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HEALTH AND SAFETY COMMISSION

HSE's Hampton Programme - Update

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Issue

To review steps planned by HSE taking forward mergers with other regulators and progress in some other areas of work recommended by the Hampton report.

Timing

1. Routine

Recommendation

2. The Commission is invited to agree:
 - HSE should make a formal presentation of merger plans to the Cabinet Office (para. 6)
 - Opportunities arising to influence the future of penalty regimes (para. 7)
 - Progress made in reducing administrative burdens (para. 8)

Background

3. HSE is one of seven thematic regulators Hampton proposed after consolidating 31 of 63 regulators in its scope by 2009. Mergers are to be coordinated and led by the Better Regulation Executive. Detailed plans are to be in place by September 2006. The bodies and functions directed to HSE were:

- The inspection functions of the Coal Authority
- DTI Engineering Inspectorate
- Adventure Activities Licensing Authority
- Gangmasters Licensing Authority.

A decision on merging the Security Industry Authority into HSE was to be made in 2007; Home Office has commissioned an independent review to examine options for the future of SIA, due to report soon.

4. The Commission received a paper below the line in October 2005 detailing each of the organisations planned for merger and giving initial advice on the implications for corporate governance in HSC/E. Annex 1 was first attached to the October paper and is included here for reference.
5. Whilst HSE has been progressing work across a broad better regulation front this paper refers to initiatives of particular interest in responding to a review of penalties and looking at the burdens from forms.

Issues

6. HSE has seized the opportunity to demonstrate it is a worthy holder of the title Thematic Regulator by making all due progress across its merger workstream. Brief details of the progress made with each project are set out below with a more detailed breakdown on specific issues in Annex 2. In each case where HSE has developed a merger plan it is fully to absorb the merging body into HSE reporting to ministers through HSC. Programme staff have kept in close contact with the Better Regulation Executive (BRE) and we believe we are on track to deliver a response to the Hampton merger recommendations that will be welcomed by them for both its content and timing. The Government's Better Regulation Action Plan requires HSE to have agreed formal plans for mergers by September 2006.

The Commission is invited to agree that HSE makes a formal presentation of HSE's plans to BRE this Spring.

- Coal Authority - HSE believes it can meet the spirit of Hampton's recommendation relating to this body by a simple administrative arrangement well short of any merger or transfer of resources, this paper does not deal with any further details.
- Engineering Inspectorate – HSE has agreed with DTI the scope of functions to come to HSE and the administrative arrangements for making the transfer. More work is to be done on defining the precise policy remit and resources required to fulfil the transferring work, which will be located in FOD and linked to the wider HSE electrical community. Our contact with industry bodies suggests they welcome the rationalisation of safety regulation structures.
- Adventure Activities Licensing Authority – HSE has made good progress with understanding the complex contractual arrangements that supports the AALA and has developed a plan for their transfer which will see the merger completed by late 2006.
- Gangmasters Licensing Authority – this is the most complex of the merger plans and HSE has set up a project steering group involving the GLA, HSE and Defra.

Various sub-groups are making progress with shaping the development of GLA within Defra in a way that will facilitate its transfer by the end of 2009. The GLA is currently active in shaping an evidence-led, risk based inspection regime.

Penalties Review

7. The Better Regulation Executive is carrying out a review of penalties relevant to the regulators in Hampton's scope. The review is being lead by Prof. Richard Macrory. MISC/06/02 explained to Commissioners that HSE has a strong working relationship with the review team and has contributed to a consultation document due for publication in the spring. Whilst the review provides opportunities to reinforce calls made previously by HSC to raise fine maxima it also creates an opportunity to reconsider all the levers available to promote compliance and evaluate alternative penalties. As an exercise intended to improve consistency across a number of regulatory regimes there will be a need to ensure the importance of enforcement to securing health and safety outcomes is understood in the context of the broad scope of regulatory interventions with business in relation to consumers, workers and the general public.

The Commission is invited to note the need to make a formal response, a paper soon after the consultation opens will give an opportunity to input to the process.

Forms Review

8. The Commission may recall HSE's intention to take a "zero based" approach to reviewing all the forms in its catalogue; this work is now complete. The project has identified 50% of the forms reviewed as not contributing directly to HSC Strategy or any relevant HSE business need. HSE is now implementing work to remove these forms. Cabinet Office is aware of the project and has referred to it as '*an excellent case of best practice that we want other departments to adopt*'. Work on the project has confirmed that 3 forms account for a sizable majority of the volume of forms handled by HSE (incident notification under Reporting of Injuries, Diseases and Dangerous Occurrences Regulations, notification of construction work and administration of the asbestos removal permissioning regime). HSE will be expected by government to make a significant impact on the burden from forms and these areas will be subject to close scrutiny. Reviews in each area are currently in hand. HSE believes that the most significant impact on burdens from forms will be made by a combination of abolishing requirements and automating business processes; work to facilitate automation is also in hand.

The Commission is invited to note progress with reducing the administrative burden and that significant challenges lie ahead.

Consultation

9. With members of the HIP Board (which includes LA representation) and sponsoring departments.

Presentation

10. HSE experts in Communications Directorate are working with each of the merger project managers to implement detailed communications plans.

Costs and Benefits

11. The costs of delivering mergers may be substantial, if temporary, and risk diversion of HSE resources away from the HSC Corporate Plan and/or the creation of budgetary pressures. Functions in AALA and the GLA are heavily reliant on income. The business plan for AALA relies on its 'parent' to subvent any funding gap should the income stream prove insufficient to support expenditure: current assessments value this risk in the order of £0.5m pa. HSC is set to inherit a plan for the GLA providing for estimated operating costs of £2m pa (not including enforcement costs financed separately by Defra) with a reliance on £2m pa of income (all costs to be confirmed); by 2010 the declared aim is for the GLA to be self-financing. Forecasting and realising income will be inherently unpredictable due to the nature of both licensing regimes. All possible steps will be taken to manage these risks e.g. by recognising the demand led nature of the GLA licensing function within the HSC settlement or asking DWP to share the financial risk.
12. Merged organisations present new and potentially difficult challenges in terms of, high profile, possibly emotive, policy, enforcement, legal and communications issues. It is unlikely that HSE will achieve any economy of scale in these new areas in either the short or medium term. HSC cannot expect extra resources fully to meet management and support of these new activities. DfES and Defra indicate that their investment in these functions is both low and inextricable. This is not unreasonable and HSC will make similar arguments in relation to the export of responsibility for rail safety to the ORR. HSE cannot reduce many of the overhead and enabling costs associated with rail safety (eg accommodation, HR and financial services, IS/IT support). In arguing to retain this rail-related resource there is a clear case for a quid pro quo in supporting the newly imported functions (whilst the income risk, which could result in HSC having to reduce expenditure in other areas, remains key).
13. The Forms review has consumed about £30k. There may be some minor efficiency gains from discontinuing use of forms. There will be costs arising out of turning remaining form-based processes into on-line processes but options will need to be subject to business case disciplines and the aim will be to achieve savings - or at least cost-neutrality. The more general reviews of RIDDOR, Asbestos Licensing and the Construction Regulations will pick up the form related issues as part of wider considerations.

Environmental Implications

14. None.

Other Implications - Risks

15. None.

Action

16. 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 Activities 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

Mergers Governance

Specific governance issues in each merger are outlined below. HSE is very aware of the need for sensitive handling when working with people in governance structures in organisations that are asked to cooperate with the merger project in the prospect that their own positions are likely to be subject to change in merged structures. Specifically:

- Engineering Inspectorate - HSE will take on the public safety role of the Inspectorate with respect to the electricity transmission and distribution industry whilst other existing EI roles will be retained within DTI. Initially an Agency Agreement arrangement will empower HSC/E to fulfil the safety role on an interim basis. A precise delineation between DTI and HSE on the policy and enforcement responsibilities will also be needed. A permanent transfer of the safety functions within both primary and secondary legislation will follow this once the Regulatory Reform Bill becomes law. It is expected that some of the existing EI staff will transfer from the outset to HSE as part of a dedicated team to fulfil this function. They will be appointed as HSE Inspectors and located within FOD with links to the rest of the HSE electrical community. A suitable management reporting structure has been agreed.
- Adventure Activities Licensing Authority – When HSE is designated as the AALA, Tourism Quality Services (TQS), the current AALA, will continue to function almost as they do now. Cabinet Office has designated the AALA a non-departmental public body, and DfES has a financial memorandum (rather than a contract) with TQS. TQS will be carrying out the licensing work on behalf of HSE under a contract that has yet to be negotiated. HSE will need to have good managerial control to ensure that TQS works to HSE standards and it is currently considering how to manage the contract.
- The Gangmasters Licensing Authority – The GLA is regulated by a Board of 19 industry stakeholder representatives appointed by the SoS. As the functions of the Board are transferred to the Commission, the Board members will lose their role. There has been opposition to the merger from within the GLA Board, so presentational and political issues in the post-merger structures of both the Board and authority (officials) are likely to need careful handling. A tripartite Project Steering Group (HSE/Defra/GLA) has been set up to minimise and manage these challenges and oversee arrangements for merger.

Mergers risks outside of our control

It is becoming clear to HSE that because of commitments made by other departments it will be taking on some risks (to either budgets or reputation) structured in ways it would not have chosen, specifically:

- **Engineering Inspectorate** - The transfer represents a low risk to HSE's reputation with industry as the latter supports the proposal. The requirement will be for HSE to attract existing EI staff; this will help ease the transfer of the current public safety role to HSE and limit any drain on existing resources. The transfer of responsibilities but no staff will present HSE with considerable regulatory expertise and resourcing difficulties. Work is also ongoing to try and limit the extent of HSE's role across government in individual topics, such as electromagnetic fields, which could attract significant future political and public interest.
- **Adventure Activities Licensing Authority** – As HSE does not have the expertise to assess and make judgements about standards in relation to licensing of adventure activities, while the current licensing regime continues it will contract the work to TQS, the existing AALA. This means that HSE, which becomes the AALA, will be dependent on the judgements of TQS inspectors. Safeguards will be put in place to keep any resulting risks as low as possible, but closer monitoring may be needed in the early days and this will place additional demands on HSE resources. TQS is currently funded partly by the fees operators are charged for a licence, and partly by grant-in-aid from the Government (currently via DfES but, after absorption, by DWP). The costs of managing the TQS contract will be met out of HSE resources.
- **The Gangmasters Licensing Authority** – The GLA is in its infancy and some risks may not be apparent until the licensing regime is more developed; key variables include the number of licence applicants (currently unknown) and the licence fee structure (currently subject to public consultation). The GLA has already had to procure and develop IT systems that may not be compatible with HSE's. There are reputational risks if the emerging licence regime proves incapable of controlling the casual, temporary and migrant labour sector in the industry for lack of intelligence, cooperation or enforcement. Labour providers and individual workers in this market are hard-to-reach for good reason and may elect to remain hidden. In the worst case a repeat of the Morecambe Bay tragedy could not be ruled out. Post merger HSE will need to make arrangements to accommodate the GLA's UK-wide remit. The GLA is, however, due to have a three year review of its activities and performance before a merger takes place. The Project Steering Group has set up a number of working groups to deal with these and other issues.

Merger plans and timescales

Whilst HSE is confident it will eventually realise burden reductions to duty-holders as a result of the mergers, benefits are not likely to accrue for some time in most cases. The outline of each plan is below; HSE intends to agree with the Cabinet Office that this timescale for full benefits is acceptable to them.

- Engineering Inspectorate - The transfer is designed to limit disruption to industry arrangements and maintain current regulatory standards and consistency through the retention of staff currently carrying out this function. When the new arrangements are in place and working well it will be necessary to review the impact on both industry and HSE. There may be some opportunities to rationalise regulatory input in areas where both HSE and DTI currently, by necessity, allocate resources.
- Adventure Activities Licensing Authority – The absorption of the AALA into HSE is planned for completion by late autumn 2006. The initial post-absorption work will concentrate on getting the contract with TQS working well, HSE will then undertake a detailed review of the activities, functions and success of the licensing scheme with a view to its long-term future.
- The Gangmasters Licensing Authority – By the end of 2006 GLA will (with active HSE involvement) have:
 - Completed public consultation and put in place necessary legislative arrangements.
 - Developed an evidence-led, risk-based approach to inspection.

Merger Stakeholder Management

As the mergers are an agreed government policy HSE does not plan to conduct any formal public consultation on the fact of the mergers. HSE is well aware however of the need to engage with relevant stakeholders during the merger process and each merger project has its own plan for doing so.

Each merging organisation currently has its own distinct brand identity. As part of the merger process HSE plans to ensure that the merged organisation is clearly branded as a part of HSE whilst maintaining whatever badging is useful for continuity of engagement with the relevant stakeholders.