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## HEALTH AND SAFETY COMMISSION

### HSC's response to proposals for a Better Regulation Bill

A Paper by Jonathan Russell and Steve Woolley

Advisor(s): Jennifer Terry, Julian Cooper

Cleared by Jonathan Rees on 27 September 2005

#### Issue

1. HSC's response to the Cabinet Office consultation document on proposals for a Better Regulation Bill<sup>1</sup>.

#### Timing

2. For this meeting. The deadline for consultation responses is 12 October 2005.

#### Recommendation

3. The Commission is invited to approve the draft response to John Hutton, attached as an Annex.

#### Background

4. The Bill enables the delivery of some Hampton report recommendations, ie updating the Enforcement Concordat, merging regulators and reforming the regulatory penalty regime.

5. HSE was invited to comment on the draft consultation document in July, as part of the Ministerial clearance process. In August HSE legal advisors considered the Cabinet Office's draft instructions to Parliamentary Counsel on the Hampton parts of the Bill. Key areas of concern were the proposals to place the 'Hampton Principles' on the face of the Bill, and to update the Enforcement Concordat and put it on a statutory footing; outlined below at para 6. HSE has also commented on the first draft of the new concordat, at official level.

#### Argument

6. The proposal to place the Hampton Principles and Enforcement Concordat on a statutory footing carries a risk of legal ambiguity and of cutting across criminal law provisions; it will require careful drafting. There is an inherent risk of ambiguity if the Concordat is given a statutory footing, but this will be minimised if the document is kept brief and clear. Contact with BRE at official level has raised a concern that a detailed

<sup>1</sup> The consultation document can be found at:  
[http://www.cabinetoffice.gov.uk/regulation/bill\\_for\\_better\\_regulation/index.asp](http://www.cabinetoffice.gov.uk/regulation/bill_for_better_regulation/index.asp)

concordat may be proposed.

7. As this is an important new Bill and the concordat proposal could have implications for the way HSE works, the Commission is invited to respond formally to support the proposal to reform regulatory penalty regimes and enact powers to merge regulators, while expressing concerns about the proposal to place the Enforcement Concordat on a statutory footing. A draft HSC response is attached as an Annex.

### **Consultation**

8. HSE Legal Advisors, Policy Group's Enforcement Policy and Better Regulation Units and the Hampton/BRTF Implementation Programme Board.

### **Presentation**

9. No issues.

### **Costs and Benefits**

10. The Cabinet Office's partial Regulatory Impact Assessment for these proposals is short, it states that benefits are expected for business, but are not directly quantifiable, and no direct costs to business have been identified.

### **Financial/Resource Implications for HSE**

11. A prescriptive Enforcement Concordat could have financial and/or resource implications for HSE. They have not been assessed at this stage.

### **Environmental Implications**

12. None.

### **Other Implications - Risk**

13. The concerns raised in this paper also apply to Local Authority enforcement.

### **Action**

14. The Commission is invited to approve the draft response, attached as an annex.

**DRAFT REPLY TO FROM THE HSC CHAIR TO JOHN HUTTON, MINISTER FOR PUBLIC SERVICE REFORM, ON THE BETTER REGULATION BILL CONSULTATION**

John Hutton

Dear

**Consultation Document on a Bill for Better Regulation**

I write in response to the above consultation document. The Health and Safety Commission supports the reforms and revisions to implement the Hampton agenda.

We particularly welcome the proposal for an enabling power to reform regulatory penalty regimes through secondary legislation. This is a useful vehicle to deliver policy on increasing penalties; improve consistency of penalty regimes between enforcing authorities; and introduce administrative and alternative penalties such as restorative justice. All of these are long standing HSC policy objectives, which will, we believe, improve the contribution of formal enforcement to reducing ill-health and injury, ensuring long-term compliance, and delivering justice.

We are long-standing supporters of the Enforcement Concordat and the clarity it brings for all our stakeholders, including business. This clarity should be the yardstick against which all proposed amendments are judged. The aim must be to produce a revised concordat that gives even greater certainty. It is vital to avoid a situation where our best intentions end up creating legal uncertainty and confusion.

Therefore, the proposal to place the Concordat on a statutory footing needs to be considered fully. The purpose and consequences of the proposal need careful thought. For example, to meet the objective of being helpful to business, the relationship between whatever may appear in the Bill, the Concordat and any supporting guidance must be clear. The current Concordat avoids legal ambiguity and cutting across criminal law provisions, so must any revision, especially if it is decided to place it on a statutory footing.

This leads us to favour a relatively brief and clear statement of how regulators are committed to acting. This would be more useful to business and all concerned than a wide-ranging declaration of detailed procedures and provide greater clarity. The Health and Safety Executive (HSE) has provided the Better Regulation Executive with more detailed comments on this issue.

I am pleased to note the close working relationship already established between officials in the Better Regulation Executive and HSE to progress the various proposals, including the proposed mergers, which we welcome, and look forward to it continuing.

**Bill Callaghan**  
**Chair, Health and Safety Commission**