

Regulation, Enforcement, Inspection, and What we will Do.

Background

I recently had a stimulating discussion at the FOD Management Board. It transpired that we had a common understanding of what we wanted to do, but we did not always have a common vocabulary to express this. I think that it is essential to generate a shared understanding across HSE of key words used in connection with our functions and what we are setting out to do. To that end I've set out below what I believe we are setting out to do and some definitions which I hope we can share. I think it would be useful to take advantage of the Board residential session to discuss this.

What we are setting out to do?

This needs to be seen in the light of our Mission and Vision, and I attach the definitions now agreed by the Commission and supported by our Minister at Annex 1 for easy reference. All the changes we are undertaking are aimed at improving our effectiveness in working towards these aims.

I believe that the changes we are seeking to achieve are covered in the attached document "Building on success: a broad range of intervention strategies" (Annex 2), to which many people contributed last year..

Much has already been changed but change must remain a continuous evolution in how we go about our work. We need to build on the many examples of good practice across HSE, but apply them in a more systematic, consistent and targeted way.

In terms of the balance of our efforts we want to put more emphasis on the "educate and influence" aspects of our work, and the working in partnership with others (at all levels) who can help to achieve the improvements in health and safety performance for which we strive. Encouraging our staff to use their authority and experience more on these activities means using a smaller proportion of our total front line resource for the inspection and enforcement aspects of our work. (Note – if we are successful in increasing our productivity, then it may be possible to maintain or even increase the actual time available for this work)

This is not to suggest that such activities are not valuable and important tools to us in our work, or that we wish to "soft-pedal" on enforcement (as a regulatory body our ability to enforce will always remain central to our role, and there is no intention to revise the current Enforcement Policy). It simply reflects a belief (and we agree that at present our evaluation of the effectiveness of different approaches and techniques is not sufficiently well developed to allow it to be more than this) that by altering the balance in this way will help us to climb off the current plateau in safety performance and to tackle the increases in ill health.

Definitions

To assist in defining a common vocabulary I have set out some working definitions that I hope will assist in preventing misunderstanding of concepts because of confusion over the meaning of terms. The definitions are listed at Annex 3.

I hope that what I have set out makes sense. What is important is that we develop a shared sense of how we alter the balance of our activities to best effect, and then communicate this in a coherent and consistent way with the managers and staff who work for us and on whom success will depend.

If you agree that the “Building on success” document and the definitions are useful we should circulate them to senior managers to use in discussion with their staff as part of our efforts to communicate a clearer image of the practical changes associated with the Change Programme.

It is equally important that these developments in the ways we work with others are seen in the context of the ways we wish to work and our values. I would appreciate a discussion about the best ways to link the two issues in a way that can be easily communicated through the management chain.

Annex 1

HSC/E vision and mission (v6 05.03.03)

Vision for health and safety

To gain recognition of health and safety as a cornerstone of a civilised society, and with that achieve a record of workplace health and safety that leads the world.

HSC/E mission

To protect people's health and safety by ensuring that risks in the changing workplace are properly controlled.

What we currently do and will continue to do

1. We protect people by providing information and advice; by promoting and assuring a goal-setting system of regulation; by undertaking and encouraging research; and by enforcing the law where necessary.
2. We influence organisations to embrace high standards of health and safety and to recognise the social and economic benefits.
3. We work with business to prevent catastrophic failures in major hazard industries.
4. We seek to optimise the use of resources to deliver our vision and mission.

What we are aiming to do

5. We will develop new ways to establish and maintain an effective health and safety culture in a changing economy, so that all employers take their responsibilities seriously, the workforce is fully involved and risks are properly managed.
6. We will do more to address the new and emerging work-related health issues.
7. We will achieve higher levels of recognition and respect for health and safety as an integral part of a modern, competitive business and public sector and as a contribution to social justice and inclusion.
8. We will exemplify public sector best practice in managing our resources.

How we will do it

- We will champion high standards of health and safety.
- We will work with others and earn their trust.
- We will respond innovatively within a changing economy.
- We will be open and learning and value people.
- We will act professionally and take personal responsibility in all we do.

Annex 2

Building on success: A Broad Range of Intervention Strategies

This statement sets out the Executive's views on how we can make best use of HSC/E's collective strength in achieving our mission. It sets out principles, not detail, about how we should use all the tools and techniques we have for continuing to drive improvements in standards of health and safety.

These principles are consistent with the change programme and essential to its success. The change programme is about providing a better climate and structure to help HSE achieve its objectives. How we work together is a vital part of this. Success relies particularly on co-operation and sharing information and good ideas across all HSE's functions and disciplines.

Why?

We want to become even more effective at achieving our mission of ensuring that risks to people's health and safety from work related activities are properly controlled. While vital, regulation and enforcing compliance with the law are not the only means of achieving this. We need to find ways of engaging other people in our work by developing shared agendas with them. We also need to redouble our efforts to engage those whom we do not normally reach, including the vast numbers of small firms which we cannot regularly inspect. We wish to build on the good practice that already exists all around HSE. Much of what we want to do is already happening somewhere, but we need to make sure this good practice is being applied in a more systematic, consistent and targeted way.

We will be more proactive and more strategic in our approach, including setting clear priorities and supporting people in saying "no" to other work. We want to use long-term relationships with duty holders and others to drive performance improvements.

The key principles

The first principle is a fresh emphasis on encouraging duty holders to do more to improve health and safety. This is familiar territory to many HSE staff, but in the past 10-15 years concerns about "burdens on business" have discouraged this approach. We need to update and improve the financial and other arguments to persuade duty-holders that good standards will help their business. For example, by directly saving money, or indirectly, by improving their reputation or the standards among their suppliers and customers. It may be that new approaches are now possible because of changes in technology, or commercial circumstances .

We will however need to be very clear in our dealings with duty holders to distinguish between what we can compel them to do, and what we can encourage them to do. Examples of where we already do this are in the seminars organised by Workplace

Contact Officers to deal with occupational health issues, and seeking the inclusion of H&S performance information in company annual reports.

The second principle is that we aim to be more consistent in going beyond compliance assessment and enforcement to make full use of the other intervention strategies. Below are some examples of possible intervention strategies. In practice it will usually be most effective to use them in combination.

What other Intervention Strategies?

Partnerships

These are strategic relationships with other organisations or groups whom we can convince that improving health and safety will help them achieve their own objectives. This may involve dutyholders or trade unions, other Government departments, trade bodies, investors, or educational or media organisations. We want partners to seek continuous improvement in the H&S performance of those they deal with, and share an agenda to demonstrate that good health and safety management is good business.

Motivating senior managers

We will engage with the most senior managers to enlist their commitment to achieving continuous improvement in health and safety performance, and to ensure that lessons learnt in one part of the organisation are applied throughout it. There will be a challenge to HSE to ensure that our dealings with large and influential organisations are themselves consistent and “joined up” across HSE.

Intermediaries

We will enhance our work with people and organisations that can influence duty holders on our behalf. These may be their trade bodies, their insurance companies, their investors, or other parts of government who perhaps are providing money or training to dutyholders.

Supply Chain/Design

We will encourage those at the top of the supply chain (who are usually large organisations, often with relatively high standards of H&S management) to use their influence to raise standards further down the chain, e.g. by inclusion of suitable conditions in purchasing contracts. We will also work with those who can improve health and safety by improving the design of processes or products

Best practice

We will encourage the development of best practice examples with those organisations which are committed to leading edge performance, and then use these examples to raise standards elsewhere in their sectors.

Education and Awareness

We will seek further ways of getting our messages and advice across to key target groups, particularly those whom we find difficult to access, using channels such as small business groups, chambers of commerce, etc. A good example of where this is already happening is through the safety awareness days for farmers and others. These enable us to influence far more dutyholders than the traditional approach of inspecting individual premises.

Information

Improving published information about health and safety performance is an important way of influencing duty holders. We are working with a number of industry sectors so they can report to common definitions and benchmarks against their peers. We also need to make better use of the information we hold, and share it widely.

More generally, we need to publicise the wide variety of good initiatives already taking place in HSE, and apply them more widely.

Inspection and Enforcement

We wish to use all the tools available to us. Inspection and enforcement will remain a vital part of our work. They are important means to achieve our objectives, and represent what many of our stakeholders expect of us. Inspections and investigations also provide many opportunities for inspectors to influence duty-holders to explore the boundaries of “reasonable practicability”. We want this to continue. And inspection is frequently combined with the other influencing techniques in this note.

We will continue to apply the HSC Enforcement Policy Statement in a firm, proportionate, and increasingly transparent way. Good behaviour by a duty-holder in one area does not excuse failure to comply with the law in others, and we will not shirk from taking enforcement action whenever this is indicated by our policy.

So What for ME?

Implementing this approach will affect everyone in HSE – it is an integral and essential part of the change programme.

It relies on operational, policy and specialist staff working closely together. If we are to be seen by our stakeholders as having a unified purpose and approach, we must

improve our coordination of policy, science and operational activities. This can only be achieved through enhanced communication across the organisation, more team working, and a consistent targeted programme of work. The encouragement of best practice will mean sharing information: between those who know what improvements might be possible, and those who know which organisations might be most receptive to them.

All parts of HSE need to embrace the idea that they can contribute to the achievement of priority programmes and targets by their contribution to our research, our education/advice, our strategic influencing, our development of new legislation, or our compliance assessment and enforcement activity. We can help each other by thinking about our own work in the context of the broad HSE agenda, and sharing with colleagues any insights we have about how things might be done better – the inspector making suggestions about possible changes in legislation to policy colleagues, the policymaker identifying the new trade group to target, etc.

Conclusion

This new approach represents a significant shift of emphasis within HSE, but one which we believe staff will recognise and welcome. It is about doing more of many of the excellent activities which are already going on, but in a more consistent and targeted way.

Making it work effectively will require a significant shift towards demonstrating the full set of HSE's values in all our work. This will evolve rather than appear overnight, and the change programme is aimed at helping bring this about. We all have important parts to play in developing this more strategic and proactive approach to delivering our mission, of reducing harm to people.

Annex 3

Working definitions for commonly used terms

Enforcement - means activities directly associated with ensuring dutyholders discharge their legal duties. Techniques may include giving advice (written or oral), withdrawing approvals, varying licences, serving notices, issuing cautions, prosecuting. The term implies the possibility of escalation if the dutyholder does not act appropriately (eg move from advice to notice if the advice is not followed)

Inspection - is the proactive mechanism used to assess the extent to which dutyholders have discharged their duties and to motivate them to do so. It is usually done at the workplace, and includes looking at the workplace, the work activities, the management of health and safety, talking to employees and their representatives, and the offering of guidance or advice.

Investigation – is the inquiry into a set of circumstances, most usually those surrounding either an incident or a complaint. The aim of investigation is to identify the immediate and underlying causes of the circumstances in question and to take necessary enforcement action to ensure risks associated with the circumstances are controlled.

Regulation - encompasses a broad range of activities undertaken by all parts of HSE. It includes establishing the legal framework, setting standards, providing authoritative advice, permissioning, inspection, and enforcement. It also includes our engagement with Local Authorities in their role as Enforcing Authorities.

Securing Compliance - includes all our enforcement work with dutyholders plus work HSE - Policy and Operations - does with other stakeholders (eg trade bodies, customers high up supply chains, OGDs) which encourages dutyholders to discharge their duties.

Advice - has a range of meanings dependent on context.

1. Informing a dutyholder that in the opinion of an inspector they are failing to discharge a duty, are in breach of the law and need to act to put the matter right (enforcement). This will often also include giving information on how the law can be complied with.
2. Giving unconditional information, for example how work can be done in other ways, to help dutyholders achieve more efficient compliance (securing compliance).
3. Giving unconditional advice to a stakeholder about how they can facilitate or encourage dutyholders who are within their sphere of influence to discharge legal duties (securing compliance).

4. Giving unconditional information to a dutyholder about practices designed to assist in achieving health and safety performance above the level needed to comply with the law (regulation).

Guidance – Advice published by HSE in any or all of the above categories. Where guidance includes enforcement advice the implication is that if an employer implements the advice they will comply with the law and HSE will not take enforcement action against them.

These terms are not mutually exclusive and at their extremes definitions may overlap. For example in the course of an inspection an inspector may identify a number of issues where various types of advice are given. Information coming from the inspection may also identify a set of circumstances requiring investigation. The result of the investigation may be that enforcement action is taken to rectify identified failures in risk management.