

DRAFT

Merger of the Health and Safety
Commission and the Health and Safety
Executive: Changes to Legislation governing
Health and Safety in Great Britain

DWP Consultation Document published August 2007:
Response from LACORS

September 2007

Introduction

1. The Local Authorities Co-ordinators of Regulatory Services (LACORS) is an established local government central body working with and on behalf of local authority associations across the UK. We aim to facilitate best practice and consistency in the enforcement of regulatory services provided by local authorities. LACORS is committed to the improvement agenda in this area. LACORS also works to influence legislation to ensure that the requirements of local authorities are understood, and Government policy can be practically enforced.
2. LACORS works with local authorities in a number of key policy areas, including health and safety. We utilise robust communication systems to facilitate work with councils, including policy discussion groups, the LACORS website and specialist emails.
3. In drafting this response LACORS has sought the views of its officer advisory policy forum which consists of representatives of Head of Service and county health and safety practitioner groups from each English region, Wales and Scotland. The policy forum was also consulted on the drafting of LACORS' response to the consultation document *A Stronger Voice for Health and Safety*, (see Appendix)
4. LACORS has consistently argued for local authorities to be recognised as equal partners with HSE's Field Operations Directorate (FOD) in delivering health and safety in the workplace; and that HSE's central policy resources see councils and FOD as equals.
5. Local authorities (LAs) are responsible for the enforcement of health and safety law in over 1.1 million workplaces employing some 12 million people. Changes in the economy mean that the LA enforced sector (including the service and retail industries) is expanding as a proportion of the total relative to the HSE-enforced sector. Changes in HSC priorities mean that there is also an expanding focus on health and safety in the LA-enforced sector relative to the HSE-enforced sector.
6. Under the Health and Safety at Work Act 1974 local authorities and HSE are accountable to the HSC for matters relating to their enforcement of the Act. The HSC also issues guidance to local authorities in relation to their powers under the Act. HSE and local authorities act as partners in delivering HSC objectives.
7. However LAs' role as delivery partners has not historically been reflected in their relationship with HSC and HSE. A key factor here is that while HSE has a long-established policy resource and there are well-established routes by which its views feed into HSC policy, the LA sector lacks an established and equitable path through which to feed its views to HSC. Meanwhile the HSC has no policy support independent of HSE.
8. LACORS has played a significant role in building partnership working between local authorities and FOD in recent years and welcomes the progress HSE has made in recognising the need to treat LAs as partners. In pursuing this objective LACORS has

argued that the organisation of health and safety needs to change in order to effectively and equitably support its two main delivery arms.

9. In their joint response of September 2003 to the HSE's *Review of the relationship between the Health and Safety Executive and local authorities*, LACORS and the LGA recommended that 'the HSC role should be expanded and the HSE's powers for monitoring and ensuring LAs' compliance with guidance etc. be transferred to the HSC. The resulting structure would see the inspectorates of the HSE and of LAs reporting to the same independent auditor. This would mean that the HSE and LAs would be treated as equals and would make the enforcement activity of all LAs and the HSE equally transparent and accountable' on the grounds that it would engender a 'consistent, equal treatment of both LA and HSE health and safety enforcement services'.
10. In their joint response of December 2003 to the HSE's *A Strategy for Workplace Health and Safety in Great Britain to 2010 and Beyond*, LACORS and LGA reiterated the need for 'equity in the partnership between LAs and the HSE at a strategic and an operational level'. In particular the response called for the performance of both FOD inspectors and LA inspectors to be analysed and published by the HSC independently of the HSE and for FOD results to be made public on the same basis as LAs performance, to allow better scrutiny of the effectiveness of the deployment of the overall inspection resource. The response argued that 'at present the HSC relies on HSE staff for secretariat functions and, in our view, this is not sufficiently independent to instil confidence in the HSC's role of overseeing the health and safety network. We urge the HSC to address this'.
11. The proposed merger of HSC and HSE raises the question of how the new body will function simultaneously as both a director of local authority health and safety enforcement and a delivery partner. In particular will it be capable of paying sufficient regard to the local authority enforced sector and to local authority objectives, needs and priorities?
12. The Consultation focuses on modernising governance arrangements in light of best practice. It sees the HSC being replaced by a new governing board for HSE and existing HSC members becoming non-executive members of that board. LACORS supports the need for best practice governance arrangements. We would have preferred that in looking at modernised governance arrangements, other options were considered. We previously suggested that effective health and safety regulation could, in our view, be improved if the existing HSC were strengthened and expanded to create a strategic policy-making body, incorporating the policy-making and strategic functions currently located within HSE and overseeing a delivery-orientated HSE and local authorities' health and safety delivery functions. However, this is not presented as an option. Therefore, it is essential that in taking forward the modernisation of governance arrangements, particularly in the manner proposed, the views of local government as an equal partner in delivery are properly considered, including the reasons why we might have preferred consideration of something different. We see it as very necessary to properly strengthen the representation of local government within the proposed new governing body. The reasons for these views are set out below

a) Do you think that the proposal will secure that regulatory functions will be exercised so that they are transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed as explained in paragraph 1.13?

13. This will depend on whether the new arrangements develop the partnership between HSE and LAs or set it back. This is discussed in general terms in answer to question b).
14. Local authorities are already committed to working within these principles. However a delicate balance needs to be struck between achieving consistency of practice between HSE and LAs and maintaining a local service which is well-targeted, accountable and proportionate. This balance needs to reflect the views of the community each LA serves and to take account of the different kinds of premises enforced by local authorities. Moreover, while HSE has sought to distance itself from public safety, local authorities cannot abdicate responsibility for this role. The need to strike this difficult balance is one of the reasons why we feel the proposed structure needs to provide a stronger voice for local authorities than is currently proposed.

b) Do you have views regarding the expected benefits of the proposal as identified in Chapter 3 of this consultation document?

15. Chapter 3 does not seem to set out the benefits (except in very general terms in paragraph 3.32), but the details of what will be done. Chapter two (2.16) sets out some benefits.
16. The central theme of our response is that the existing Health and safety system in Britain consists of two pillars, the Health and Safety Executive and Local Authorities, each of which has responsibility for approximately half the nation's workplaces. Above these two pillars sits the Health and Safety Commission to which both are responsible and which has responsibility to government for health and safety policy and its delivery.
17. The days when the HSE as the body responsible for factories could claim to oversee the key areas of the economy are gone and local authorities' responsibility for much of the service sector means their health and safety functions are now central to maintaining Britain's economic success. Gone also are the days of silo working in which local authorities and HSE had a poor relationship. In recent years the two pillars of UK Health and Safety have formed an increasingly effective partnership. This has not been an easy achievement; for example, it is only in 2007 that local authorities have finally been granted the right to put papers to the HSC.
18. By creating a body that, while overseeing itself, is both the operational partner of local authorities and their statutory master, the proposal to merge the HSE and HSC risks unbalancing a system that, as the consultation acknowledges, has a proven track record of success as the best in Europe. A better working relationship between HSC and HSE is to be welcomed and provides an opportunity to improve an already excellent system; not however, if it carries with it a negative impact on the relationship between local

government and HSC. In particular the new arrangements risk unbalancing the existing structure by skewing the new body's policies towards those areas enforced by the HSE at the expense of the equally significant local authority sector.

19. LACORS feels strongly that the most effective way to avoid such negative outcomes will be to ensure that the new body includes a greater representation from the local authority sector and that two of the members should be appointed following consultation with organisations representing local government, rather than one as is currently proposed.
20. In responding to the initial HSE consultation LACORS raised questions about the wisdom of combining the roles of overseeing the operation of the HSE and overseeing health and safety policy in one body (see paragraphs 19-24 of the Appendix). These concerns do not appear to us to have been addressed in framing the proposals in this consultation and we have appended them by way of reiteration.
21. We welcome the fact that a member of the new body is now to be specifically appointed following consultation with bodies representing LAs (subject to the reservation that we would like to see two members so appointed). We also welcome the provisions in paragraph 3.26 subject to the clarification of the third bullet point, which is unclear.
22. We also welcome as a positive development contributing to the development of a successful partnership, the decision of the HSC allow local government to submit papers to it (previously all HSC papers were provided by HSE) We would however have liked to see this provision included in the proposals for amending legislation.

c) Is there any empirical evidence that you are aware of that supports the need for this reform?

23. No

d) Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposal intends to address?

24. No legislative instrument on its own can improve the workings of HSE/C, only provide an opportunity to do so and the at opportunity will only be taken if the new arrangements co-exist with a continuing strengthening of the partnership with LAs

e) Is the proposal put forward in this consultation document proportionate to the policy objective?

25. No comment

f) Does the proposal put forward in this consultation document taken as a whole, strike a fair balance between the public interest and any person adversely affected by it?

26. No comment

g) Does the proposal put forward in this consultation prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise, as explained in paragraph 4.6? If so, please provide details. No comment

h) Do you consider the provisions of the proposal to be constitutionally significant? No comment

i) Does the proposal put forward in the consultation document make the law more accessible and easily understood? No comment

j) you have views on whether there should be a legislative requirement that the new Executive specify the precise terms in which the new Executive will delegate its powers on enforcement issues to officials (as outlined in paragraph 3.11)?

27. LACORS would like to see the new Executive's relationship with its officials on this point replicate the existing terms of the relationship between the HSC and HSE officials.

k) you agree that the proposed Parliamentary resolution procedure (as outlined in paragraphs 3.37) should apply to the scrutiny of this proposal?

28. No comment

Appendix: LACORS' answers to the questions posed by HSE's Consultation Document: "A Stronger Voice for Health and Safety" contained in LACORS' official response of March 2007:

Question 1 – Do you agree with our proposals for merging HSC and HSE into a new single authority for regulating health and safety at work in Great Britain?

1. As paragraph 47 states, many people fail to differentiate between HSE and HSC and in LACORS' experience this failure is common (although by no means universal) among HSE staff. This problem is reflected in the CD, parts of which read as if the HSE was solely responsible for enforcement and the only legitimate source of policy advice to HSC (e.g. paragraphs 14, 20, and 22; and paragraph 36 which implies they are one body).
2. This has resulted in a tendency for HSE to advise HSC with insufficient regard to the role and requirements of local government and to ignore the experience and advice available from the local government sector. The position has improved over recent years but there remains room for further improvement. Any new body will need to ensure not only that this tendency is avoided, but that it considers health and safety within the wider socio/political contexts of local communities, including LAs' public health role.
3. Whilst paragraph 14 states that the HSC sees its role as to protect the workforce against health and safety risks, local authorities are equally concerned with public health and safety including risks associated with work but affecting those other than workers.
4. From the LA point of view it can seem that HSE and HSC share a tendency to treat LAs as delivery agents only rather than the strategic partners that they are. It is essential that any new arrangements do not lead to a further favouring of HSE's Field Operations Division (FOD) over LAs in terms of policy engagement and resources allocated to support etc. There needs to be a development of more equitable support from the centre to support effectively both FOD and LAs.
5. Although the strategic partnership between HSE and LAs has done much to improve operational relations since its institution in 2004, it is acknowledged on both sides that the relationship had been allowed to deteriorate prior to this. One problem the strategic partnership has tried to address is the difficulty local authorities face in feeding their experience and priorities into health and safety (H&S) policy-making. There is a need to reflect on the experience of the partnership so far and learn lessons. Building trust and changing organisational culture takes time. These processes of reflection and change could be jeopardised if the reorganisation of HSC/E does not properly take them into account.
6. LACORS sees the reorganisation of HSC/E as an important opportunity to address these historic problems and to secure permanently the achievements of the strategic partnership as a foundation for a further improved relationship. However, the merger also represents a risk to these gains and if mishandled has the potential to significantly damage the delivery of H&S objectives.

7. The reference in the Foreword to seeking a stronger link between the formulation and delivery of policy is welcome but this does require the two main delivery arms to be treated equitably. Merging the HSC and HSE is seen by many in councils as likely only to strengthen that link in respect of half the area of HSC's responsibility, while further weakening it in respect of the remainder. This fear and concern is real and needs to be addressed constructively and positively.
8. This is why, in discussion with Heads of Service, they continue to express the view that the separation of HSE's delivery and policy function to create a stronger HSC overseeing LAs' delivery functions and a delivery-focussed HSE would be a more effective approach to reorganisation, enabling HSC to act as a more balanced body.
9. LACORS recognises that this option is not currently under consideration. Therefore we see it as essential that the proposals in *A Stronger Voice for Health and Safety* take account of the need for more effective machinery through which local authorities can contribute to the health and safety agenda. We feel that the CD, as drafted by HSE, does not set out adequate means to achieve this end. Indeed paragraph 65 makes it clear that the details of how the new organisation would work in practice have yet to be worked out.
10. Paragraphs 27, 39 and 43 imply that the Local Government Panel (LGP) is the primary means by which LA thinking is/will be transmitted to HSC. However, it is important to acknowledge that LGP is a recent development which has only met the HSC twice and is very much still in its early days. LACORS hopes and expects that the LGP will make a useful contribution to health and safety coordination. However, we do not consider it realistic to expect a body which is still establishing itself and its relationship with the HSC and which only meets twice a year to 'ensure that the interests of LAs are reflected in the governing body's consideration when setting policy and strategy' or 'to provide an effective means of agreeing overarching objectives for LAs' contribution to the strategy'. The LGP can be an important part but it is difficult to see it as the "whole".
11. LACORS' policy forum brings together representatives of Heads of Service and county practitioner groups for each English region and for Scotland and Wales. This forum informs from council's perspectives the discussions of the Health and Safety Executive/Local Authority Enforcement Liaison Committee (HELA). This machinery has already proved itself a useful source of policy development and operational liaison which LACORS would like to see established on a firmer footing, perhaps by a requirement for the new body to take account of the policy forum's views.
12. As paragraph 44 indicates, sound evidence, expert advice, and consultation are essential. LAs must be able contribute to these inputs and their contributions must be direct and not filtered by excessive bureaucracy. The interests of local authorities do not need to be simply 'reflected' (paragraph 17); they need to be taken fully into account and to be much more central to the policy-making process. The 'local authority view' should include the views of officers, both managers and practitioners, alongside that of elected members.
13. Proceeding with the merger on the lines proposed, it will be necessary to ensure that local authorities are strongly represented among non-executive directors. The HSC as currently

constituted includes one member whose remit includes 'local government issues' but while HSE's CEO and two deputies attend HSC meetings there is no direct representation of local authorities. Paragraph 17 notes the current obligations of the Secretary of State when making the 'remaining' appointments to the HSC. In practice this has tended to mean a letter informing the local government representative bodies of opportunities for appointment.

14. Proceeding with the merger, LACORS would like to see the non executive directors include a minimum of two directors specifically appointed to represent local government with experience in local government of whom one should have active political experience. We would also like to see a formal requirement to consider the views of local authorities. It is essential that any new body fully acknowledges the benefits, indeed need, to have advice from local government, particularly when it is considering matters where it may have a relevant interest. In some cases that interest may be significant with councils being the main enforcement authority for a particular sector or area of activity.

Question 2 – Do you agree with the overarching governance principles for a new merged health and safety authority?

15. Yes, subject to the points made in answer to Question 1.
16. In regard to 'selection and skills' we draw attention to the concerns raised below.
17. Whilst recognising the need to maintain links with Scotland and Wales, there is also an equally valid need to understand England and the diversity of its regions e.g. London, the south west.
18. We welcome the intention to continue to hold open meetings, but note that this raises questions in relation to the expanded role of the new governing body as set out in the CD.

Question 3 – Do you agree that the governing body of the new merged health and safety authority should consist entirely of non-executive directors?

19. We find the CD unclear on whether the new governing body would replace the HSE Board. As a result it is difficult to provide a clear answer to this question. However, it appears from paragraph 45 that the non-executive directors will have significantly greater responsibilities than the current HSC. The new governing body 'will be expected to have a much greater focus on issues of strategy and policy' as well as taking on new responsibilities for holding 'the senior management team to account for operational effectiveness and efficiency'; and to strive to make decisions that further the organisation's purpose' while being 'able to involve itself at a level of detail that facilitates effective decision-making'.
20. This broader responsibility is confirmed by paragraph 65 which refers to the new body's role in holding the HSE senior management to account for operational performance and in turn being held to account on this issue by ministers. It is unclear from the document what advantage is anticipated from interposing unelected non civil servants between ministers and civil servants here rather than ministers holding officials directly to account.

21. These are significant tasks and it is difficult to accept the assertion that this structure will be an improvement on the existing one when, as paragraph 65 explains, the practical arrangements for making the structure work have not been considered (or, if they have been, their effectiveness is merely assumed here and not explained).
22. It is not explained what this means for the existing HSE Board. While non-executive directors will not be involved in decisions on prosecutions, will they have responsibility for staff matters and other functions currently held by the HSE Board?
23. It appears inevitable to us that, if the reorganisation is to serve a purpose, the new body will have a significantly greater role than the HSC. In that case it is difficult to see how the non-executive directors will be able to perform their functions under the same terms of service as current HSC members.
24. This also raises questions about the appointment of members to the new body. At present HSC members are appointed because they are considered to have the experience and expertise to make a major contribution to the health and safety of employees in Great Britain. While it is reasonable to assume that such individuals will have experience and abilities relevant to their new role in holding the HSE to account for its operational performance, the roles are not the same and the very best people for one may not be the very best for the other. In any event this expanded role can only serve to dilute the focus which HSC has successfully maintained on its primary function until now.

Question 4 – Do you agree that the governing body should have the scope to increase in size to 11 independent members should the need arise in future?

25. In principle, yes, but it should be required to consult with stakeholders beforehand. It is difficult to respond in detail to this question without a clearer idea of the make up of the 9 members of the new body and the balance of interests within that mix. However, as discussed in paragraph 36, it may be essential that the numbers are increased to ensure that there is no dilution or undermining of focus. It would also be sensible that the legislative regime does not prevent the governing body from expanding as is necessary with the caveat that consultation would always be necessary should any change be proposed.

Question 5 – We would welcome your views on whether we should be doing more to enhance our relationship with stakeholders

26. It is important that relevant decisions are made having considered potential impact on relationships with stakeholders. For example, we are concerned that the recent proposed cut of 40 per cent in the budget of the HSE's Local Authority Unit (LAU), the reduced number of local authority secondees to LAU and changes to the management structure of Partnership Teams (which oversee the partnership between local authorities and HSE at regional level) involving their merger with external relations teams, could undermine the good work of the partnership so far. While it was always envisaged that partnership working should become 'embedded' in HSE's organisation, we are not convinced that the relationship is ready to enter that stage now. However, the decisions to make those cuts

were not made with the relevant stakeholder (in this case local government), although we do recognise that the final decision will be for the HSE to make.

27. One challenge to the HSC or new body is to become more outward focussed not just to business but to look to other government departments for influence and support for health and safety in local government. LAs have done well to devote greater resources to delivering health and safety targets but if this increase is to be sustained we need to influence central government. HSC or its replacement has a crucial role to play to ensure that the centre fully recognises the potential impact that improved health and safety can have on local businesses, communities and families. Health and safety must be recognised as an important contributor to those areas identified as shared priorities between the centre and locally and in the themes of Local Area Agreements and their equivalent in Wales and Scotland.
28. There may be a case for reviewing the membership, effectiveness etc of the Advisory Committees referred to in paragraph 73 now, in the context of the recent changes in priorities.

Question 6 – Do you agree that prosecution and individual enforcement decisions within a merged health and safety authority should continue to be taken by officials?

29. Yes, but within a clear and published enforcement policy, consistent with Hampton and wider better regulation principles.

Question 7 – Do you agree that the merged body should be known as the Health and Safety Executive?

30. While the HSE is a recognised brand, a change of name might provide an opportunity to counteract negative perceptions or associations with the brand and it would also emphasise that change has taken place. We would therefore prefer, and encourage, a change in name.

Question 8 – In your view, how well does this Consultative Document represent the different policy issues involved in this matter:

31. Not very well. Acceptance of the underlying argument seems to be assumed rather than clearly set out. There is no organisational chart explaining the structure of the new body. The lack of clarity over the future of the existing HSE board is one consequence. .

Question 9 – Is there anything you particularly liked or disliked about this consultation exercise?

32. See above