to continually improve our performance.

- Further information about our standards and performance:

***The standards you can expect from us***

<http://www.hse.gov.uk/aboutus/hse/standards.htm>

***Our performance: HSC/E Annual Report***

<http://www.hse.gov.uk/aboutus/hse/standards.htm>

The leaflets ***The Health and Safety Executive - working with employers*** and ***The Health and Safety Executive and you*** provide further details.

