

MISC/04/16 Annex 1 Appendix 2

Aligning HSWA section 28 with the Freedom of Information Act 2000 (FOIA) - Responses to the public consultation

The fully open stage of the consultation ran from 22 March to 21 May 2004. Responses were received from the following 17 organisations and individuals:

Representative organisations

APIL (Association of Personal Injury Lawyers)

CBI

TUC

LACORS (Local Authorities Coordinators of Regulatory Services)

ECIA (Engineering Construction Industry Association)

EEF

Police Federation of England and Wales

Other organisations and individuals

Aidan Nelson, Director, Policy and Strategic Initiatives, Rail Safety and Standards Board

Nick Turner, Health, Safety and Risk Manager, Citigroup

Derek Maylor, Safety Co-ordinator, Communications Workers Union

Gary Relf, Health and Safety Co-ordinator, Hollingsworth and Vose

Emma Burton, Management Systems Adviser, London Underground Ltd

Jim Roy, Risk Manager, Oxford Radcliffe Hospitals NHS Trust

Craig Waddell, Unit Representative, Royal Mail

Peter Collings, Police Officer, Surrey Police

Neville Hampson, BT Engineer, British Telecom

Andrew Rowe, Training Consultant, Casella

Summary of responses

A Reasons for amending section 28

One respondent disagreed that greater openness with health and safety information will strengthen confidence in HSC/E and in the health and safety system.

One respondent disagreed that HSWA s28 is an unnecessary barrier to openness with health and safety information.

The TUC felt that there is no need to amend s28 – on the grounds that it can be abolished.

The CBI, EEF, ECIA and the Rail Safety and Standards Board stressed that information provided by organisations on the basis of legal requirements needs to be put in the relevant context and sufficient safeguards applied for the recipient to understand that performance comparisons may be inappropriate, and to avoid the potential for superficial but commercially

damaging use of health and safety information. The ECIA also felt that if information is more freely available it will stimulate demand for it, which could have substantial resource implications for HSE.

LACORS felt it will still be beneficial to have some sort of barrier to the release of information, but it needs to be framed in the right way.

Others noted that a common sense approach, taking account of a genuine claim to health and safety information, can only help in raising the profile of HSC/E, what it does and how it does it. Also that employers will be encouraged to manage health and safety more effectively if information that is useful/beneficial to both employees and the public can be released. And employers should have nothing to fear if they are managing safety effectively.

One respondent noted that amending s28 will result in information that an organisation has been compelled to provide being available to the public – and competitors, so it should not be released unless it will be a benefit to the safety of the public and the employees.

B The present situation

Only the TUC thought our reasons for not just repealing s28 were not valid. The TUC considered that the FOI Act adequately covers all HSC/E's concerns.

Only the CBI felt there were any options for amending s28 that HSC/E had not looked at. The CBI identified the issue of compensation for release of information that causes harm or detriment to the information-provider. The EEF wondered whether it might be possible, as suggested in the online discussion forum, to remove the other subsections in s28 entirely to keep the requirements straightforward.

Of the respondents who answered the question "how open do you think HSC/E currently is?" none felt that HSC/E tends to release information when it should be withheld, three felt that HSC/E tends to withhold information when it should be released, and twelve felt that HSC/E gets it more-or-less right.

C Looking ahead

Nine respondents thought that the practical effect of amending s28 will be to clarify what information should be released. Two thought instead that information will be released when it should be withheld, while none thought that information will be withheld when it should be released.

The CBI, ECIA and EEF commented that changing section 28 will clarify some instances for release of information but not necessarily others. If the driving thought is that more information should be more available it is likely that some information may be released when business would judge that it should be withheld. In reality there are sufficient protections under the FOI exemptions but many of them are subjective requiring interpretation and clarification and undoubtedly case law will develop in this area in due course. Business will monitor the practical developments as they evolve over time.

The Police Federation of England and Wales hoped that the practical effect of amending s28 would be that the particular concerns of trade unions and their members will be met fully by HSE in releasing all relevant information. The Police Federation also had concerns around the issue of information about enforcement decisions.

Other respondents commented that in practice a lot will be in the perception – the amendment will make HSC/E look ‘open and honest’ while at the same time providing safeguards such as for whistle-blowers. Also, while it may make poor performers in health and safety sit up and think, common sense will be needed to differentiate one-off from continuous poor performance.

D The Discussion Documents

Of the 13 respondents who answered the question “did the discussion notes provide the information you needed?” nine said yes, one said no, and three were not sure.

The CBI and ECIA - while understanding that the consultation papers needed to discuss how s28 should be amended, rather than whether it should be amended – felt there was also a need for more detailed consideration of the practical problems, especially that of enabling information to be seen in context.

The EEF felt the documents could have included more examples, from companies’ perspective, of situations which would be affected by the change.

E The Consultation System

Of the 15 respondents who expressed a view on whether the consultation system was helpful, 10 found the consultation system easy to use, and another three said they preferred this format to paper documents.

One respondent found the system difficult to use, commenting that the index of notes was not entirely clear, and much of the consultation material had to be printed out anyway. And another respondent would have preferred a paper document.

Fourteen respondents commented on the online discussion group. All thought it was a useful option, but only one respondent had participated in the group.

All fourteen respondents said that, having registered on the system, they will use it again to let HSC/E have their views in future consultations.