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## HEALTH AND SAFETY COMMISSION

### Better Regulation Executive (BRE) Review of Penalties - HSE contribution to preliminary call for evidence

A Paper by Keith Pritchard

Cleared by Jonathan Rees on 20 February 2006

#### Issue

1. To inform the Commission that HSE has sent a response to the BRE's call for evidence, which comes ahead of a full public consultation in the Spring. The views of local authorities are being coordinated by LACoRS.

#### Timing

2. Routine. The Commission will have an opportunity to consider and formally respond to the BRE Penalties Review Consultation Document when it is published. The deadline for responses is expected to be the end of August 2006.

#### Background

3. The final report of the Hampton Review, published in March 2005, recommended that the BRE should undertake a comprehensive review of regulators' penalty regimes. Following this recommendation, the BRE established a Penalties Review, under the guidance of Prof Richard Macrory, Professor of Law at University College, London, which is due to report in late 2006.
4. In December 2005, the BRE published a discussion paper Regulatory Justice: Sanctioning in a post-Hampton World (available on the BRE website at [http://www.cabinetoffice.gov.uk/regulation/mergers\\_and\\_penalties/penalties\\_review.asp](http://www.cabinetoffice.gov.uk/regulation/mergers_and_penalties/penalties_review.asp)), which includes a list of questions on which the Review would like evidence.

#### Argument

5. There are no new policy lines in the response, attached at Annex 1. In the main, this pulls together information and perspectives already publicly available - in particular, in recent Offences and Penalties Reports, the Commission's Enforcement Policy Statement, and *Sensible health and safety at work: The regulatory methods used in Great Britain*. But the call for evidence provides an opportunity to reiterate HSE views on penalties reform, previously contributed to the Hampton Review, and to add emphasis. It also builds on HSE's strong working relationship with the Penalties Review Team. We are not, in this response, committing ourselves to any course ahead of the full Penalties Review consultation exercise.
6. Key messages are that
  - our enforcement approach is evidence-based and focussed on achieving strategic targets and outcomes;

- we deal with regulatory offences that have the potential for causing death or injury to workers and the public, and with high hazard sectors where non-compliance could have catastrophic consequences;
- we believe current level of fines available to the courts, and imposed by them, for health and safety offences is too low, and there needs to be consistency across a range of regulators;
- while we believe our current range of enforcement tools is about right, we are interested in increasing the levers we can use to motivate compliance in a wide range of circumstances - eg, through changes in behaviour and by providing inspectors with more flexibility;
- we are prepared to look at alternative penalties, such as restorative justice, where there is evidence to suggest they can bring about improved compliance and a reduction in ill-health/injury; and
- we are effectively engaging with our stakeholders and with other regulators, to ensure consistency of approach, and that our response is informed by these dialogues.

### **Consultation**

7. Within HSE.

### **Presentation**

8. No presentational issues.

### **Costs and benefits**

9. None associated with this paper.

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

10. None.

### **Environmental/other Implications**

11. None.

### **Contacts**

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