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HEALTH AND SAFETY COMMISSION

Evaluation Of the Enforcement Policy Statement

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Issue

1. To inform the Health and Safety Commission (HSC) of the findings from the evaluation of the Enforcement Policy Statement (EPS) and the proposed next steps.

Timing

2. Routine, but HSC will need to come back to the issue in 2007.

Recommendation

3. To note the findings from the evaluation of the EPS and next steps -
 - The EPS is fit for purpose and enjoys stakeholder support;
 - The principles of enforcement set out in the EPS remain relevant in achieving effective enforcement and sustained compliance;
 - In the light of the above, the EPS is fit for purpose and there is no need for a revision at this stage; however,
 - Revision may need to be considered later in 2007 once the outcomes of the BRE's Macrory Review and Compliance Code development are known. HSE will keep the position under review and advise the Commission accordingly.

Background

4. The EPS was first published in 1995 and revised in 2002. It is a public statement setting out the general principles and approach the Commission expects from all health and safety enforcing authorities (mainly the Health and Safety Executive (HSE) and Local Authorities). The EPS's key aims are to ensure consistent, fair and proportionate enforcement. Enforcement is defined widely to include all dealings between enforcing authorities and duty-holders. The EPS defines the purposes of enforcement as –
 - Ensuring that duty holders take action to deal immediately with serious risks;
 - Promoting and achieving sustained compliance with the law and;
 - Ensuring that duty holders who breach health and safety requirements, and directors or managers who fail in their responsibilities, may be held to account.

5. The EPS's enforcement principles are well established; the current Government-wide Enforcement Concordat published by the Cabinet Office was modelled on HSC's own enforcement principles:
 - proportionality in applying the law;
 - consistency of approach;
 - targeting of enforcement action;
 - transparency about how the regulator operates: and
 - accountability for the regulator's actions.The EPS also sets out how HSC expects decisions to be made with respect to investigation and prosecution.
6. The revision of the EPS in 2002 followed extensive consultation. A review was scheduled for early 2007. However, the timing now needs to be kept under review to take account of outcomes from two current Better Regulation Executive (BRE) workstreams: the Macrory Review of Penalties (expected to be published soon) and the proposed new Compliance Code for Regulators which may be issued using powers in the Legislative and Regulatory Reform Act. Both areas could lead to changes with a potential impact on the detail of the EPS. Neither have known timescales, but the situation is likely to become clearer in 2007.
7. To provide an evidence base for the EPS and inform any review, the Commission instructed HSE to evaluate the impact of the EPS on compliance with health and safety law. An evaluation programme was agreed in November 2003 (HSC paper HSC\03\118). The evaluation aimed to address 3 key questions -
 - 1) Are HSC's enforcement policies and principles appropriate, particularly in terms of contributing to the fulfilment of HSC's mission and the purposes of enforcement?
 - 2) Do enforcing authorities observe the policy, principle and practices set out in the EPS?
 - 3) How can the enforcement policy be made more effective?
8. Since Autumn 2005, the evaluation work has been overseen by HSE's Enforcement Strategic Enabling Programme (Enf. StEP) Board, chaired by Sandra Caldwell. This is in view of the synergies between the work required to address the StEP objectives and to evaluate the EPS.
9. Specific research, 'Evaluation of EPS and Enforcement Action' encompassing both the impact of enforcement and analysis of HSE's enforcement management model (EMM), was commissioned from Greenstreet Berman in 2003, to be conducted in 2 main phases. Phase 1 included an initial literature review and analysed the impact on duty holders. Phase 2 included: a further literature review identifying and drawing on past work and available evidence; discussions with duty holders and inspectors; and interviews with victims' representatives and employee focus groups. The main report of the Greenstreet Berman research can be found in Annex 1.
10. A variety of other sources of research and information about enforcement and influences on duty holder behavior also formed part of the evaluation. In particular:
 - Work carried out and commissioned by the Enforcement StEP to help address how HSE and Local Authorities can maximise the benefits of formal enforcement and manage enforcement effort to help deliver HSE's strategic programmes.

- an HSE evaluation of the use of formal cautions by health and safety enforcing authorities; and
- an 'Evidence-based Evaluation of How to Secure Compliance with Health and Safety Law', conducted by Greenstreet Berman and published in 2005.

Argument

11. The EPS evaluation evidence base described above indicates that the EPS and its values are fit for purpose and that no changes are required at present. A key strength is that the EPS allows a flexible approach and the targetting and fine-tuning of enforcement activity to enable HSE to address priority areas. However, it will be necessary for HSE to monitor the impact of the BRE workstreams to assess whether any changes are required in the future and report back to the Commission as appropriate.
12. Key conclusions from Greenstreet Berman's EPS evaluation work, supported by the other sources, endorsed the continuing value of the EPS. In addition, a number of communication objectives have been identified by the evaluation and maintaining the current statement of policy will support their delivery.
13. Whilst the EPS itself has been generally well received by duty holders, victims and workers, as well as the inspectors it directs, the evaluation has shown a need for continued effort to improve communication about enforcement. In particular:
 - increasing stakeholders' awareness and understanding of the enforcement policy and its principles;
 - communicating the reasons for formal enforcement action, especially prosecution, in order to better demonstrate proportionality and effectiveness to both duty holders and workers/victims;
 - improving publicity and communication of information on individual cases, in order to sustain the motivational impact on duty holders more widely, including doing more to publicise notices as well as prosecutions;
 - do more to ensure workers and particularly victims are involved in enforcement processes where they have an interest.
14. Work is underway which will address these points:
 - As already reported to HSC (HSC/06/80) the Enf. StEP is working to help ensure the EPS is followed by all enforcing authorities. It is doing this through communication and improving the management and effectiveness of enforcement activity;
 - Where communication of enforcement is concerned, the Enf. StEP Director is exploring with HSE's Director of Communications how HSE can best exploit the opportunities highlighted by the research, for both notices and prosecutions;
 - Work is in hand to improve guidance to inspectors on informing and involving workers in the outcomes of inspections, including any enforcement activity;
 - Since the evaluation work was completed, HSE has recently enhanced its efforts to engage and involve victims by launching a new Victim Personal Statement scheme in accordance with the Home Office's Victims Code. Victims are now invited to make a statement of how the alleged offence has affected them. It is made clear to victims that the affect on them and their views will be taken into account when deciding whether prosecution would be in the public interest.

Consultation

15. Throughout the extensive evaluation process consultation has taken place with a wide range of stakeholders including duty holders, workers, victim representatives, members of the public, HSE Inspectors and LA Inspectors. Within HSE, Enforcement StEP, FOD HQ, PEFD and the Worker Involvement team have been involved in the drafting.

Presentation

16. Greenstreet Berman's main report entitled 'Evaluation of EPS and Enforcement Action' will be published in hard copy and on the HSE website. Detailed appendixes to the research will only be published on the website.

Costs and Benefits

17. The costs of work to date on the EPS evaluation is approximately £230,000, comprising £180,000 for research and HSE staff costs of £50,000 (6 months Band 4 time and 4 months Band 3 time). This does not include work contributed by the Enforcement StEP, as this has been accounted for elsewhere.

18. Benefits from the establishment of an improved evidence base include an enhanced ability to take targetted action to improve the effectiveness of enforcement via initiatives such as the Enforcement StEP, and presentational benefits from being able to demonstrate to stakeholders (including within Government) that policies are well founded and enjoy wide support. In particular, the work places HSC\E in a good position to discuss with the Better Regulation Executive any forthcoming proposals resulting from the Macrory review and developments with proposals for the Compliance Code.

Financial/Resource Implications for HSE

19. See paragraph 15, otherwise, none.

Environmental Implications

20. None.

Other Implications

21. None.

Action

22. To note the positive outcome of the EPS evaluation and the next steps.