

Health and Safety Commission Paper		HSC/05/121	
Meeting Date:	11 October 2005	Open Gov. Status:	Fully Open
Type of Paper:		Paper File Ref:	Below the line
Exemptions:	No		

HEALTH AND SAFETY COMMISSION

HSE's Hampton Merger Programme

A Paper by Max Walker

Lead Board Member: Giles Denham/Jonathan Rees

Cleared by Jonathan Rees on 23 September 2005

Issue

To consider HSE's proposed approach to the mergers with other regulators recommended by the Hampton report.

Timing

1. Routine

Recommendation

2. The Commission is invited to agree:
 - The broad approach to corporate governance set out in paragraphs 7 and 8.
 - The strategy for benefit realisation.
 - The practical steps HSE is taking to prepare for the mergers.

Background

3. At its July meeting the Commission received an overview of HSE's work in response to the Hampton and Better Regulation Task Force "Less is More" reports. The Commission asked for more detail on each of the organisations planned for merger and advice on the implications for corporate governance in HSC/E.

4. HSE is one of seven thematic regulators Hampton proposed after consolidating 31 of 63 regulators in its scope by 2009. The bodies and functions directed to HSE were:
 - The inspection functions of the Coal Authority
 - DTI Engineering Inspectorate
 - Adventure Activity Licensing Authority
 - Gangmasters Licensing Authority.

A decision on merging the Security Industry Authority into HSE was to be made in 2007.

5. Mergers are to be coordinated and led by the Better Regulation Executive. Detailed plans are to be in place by September 2006.
6. Annex 1 gives an overview of each of these five organisations.

Issues

Governance

7. In general HSE will seek to fit the merged organisations into the HSC/E model i.e. with HSE reporting through the Commission to the relevant Ministers. Specifically:
 - The Coal Authority merger proposal presents HSE with the challenge of pinning down the point of synergy between the inspection regimes and this analysis is underway. There are however no governance implications.
 - The Engineering Inspectorate has no separate legal status and draws its powers from DTI Ministers. There may be legal complexities in how the relevant powers are given to HSC/E and these are being discussed with DTI officials. Governance arrangements are not complex requiring only that the handful of EI staff transferring are placed in a suitable management reporting structure.
 - Legal advisers are examining options for transfer of the powers and responsibilities of the Adventure Activities Licensing Authority to HSE.
 - The Gangmasters Licensing Authority has been established as a separate NDPB with specific governance arrangements including a Board. Work in developing a merger plan will consider how engagement can be maintained after merger with the bodies represented on the Board, while bringing the Authority's work under the governance of the Commission.
 - The Security Industry Authority is also a new, larger and legally separate organisation. In view of the Hampton recommendation on timing, HSE has yet to consider the issues raised by a merger.
8. In taking on merged bodies HSE will have control over some regulatory activities that can directly contribute to health and safety outcomes. It will also take on delivery responsibilities in support of government policies that are not formulated by either HSC or DWP. The AALA for example helps to underpin a DfES policy of encouraging outdoor activities as part of young people's education. HSE will seek to ensure HSC reporting lines are clear post-merger, both to relevant Secretaries of State and to

devolved administrations where necessary. **The Commission is invited to agree this approach for governance arrangements following mergers.**

Realising Benefits and Timetable

9. Benefits expected from the mergers are set out in the Hampton report:

- More flexible and strategic regulation, fewer multiple inspections, fewer interfaces business to regulator and regulator to regulator (mergers across the whole of government may result in 33% less inspection)
- More complete risk assessment, de-conflicted regulations, regulators easier to access and more comprehensive advice
- Consolidated forms and data
- Work areas better prioritised and resources used more effectively

10. The review anticipates that the thematic regulators will need fewer people and less money to deliver the work currently planned by the various bodies being brought together. HSE understands the importance of fully integrating the merged bodies, to secure maximum benefits. However, it believes the benefits will be best achieved by progressing the formal mergers as quickly as possible, and then working through the integration issues. The exception is likely to be the Gangmaster Licensing Authority, where, in view of its recent establishment, the sponsoring Department would prefer the merger to take place towards the end of the Hampton period. In the meantime, HSE is offering support to maximise the Authority's acquisition and use of compatible systems and procedures. **The Commission is invited to note the strategy for benefit realisation.**

Practical arrangements for merger

11. A Project Manager has been assigned for each merger to work with the current sponsoring department in developing a detailed merger plan. These will have a number of common issues to address e.g. employee transfer. An outline of the issues is at Annex 2. With the possible exception of the Coal Authority, Ministers and HSC will need to agree the detailed arrangements for transferring or delegating powers and responsibilities. HSE's Legal Adviser's Office is also working with other government departments on a Better Regulation Bill to be introduced to Parliament this session. **The Commission is invited to note the arrangements HSE is making to deal with the practicalities of the mergers.**

Consultation

12. With members of the HIP Board and sponsoring departments.

Presentation

13. HSE is discussing detailed proposals with the current sponsoring departments for each organisation. Consultation and communications plans will be developed once the key project milestones are clear. These will involve both staff in the merged organisations and those in HSE who will be affected by the transfers.

Costs and Benefits

14. At this early stage it is not possible to forecast the upfront costs and longer term savings from the merger proposals. HSE will negotiate with current sponsoring departments to ensure that funding transfers reflect the current full costs of the bodies merging. It is likely that HSE will need to absorb its own project management costs. HSE plans to redeploy any resource savings from the mergers into priority regulatory activity.

Environmental Implications

15. None.

Other Implications - Risks

16. None.

Action

17. The Commission is invited to agree the approach set out above.

Coal Authority

The Coal Authority is a non-departmental public body established by the Coal Industry Act 1994 to:

- own and manage the nation's coal reserves and the historic liabilities arising from past mining;
- license coal mining operations and grant permissions for other operations that incidentally extract coal;
- settle subsidence claims not falling to licensees;
- provide access to geological data and coal mining plans.

A standard condition in the current licences allows the Authority to inspect mine workings and records to check that licensees are working within permitted boundaries of their lease and complying with licence conditions. The conditions also provide for monthly and annual returns to the Authority.

Section 4 of the 1994 Act requires an agreement between HSE and the Authority to secure co-operation and the exchange of information. The resulting memorandum of agreement sets out that licensing is for the Authority alone; health and safety enforcement is for HSE alone but both parties exchange information and advice to assist the other.

The Authority aims to visit each operating underground mine and surface opencast site once a year. Additional visits may be made where a specific lease or licensing issue occurs. The total inspection time was 73 staff-days in 2004/5. Whilst inspection is important in establishing a coalmining operator's compliance with the terms of the lease and licence, it represents only a modest proportion of the property and licensing work of the Authority i.e., less than one third of a staff-year in total.

Engineering Inspectorate, DTI

The EI has played a role in regulating public electricity supply quality, continuity and safety since the provision of public electricity supplies commenced in the late nineteenth century. The relevant statutory framework can be traced back to the Electric Lighting Act 1882.

The EI comprises a staff complement of 8 (one Chief Engineering Inspector (SCS), one Deputy Chief, 5 Inspectors and one Admin Officer). All staff are civil servants based in London. Inspectors are appointed under Section 30 of the Electricity Act 1989 as amended. Inspectors carry out their duties for the Secretary of State in respect of electricity networks in England and Wales. They enforce requirements in Scotland for the Scottish Executive, and also carry out similar enforcement activities under corresponding legislation for the Northern Ireland Office under an agency agreement. There are four main roles:

Enforcement of standards in public safety

The main aim of the Electricity Safety, Quality and Continuity Regulations 2002 (ESQCR) is to set safety standards for electricity companies to help prevent danger to the public from electrical plant and lines. Inspectors investigate fatalities and some major injuries involving members of the public. They handle complaints from the public about safety related matters. They carry out annual safety management audits with licensed electricity companies. The EI has an agreed Memorandum of Understanding with HSE covering this area of work.

Enforcement of standards in supply quality and continuity

The ESQCR also address quality and continuity of supply. Inspectors handle complaints from customers about supply reliability and quality, and occasionally carry out detailed investigations. For example the Minister for Energy commissioned Inspectors to report on the National Grid Company power failures in London on 20 August 2003 and in Birmingham on 5 September 2003. Inspectors also explore continuity of supply issues during the annual safety audits.

Hearings and inquiries

Inspectors also carry out formal public inquiries into contested applications for new overhead power lines and for gas pipelines and when electricity companies and landowners are unable to reach negotiated agreement on access and maintenance matters. Occasionally Inspectors conduct hearings for non-electrical equipment, for example gas pipelines and telecommunication masts.

Technical advice to Ministers, input to DTI policy and interface with industry

Inspectors are currently participating in working groups investigating the requirements for the connection of wind turbine generators to transmission networks. Working with policy colleagues, Inspectors have produced papers on electricity supply issues for the G8 summit in July 2005. They also handle queries about electromagnetic fields.

Adventure Activity Licensing Authority

Following a number of serious accidents and fatalities to youngsters involved in adventure activities there was significant public concern that safety standards at centres providing such activities were too low. In 1994 a number of school children lost their lives on a canoe trip across Lyme Bay and Parliament passed the Activity Centres (Young Persons Safety) Act 1995. This is an enabling Act providing for the introduction of regulations to control the commercial provision of certain adventure activities (caving, climbing, trekking or watersports) to under-eighteen year olds.

The Act requires the Secretary of State for Education to designate a body to be the Adventure Activities Licensing Authority (AALA) which issues licenses to organisations wishing to provide these activities. Currently the AALA is Tourism Quality Services Ltd (TQS), a small company established for the purpose. The actual Authority is considered to be the TQS Board of Directors. AALA is part funded by a grant in aid provided by DfES.

The Adventure Activities Licensing Regulations 2004 give practical effect to the Act. They define the licensable activities in detail, specify who requires to hold a licence, provide for the appointment of inspectors, place various requirements on the AALA and empower it to collect fees. It is an offence to provide defined activities to those under 18 without a licence but AALA has no enforcement powers and enforcement is by the relevant enforcing authority for the HSWA (the regulations are relevant statutory provisions). AALA's only sanction is to refuse to grant a licence or to withdraw one.

DfES has responsibility for the Act in Scotland but the Welsh Assembly Government (WAG) has responsibility in Wales. There is formal liaison in both. DfES, HSE, WAG and Scottish Executive (SE) are all entitled to send observers to AALA meetings.

AALA has a staff of about a dozen, both full and part-time, comprising inspectors and administrative staff. There is a small HQ in Cardiff but the inspectors are home based across Scotland, England and Wales. The period of the licence cannot exceed 3 years. If AALA refuses to grant or renew a licence, a provider may appeal to the Secretary of State for a determination; this is rare.

AALA is only responsible for the licensing regime and for the investigation of complaints about matters covered by licensing. HSE or the relevant local authority remains the enforcing authority for all other relevant health and safety legislation, any investigations (eg accidents) and for enforcement activity. Under the terms of a Memorandum of Understanding (MoU) HSE and LA do not undertake proactive inspections at centres. AALA is obliged to bring any matters of evident concern to the notice of the enforcing authority.

Gangmasters Licensing Authority

The Gangmasters Licensing Act 2004 established the GLA to operate a licensing scheme for labour providers in agriculture, shellfish gathering and associated processing and packaging sectors. In addition to its licensing responsibilities the Act empowers the Secretary of State to appoint enforcement officers.

A Chairman and Chief Exec were appointed to the GLA in January 2005. The Authority is based in Nottingham.

Work is still being done to consider exemptions for SME employers and to define how far up the supply chain is in scope for licensing but GLA is estimating it may need to issue some 6000 licenses covering the activities of up to 500,000 employees. Whilst there is some migrant labour used in Scottish fisheries, Midlands market gardening and South West flower growing it is thought the greater part of the workforce is to be found in coastal East Anglia and Eastern England.

Although the deaths of 21 Chinese immigrant cockle pickers in Morecambe Bay gave considerable impetus to the legislation the GLA has its origins in a Private Members Bill that was focused on preventing the exploitation of gangworkers, upholding their employment rights, and regulating 'rogue' gangmasters. A range of Government Departments retain an interest in migrant worker issues: DWP (benefit fraud); Home Office (immigration); DTI (employment rights); Defra (Agricultural Minimum Wage) and HSE (H&S).

It seems likely GLA will support its HQ standards and licence issuing with a team of compliance officers checking the activities of licensees against licence conditions. In addition enforcement officers will be required to deal with breaches of licence and where unlicensed labour providers do licensable work. HSE's statistics do not show a significant number of injuries or ill health in the relevant sectors but we can assume significant under-reporting that should improve markedly as a result of licensing.

Pilot audits have found that health and safety offences are the main category of non-compliance for which evidence can be gathered to a standard required for enforcement.

Security Industry Authority

The SIA was created by the Private Security Industry Act 2001 to improve the security industry's image so that the general public and the wider business world would have a clearer understanding of how the industry is regulated and who is entitled to work in it. It also works to make it a better and more attractive industry in which to be employed.

The SIA is the only authority in England and Wales dealing with these private security issues and reports directly to the Home Secretary. There are around 100 staff in the SIA, including contractors, working to a six member Board.

A key role for the SIA involves the managing and issuing of licences for people working in particular areas of the private security business. Another crucial area for the future is developing an Approved Contractor Scheme.

The current designated sectors or activities that must be covered by a licence places around 500,000 employees in scope, including:

- Door supervisors both in-house and supplied under contract,
- Vehicle immobilisers on private land both in-house and supplied under contract,
- Security guards supplied under contract
- Key holders supplied under contract
- Close protection operatives supplied under contract
- Cash and valuables in transit operatives supplied under contract
- CCTV (public space surveillance) operatives supplied under contract
- Private investigators supplied under contract

MERGER PROJECT ISSUES

1. Logistics

- IT and telecommunications
- Accommodation
- Human Resources, including terms and conditions, pay, pensions, staff handbook etc.
- Staffing and recruitment
- Finance/Audit

2. Strategic Developments

- Work Planning
- Corporate Communications Strategy
- Corporate Research Strategy
- Corporate Learning & Development Strategy

3. Legislative base

4. Stakeholder Engagement

- Whitehall
- OGDs
- Stakeholders Consultation structures
- Other industry stakeholders

5. Enforcement, compliance/vetting applications/information sharing and operations

- Relationship with other enforcement agencies:
 - Information-sharing systems
 - Compliance protocols