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HEALTH AND SAFETY COMMISSION

Better Regulation: Position Statement and Next Steps

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Issue

1. → ←

Timing

2. HSE's position statement and associated actions to be agreed within the next month
→ ←.

Recommendation

3. The Commission is invited to:
- Comment on and agree a version of the HSE position statement on better regulation, attached as Annex 1.
 - Agree the involvement of a member in chairing a new panel to assess regulatory proposals from the updated legislative review (para 15).
 - Agree the nomination of a member to monitor and challenge work in HSE to assess and then reduce the administrative burden of regulation by whatever target is eventually set for the organisation (para17).

Background

4. The Government's focus on better regulation has been strengthened by the creation last year of the PRA, which has been: (a) approving all significant regulatory proposals;
→ ←.

5. The interest in better regulation has been further sharpened by the publication on 16 March of the final report of the Hampton Review and of the BRTF's report "Less is More". The Government has accepted the recommendations of both reports. These include:
- Basing all regulatory activity on comprehensive risk assessment.
 - Placing specific responsibilities on regulators for helping business to understand their regulations.

- A review of all penalty regimes, with consideration of making wider use of different types of penalties and restorative measures, as well as positive incentives.
- A focus on the development, presentation and justification of forms used by regulators.
- Much closer collaboration between regulators over information and database sharing (subject to legal constraints).
- A consolidation of regulators.
- Measuring and reducing the administrative burden of regulation.
- A requirement to consider compensatory simplification measures alongside any new regulation.

Argument

6. HSE has often led the way in government on better regulation – eg applying its principles long before they were codified centrally. We continue to have a good story to tell, and it will be important to present this clearly to the PRA. Notably, we have sought to extend the application of the principles into all aspects of our regulatory activity, including our operational approach, our interactions with other regulators and our work on changing the health and safety culture. There is strong public confidence in HSE. Three out of four employers say health and safety requirements benefit their companies as a whole and over 80 per cent of employers regard HSE favourably.¹ → ←.

7. The draft at Annex 1 is careful to set better regulation in the context of HSC's strategy and the need to deliver better health and safety outcomes, as represented by the PSA targets. But it also recognises the increasing downward pressure on the volume of new regulation (particularly when it is not EU driven), on the simplification of existing regulation, and on the total administrative burden of regulation (following both Hampton and the BRTF). It assumes the active engagement of one or more Commission members in providing critical support to HSE, as it responds to each of these pressures.

Consultation

8. Within HSE.

Presentation

9. The agreed paper will be used → ← as a script for HSE staff.

Costs and Benefits

10. Minimal costs. Potential reputational benefit for HSC/E with → ← stakeholders across and outside government.

Financial/Resource Implications for HSE

11. Minimal.

Environmental Implications

12. None.

¹ Figures taken from the 2004 MORI survey *'Attitudes towards health and safety: a quantitative survey of stakeholder opinion'*

Other Implications

13. None

Action

14. The Commission is invited to agree the recommendations in paragraph 3.

HEALTH AND SAFETY EXECUTIVE: BETTER REGULATION BRIEF

“REGULATING FOR RESULTS”

Areas covered

1. HSE is the GB health and safety regulator for work activities, ranging from nuclear installations and mines, through to factories, farms, hospitals and schools, offshore gas and oil installations, and the safety of the gas grid. It also covers many other aspects of the protection both of workers and the public.
2. HSE regulates a wide spectrum of risks, from the relatively minor to the potentially catastrophic; it has never advocated a 'one size fits all' approach to risk management - this does not work. What HSE does promote is risk management that is proportionate and targeted, ie ensuring sensible risk control measures, applied sensibly and consistently. If there is evidence of an excessively cautious approach – as recently, where it seemed that paddling pools which posed little risk faced closure on health and safety grounds – HSE will also make this clear.
3. In addition, over 400 local authorities are responsible for enforcement in a wide range of other activities, including the retail and finance sectors, and other parts of the services sector, which together represent about half of all employment. The Health and Safety Commission (HSC) is the publicly appointed body that oversees the regulation of health and safety, on behalf of the Government. The enduring success of the health and safety system owes much to the way HSC brings together representatives of business, workers and local authorities.

Track record

4. In the 30 years since HSE was set up the number of workplace fatalities has fallen by almost two thirds, a risk-based approach has been firmly embedded in the regulatory framework, and Britain now has one of best health and safety records in the world. The public profile of risk has been raised considerably, both in the UK and internationally.
5. HSE has a good reputation with those it regulates. In a 2004 MORI survey:
 - Over 80 % of employers regarded HSE favourably.
 - The vast majority of business (three quarters) saw health and safety as a benefit and not a burden.
6. Business lays equal weight on enforcement and information/advice as drivers for improved health and safety performance. HSE has invested heavily in information and advice to provide this balanced approach. Its success is seen in:
 - More than one visit every two seconds to its website (ie 1.9 million visits a month from 600,000 visitors).
 - On average, 1,000 calls a day to its telephone information service “Infoline”.

7. HSE has also been engaged in progressive reform of the law, replacing detailed industry-specific legislation with a modern approach. Wherever possible, regulations now prescribe goals and general principles; detailed requirements are covered in codes and guidance. More recently HSE has worked increasingly with trade associations and professional bodies, encouraging them to produce appropriate health and safety guidance for their sectors.
8. In the early 1990s, the HSC undertook an extensive *Review of Health and Safety Regulation*. One of its achievements was the removal or reform of 85 pieces of legislation, which were identified as outdated.
9. In developing its policies, HSC and HSE have followed principles of good regulation since the early 1990s. These principles have been expanded and adopted across Government; they are: proportionality, accountability, consistency, transparency and targeting. The principles are also integral to HSC's policy statement on enforcement of the law.
10. Finally, HSE has used a cost benefit analysis approach to policy development since the early 1980s. This now forms a key part of the Government's Regulatory Impact Assessment process, which is mandatory for all new regulatory proposals.

HSE's current strategic drivers

11. In line with the vision in HSC's Strategy, HSE is working for better health and safety outcomes. These have been defined for the medium term by two results based Public Service Agreement (PSA) targets set by the Government. It will deploy the full range of levers and incentives to secure delivery, including new legislation where appropriate.
12. HSE also aims to be a leading performer in applying the Government's better regulation principles, while supporting delivery of HSC's Strategy and the PSA targets. This approach already includes:
 - Exploring alternatives to new legislation for new issues or changing circumstances.
 - Ensuring any new legislation needed is goal based.
 - Maintaining the development of effective stakeholder engagement processes (ranging from public consultations and external membership of PSA programme boards to informal meetings and focus groups).
 - Continuing to instil a 'think small firms first' approach to all HSE policy development.
 - Working with LAs to promote a consistent and risk-based approach.

For example, in 2004 HSE reviewed its legislative programme, reshaping it in the light of new priorities, better regulation principles and the availability of resources. Sixteen proposals were stopped and a further nine were put on hold pending consideration of alternatives to legislation.

Future better regulation work programme

13. Better regulation is not simply about legislation. HSC/E have identified five areas where its principles need to be applied. They all have a role in delivering better health and safety outcomes more economically:

- Ensuring the legislation underpinning the regulatory system supports the principles.
- Improving the regulatory incentives in the system.
- Securing more effective operational management of health and safety by HSE and LAs.
- Working more efficiently with partners, including other regulators, to deliver benefits for all stakeholders.
- Reducing the long term need for active regulation by spreading a positive health and safety culture among businesses and workers.

Legislation

14. HSE aims to influence regulatory activity in the EU to align it as far as possible with HSC's and the Government's agenda. Current objectives are to:

- Work in partnership with key stakeholders to ensure that standards of health and safety in the UK are maintained by new regulations. There is an issue with the proposed Services Directive, which could in certain circumstances import standards from other EU countries to the UK, when companies from those countries set up temporary businesses here.
- Defend successfully the provision in UK legislation that requires health and safety measures to be taken 'so far as is reasonably practical' (SFAIRP), in the face of an infraction challenge from the EU Commission. And, similarly, maintain a proportionate approach to the implementation of EU Directives.
- Ensure the next EU health and safety strategy from 2007 follows Better Regulation principles, initially using the UK Presidency Health and Safety event in October 2005.

15. HSE also applies the principles to domestic proposals for legislation:

- It will update its recent review of the forward legislative programme every six months, and will use critical assessment from an HSC member to ensure outcomes are delivered by non-legislative means where possible. [DN For HSC agreement.]
- It has already published target Common Commencement Dates for all HSE sponsored regulations from April 2005, and will roll forward this programme every six months.
- It will work to develop a rolling programme of simplification, including responding effectively to business proposals, so it can make compensatory proposals where new regulation is justified.

Incentives

16. HSE is working for better incentives in health and safety. This section focuses on the formal incentive regime, established by legislation and HSC policies, which derives from the penalty system, HSE's approach to enforcement and information reporting requirements:

- More effective penalties – HSE, with HSC's endorsement, is supporting proposals for a new offence on corporate manslaughter and increases to existing penalties –

including widening the scope for imprisonment – for breaches of the Health and Safety at Work Act.

- More effective enforcement – Alongside targeted increases in penalties, HSE is exploring whether alternative sanctions can encourage long term compliance through cultural change, not simply punishment. This work is part of an evaluation of the effectiveness of HSC's Enforcement Policy Statement, looking at evidence of what works in reducing risks and improving outcomes. It will also incorporate the Hampton report's recommendations on new types of penalties and positive incentives.
- More effective reporting – HSE has begun a full review of the Reporting of Injuries, Deaths and Dangerous Occurrences Regulations (RIDDOR) so that its provisions incentivise better health and safety practice in workplaces and are more closely aligned with HSE's specific business needs.

Operational Management

17. The way HSE's and LAs' frontline inspection staff apply and enforce legislation and HSC policy will be a major factor in how well the Better Regulation principles translate for business. HSE is well aware of this challenge, and is addressing it through:

- The Enforcement Enabling Programme - HSE and local authorities are examining how to improve their use of formal enforcement (prosecution, notices and cautions) as part of our work to promote widespread compliance with health and safety law, and the consequent reduction in injuries and cases of ill-health caused by work. The programme aims to ensure that enforcement continues to be targeted at risk; where health and safety standards are unacceptable; and at those who deliberately ignore the law.
- Work to guide the selection of the most appropriate intervention – ranging from formal enforcement, through inspection to advice – according to the business and levels of risk. This has led to an increasing use of frontline staff who are not inspectors to provide advice to business.

18. Hampton and the Better Regulation Task Force both focus on reducing the administrative burden of regulation – whether from form filling or other requirements. HSE will need to build on its targeted and proportionate approach to the paperwork associated with regulation, to ensure that its overall benefits outweigh its specific costs. It will use a Commission member [with a business background] to exercise a challenge function for this work programme. [DN For HSC agreement]

Working efficiently with other partners

19. HSE is pursuing three programmes of work with the common goal of improving the efficiency of relevant regulatory activity for stakeholders and the HSE, while delivering the same or better health and safety outcomes:

- A Local Authority Partnership Programme to make the most effective and efficient use of the resources available to the regulators, to promote consistent and risk-based approaches, and to help integrate health and safety objectives with those for public health and community well-being.

- A developing programme of work with other statutory regulators and stakeholders to identify and address potential areas of overlap or duplication in their sectors. The Hampton Review has identified information and database sharing as an important area to explore.
- An Invest to Divest programme in areas which are less high priority for HSC. This would involve moving away from more formal regulatory approaches (such as Approved Codes of Practice) where practical. It would encourage industries or sectors to fill this gap with health and safety strategies which they have developed and own themselves. A guiding principle for the programme would be that the change must not compromise health and safety standards. Areas proposed for early work include HSE's involvement with ports, aviation and domestic gas safety.

Culture change

20. HSE recognises that the level of active regulation needed is related to the pervasiveness of a commitment to health and safety in workplaces. Better Regulation principles suggest that, while culture change is a long term process, HSE should be pursuing this both to deliver better outcomes and to reduce regulatory burdens. Work is under way in four areas:

- A Worker Involvement Programme – this aims to improve the culture of receptiveness to health and safety messages in the workplace. It builds on current relevant activity, including the Workers' Safety Adviser Challenge Fund.
- A Business Involvement Programme – this aims to embed health and safety in business culture more firmly and more widely. It will include projects on the development of a corporate health and safety performance indicator, and the promotion of case studies on the business benefits of health and safety and of director involvement.
- Projects to craft messages from HSE to better reflect the diversity of workforce and business (getting it right for small business is a priority).
- A project to ensure the HSE position on health and safety competence, education and training is embedded in the national standards framework being developed by the Qualifications and Curriculum Authority, the English National Training Organisation and Sector Skills Councils.