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HEALTH AND SAFETY COMMISSION

UPDATE: Public Safety in the Sensible Risk Management Campaign

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Issue

1. Linking the work on possible public safety principles set out in the July 2005 discussion document with the wider Sensible Risk Management (SRM) Campaign.

Timing

2. Routine: To fit in with the management of the Sensible Risk Management Campaign.

Recommendation

3. HSC notes the outcome of the work trailing possible public safety principles and agrees that this workstream is subsumed within that on Sensible Risk Management.

Background

4. Public safety is the prime focus of a significant element of HSE's work – particularly in the area of specific major hazard regulation. HSC published a discussion document in July 2005 on possible principles for public safety enforcement. This paper reviews the responses, in the context of wider progress on linked areas of work on Sensible Risk Management and the Commission's overall policy statement on public safety.
5. HSC/E have long realised that the wide scope of HSWA Section 3 (S3) can lead to HSE being involved in areas which are far removed from our published priorities. HSE sought to limit this risk of diversion by using operational guidance to set limits on involvement in some areas covered by other regulators. Following a legal challenge from the Centre for Corporate Accountability, HSC's policy statement was considered and confirmed as sound, but the operational guidance was found to be too restrictive and was amended accordingly.

6. In the light of this, we believe we currently have legally robust and open statements of policy and practice on the enforcement of S3 issues, both available on the website:
 - HSC's Policy on Section 3 (Annex 1)
 - Operational Circular OC 130/10 – guidance to inspectors on prioritising public safety incidents and working effectively with other regulators.
7. Against this background, HSC agreed last year to the publication of a **discussion document (DD) to further debate on HSE's public safety role**, fulfilling the commitment it gave in the Strategy statement (see HSC/05/71). The DD, issued in July 2005, drew the link to the wider SRM debate and suggested a set of possible principles for public safety regulation. The debate closed in Autumn 2005. There were 59 responses, covering a range of views. Whilst there was no clear consensus on the proposed principles:
 - all agreed that public safety was important and that our approach to its enforcement was entirely consistent with the sensible risk principles;
 - there was wide recognition that prioritisation was essential; and
 - effective working with other regulators was seen as vital to ensure risks were identified, appropriately prioritised and effectively dealt with.
8. A summary of responses, together with a list of respondents and the six draft principles floated in the discussion document is given at Annex 2.
9. Since work on this topic began, the **Sensible Risk Management Principles have been developed and launched** (Annex 3). HSC/06/46 set out the background to the campaign and the ten sensible risk management principles. These principles are particularly relevant to many aspects of the way health and safety law applies to public safety, eg school trips, fairgrounds and major hazards installations, and clearly elucidate HSC/E's stance on prioritisation and enforcement of that issue. For example:
 - SRM Principle: "*SRM is about providing overall benefit to society by balancing benefits and risks, with a focus on reducing real risks – both those which arise more often and those with serious consequences*" This supports us giving priority to the regulation of major hazard industries, work which has a major public safety element, ensuring they are properly managed so society has the benefits they bring, while giving assurance that risks to the public and workers are properly controlled.
 - SRM Principle: "*SRM is not about stopping important recreational and learning activities for individuals where the risks are managed*" This supports our position on school trips, that such activities are of tremendous value and should go ahead. Of course, organising bodies must do what is reasonably practicable to ensure the health and safety of the children and the evidence is that every year thousands of well-organised activities take place without a hitch, giving children fantastic opportunities to enjoy themselves and learn.

Argument

10. The discussion exercise showed broad agreement with our approach (though less clearly an appetite for suggested principles). HSC's robust policy statement on S3 enforcement and supporting guidance, coupled with the widely supported new SRM principles, mean HSC/E's stance on public safety is reasonably clear. In summary, the current position is that:

- the Strategy is clear how we will prioritise and the HSC policy statement on S3 enforcement is in line with this, and the open operational circular (OC 130/10) gives more detail.
 - the SRM Principles provide the framework to locate this topic within the HSC/E philosophy of regulating risk.
 - effective communication of HSC's position to all stakeholders is achieved by the publication of the SRM statements on the website and the on-going campaign.
11. Any separate public safety principles could cause confusion and detract from the SRM Campaign's central message of duty-holders and enforcers allocating appropriate resources to issues based on the risk they pose.
12. Against that background, and in the light of the need for HSE to make best use of resources and avoid distraction from priority programme and PSA related activity, HSE considers there is little to be gained from further work to produce distinct public safety principles and that any such principles could risk causing confusion.
13. There will of course continue to be considerable interest in this area: much of the local authorities' work involves public safety; and some public safety issues gain a high profile, such as recent events when the boundaries of S3 are being tested, eg the CPS decision to use S3 to prosecute following the de Menezes shooting. HSE will need to continue to monitor pressures, and respond in line with the established policy and with regard to the Sensible Risk Management Principles.

Consultation

14. In addition to the public debate as part of the SRM Campaign and public safety principles discussion, there has been wide consultation within HSE via seminars and discussion groups and with local authority partners via LACORS and the Policy Forum.

Presentation

15. Key documents are already available on the website. Other issues will be fed into the Sensible Risk Management Campaign and HSE will continue to seek opportunities to ensure the approach to public safety regulation is communicated. For example, the Chair's Office are considering possible speaking engagements in the new year where he can take the opportunity to stress the importance of this aspect of HSC/E's work. It would be helpful if other Commissioners could consider including key messages in presentations as appropriate.

Costs and Benefits

16. **Costs:** The work on the public discussion exercise leading to this paper, including analysis of the responses and discussion on the links with Sensible Risk Management has cost an estimated £40,000
17. **Benefits:** This work reasserts HSE's public safety role, in the context of the HSC strategy helping field staff decide which issues they should become involved in, or not deal with and ensuring that HSE's resources are focussed onto the key issues that will have the most impact.

Financial/Resource Implications for HSE

18. The essential ongoing core policy and monitoring work on public safety set out in paragraph 14 will be taken forward within Cross Cutting Interventions Division at an estimated cost of some £30,000 per year, based on part of a B4 policy advisor post, with an element of senior management input.

Environmental Implications

19. None.

Other Implications

20. None.

Action

21. To note the recommendation at Paragraph 3 that HSC notes the outcome of the work on public safety principles and agrees that this workstream is subsumed within that on Sensible Risk Management.

HSC Policy Statement on the enforcement of HSWA S3

The purposes of the Health and Safety at Work etc Act 1974 include protecting people other than those at work from risks to their health and safety arising out of or in connection with the activities of persons at work. Section 3 of HSWA places general duties on employers and the self-employed towards persons other than their employees. Since the scope of section 3 is very broad, HSC has adopted this policy to assist enforcing authorities in the exercise of discretion when determining action, including selecting incidents for investigation where a breach of section 3 is suspected. It will also assist HSE staff in their consistent application of the principles set out in the HSC's Enforcement Policy Statement in determining which incidents should be given priority, within the resources available.

Arrangements for enforcing section 3 HSWA need to take account of HSC's health and safety priorities – most recently set out in [HSC's Strategy for workplace health and safety in Great Britain to 2010 and beyond](#) - whilst continuing to meet the section 18 HSWA duty to make adequate arrangements for enforcing the relevant statutory provisions, and thus demonstrate reasonable exercise of **our** responsibilities.

HSC has therefore decided that:

- enforcing section 3 HSWA in areas key to our mission (for example, in major and high hazards, including the nuclear industry and construction) remains a high priority. HSE will continue to address the most serious risks to the public's health and safety from work activities using its expertise to best effect and taking into account the regulatory responsibilities of others;
- HSC's general approach to public safety is set out in HSC's Strategy and reflected in priority programmes and incident selection criteria; and
- HSE and other enforcing authorities will take account of HSC's priorities and, generally, give less priority to the enforcement of HSWA section 3 in areas outside these priorities.

There are many situations where work activities which may give rise to risks to health and safety are regulated by other authorities using legislation that may address circumstances which are also relevant to health and safety at work issues. HSC's policy, in accordance with the Government's Enforcement Concordat, is to ensure that, wherever practicable, enforcement action by the health and safety enforcing authorities is effectively co-ordinated with that of other, relevant enforcing authorities so as to minimise unnecessary overlaps and time delays. However, initial enquiries, or information from other sources, may indicate that a breach of section 3 was or is the probable cause of, or a significant contributory factor to, the injury or risk complained of. In such circumstances, HSE and other enforcing authorities should generally consider investigating if:

- there was or is a high level of risk; or
- enforcing authorities need to act/investigate in the interests of justice.

There may, however, be a relevant health and safety interest in some aspects of a work activity covered by more specific legislation. HSE seeks to agree with other authorities who should take the lead on an investigation (to avoid unnecessary overlaps and time delays) and, where there may be a need to act alongside each other, which activities are

most appropriately dealt with by each authority. HSC expects enforcing authorities to consider the following principles when deciding whether it is suitable for them to take the lead on an investigation:

- Effectiveness: Which authority is best equipped, including appropriate powers, to investigate the alleged risks?
- Capability: is the other body capable of ensuring public safety? Does it have those enforcement powers necessary to do so?
- Health and safety expertise: Which body knows most about the risks concerned and the effective control measures?
- Economy: Is either body already inspecting/visiting the premises or activity in question? Can duplication of visits be avoided?
- Efficiency: Is health and safety enforcing authority involvement a good use of resources when considered against the scale of risk or level of public concern?

SUMMARY OF COMMENTS RECEIVED ON THE DISCUSSION DOCUMENT ON THE DRAFT PRINCIPLES FOR HSE'S REGULATION OF PUBLIC SAFETY

Background

1. The document listed six principles (full text at appendix 2) setting out what HSE's role should be in protecting the public from work-related risks. A 12 week public discussion period solicited comments. The exercise's origins were HSC's undertaking in the Strategy to promote a public debate on this.

Summary and Conclusion

2. There were 59 responses (see appendix 1). Of these there were: 2 – Employers' Groups (CBI and EEF); 8 – Trade / Professional Associations; 3 – Local authorities / bodies (LACoRS, LARSOA, CIEH, EO and Hampshire County Council) and 8 individuals who worked for LAs; 3 – Safety professionals; 3 – Government Agencies (Environment Agency and Adventure Activities Licensing Authority); 8 – Safety Organisations; 2 – Trades Unions (TGWU and CWU); 3 businesses, 6 unknown individuals and 12 anonymous contributors. Seven organisations promoted road safety issues.

3. There was no clear agreement on the principles, although;

- All agreed that public safety was important and that HSE's approach was entirely consistent with the sensible risk management principles;
- There was wide recognition that prioritisation was essential
- Respondents generally welcomed the exercise as a sensible way forward for HSE to manage its resources, although three, (ROSPA, BVRLA and Hants CC) were concerned that the document appeared more about limiting HSE's responsibilities than promoting safety;
- Effective working with other regulators was seen as vital to ensure risks were identified, appropriately prioritised and effectively dealt with. There was some concern about clarity and gaps; and
- While a significant minority felt that HSE should become involved in new areas such as work-related road traffic incidents (RTIs) others said that worker safety should be the priority for HSE and other issues should not detract from this central role.

4. Conclusion

- HSC/E's approach to managing public safety is broadly right and is supported: the discussion showed no clear appetite for additional public safety principles. The current HSC statement on public safety (HSWA S3) enforcement policy and the HSE operational guidance, taken together with the sensible risk management principles, are sufficient to communicate HSC's stance.

Summary of comments on principles

Principle 1 – Regulating Major Hazards

5. Respondents supported HSE continuing to do this. ROSPA felt that HSE should devote equal resources to other activities that could cause multiple fatalities. Local Government employers felt that resources should be allocated on risk.

Principle 2 – Working with Other Regulators to Promote Consistency, Clarity of Responsibilities, Fill Gaps and set Criteria for Priorities, HSE as “Enforcer of Last Resort”

6. This was supported. HSE should work with other bodies to promote a coherent overall approach to regulating public safety and achieve clarity of responsibilities. A mapping exercise would clarify roles and identify gaps. Only LACoRS was concerned about gaps, both in formal enforcement as well as responsibility, giving the example of hospital work practices that put patients at risk. 18 of the 32 completed questionnaires said HSE should be very concerned about gaps.

7. Enforcer of last resort - Contributions were mixed. LACoRS and EO felt LAs fulfilled this role. Two respondents thought HSE should not have this role. The Association of Personal injury Lawyers (APIL) thought it necessary to ensure consistency and plug any gaps. 3 felt that this was a fact of life. EO also felt that the problem stemmed from the lack of clarity in interpreting s.3.

8. Criteria to set priorities for public safety – This was overwhelmingly supported. However a number of respondents felt that these would have to be agreed by all the responsible authorities to be effective and there must be clarity of responsibilities between regulators before this could be done.

Principle 3 – Not Restricting the Liberty of People to do Hazardous Activities

9. This was supported. However a role was seen for HSE to educate the public about risk and ensure activity providers explained residual risks, so there was informed consent, and took reasonable steps to ensure safety. Activities that pose a significant risk to others, including rescuers, might need to be licensed or banned.

10. IOSH suggested that the Visitor Safety in the Countryside Group’s (VSCG) principles should be drawn upon to establish criteria for public safety. VSCG were content that the draft principles were broadly consistent with their guiding principles.

Principle 4 – HSE Prioritising Intervention When there was a Clear Link between Risks to Workers and the Public from the Same Work Activity

11. 29 respondents agreed with this principle, 12 (including ROSPA, IOSH, FOM, LACoRS, APIL, CBI, CIEH and EO) disagreed, feeling that priorities should be based on risk.

Principle 5 – Issues should be Dealt with Locally Utilising Local Authority Expertise in Enforcing Health and Safety to Manage Their Activities.

12. There was some confusion over this principle; some thinking it meant that LAs would be the enforcer for all public safety. It therefore should be redrafted or deleted.

13. The greatest concern was that more localised inspection would mean greater inconsistencies. Hence national standards and guidance, from HSE, would be needed.

14. LACoRS and EO pointed out that the skills needed to enforce and to manage health and safety were different. There were also concerns about resources.

15. From the completed questionnaires about how best to use LA expertise: seven felt LAs should inspect themselves, seven that HSE should enforce as it currently does. Three felt there should be partnership working and one respondent felt LAs should inspect one another. Three said arrangements should be risk based.

16. On the level of priority HSE should give to LA managed activities, seven of the completed questionnaires said this should be high, four low and the majority, 16, felt that this should be risk based.

Principle 6 – HSE Providing its Unique expertise in Addressing Pressing Issues of Concern including Occupational Road Risk:

17. The majority of respondents supported this principle. Other respondents raised concerns that this might sap HSE's resource. Thus HSE's involvement should be limited to emergencies or when its expertise was unique and then to high-level strategy, planning and advice.

18. Occupational road risk: 25 of the 59 supported HSE giving a greater priority to this topic; 14 of the 25 supported road traffic injuries becoming RIDDOR reportable. Three organisations (CBI, EEF and ECIA) felt that HSE shouldn't become involved. Three of the completed questionnaires said this should be a low priority as the police managed this topic. Seven questionnaires stated that the current level of HSE activity was about right.

19. A number, 16, did not want duplication of the police's and vehicle and driver testing agencies' work. The ABI said HSE should not involve itself in every road traffic incident, as the police do, but should have a more strategic role providing guidance and expertise on the management of occupational road risk, looking into the cause and effect of RTIs.

Appendix 1

LIST OF RESPONDENTS

SAFETY ORGANISATIONS

Visitor Safety in the Countryside Group (VSCG) – Has government departments and bodies (Environment Agency) as well as charities (National Trust and RSPB) amongst its members.

Gas Industry Safety Group (GISG) – Established to coordinate gas safety issues amongst industry players post liberalisation.

Rail Safety and Standards Board (RSSB) – Not for profit company owned by major stakeholders to promote health and safety on the railways.

Royal Society For the Prevention of Accidents (ROSPA)

Parliamentary Advisory Council for Transport Safety (PACTS) – Registered charity and associate Parliamentary group with the objective “to protect human life through the promotion of transport safety for the public benefit.”

Institute of Occupational Safety and Health (IOSH)

Infrastructure Safety Liaison Group (ISLG) – Railway operators / contractors, focused on safety management improvement.

TRADE / PROFESSIONAL BODIES

Association of Personal Injury Lawyers (APIL) – Represents claimant lawyers with around 5,000 members.

Association of British Insurers (ABI)

British Vehicle Rental and Leasing Association (BVRLA) – Trade body for companies involved in leasing cars and commercial vehicles.

Faculty of Occupational Medicine and the Society of Occupational Medicine

Engineering Construction Industry Association

Chartered Institute of Environmental Health

Ergonomics Society

HEALTH AND SAFETY GROUPS

West of Scotland Health and Safety Liaison Group

TRADES UNIONS

Transport and General Workers Union (TGWU)

Communication Workers Union (CWU) - Derek Maylor (Regional Official)

EMPLOYERS' GROUPS

Confederation of British Industry (CBI)

Engineering Employers Federation (EEF)

GOVERNMENT BODIES

Environment Agency (EA) – Management of reservoirs and waterways.

Adventure Activities Licensing Authority (AALA)
Andrew Butt – Learning and Skills Council
Defence School of Transport (MOD)

INDIVIDUALS

Mr J Clark – safety professional.
Lyndon Shearman – safety professional.
Dr Michael Howard – Lecturer in Environmental Health
John Anderson – unknown
Alex Cameron – unknown
J Carne – unknown
Wayne Gault – unknown
Barry Mould – unknown
Marie Nelson – unknown

LOCAL AUTHORITIES / BODIES

Hampshire County Council (Hants CC) – Road Safety Team
Local Authority Road Safety officers' Association (LARSOA)
Local Authority Coordinators of Regulatory Services (LACoRS)
Employers' Organisation for Local Government (EO)
Transport for London

Individuals from Local Authorities

Blyth Valley BC
Canterbury CC
Gedling BC
Mid Sussex DC
Monmouthshire CC
Royal Kingston BC
Shepway DC

BUSINESSES

Interactive Driving Systems (IDS) – Software company that undertakes research and produces interactive training packages and tools to manage road safety.
Western Power Distribution (WP) – utility company.
Jacobs UK Ltd

Anonymous - Twelve

Appendix 2

PRINCIPLES AND QUESTIONS CONTAINED IN THE DISCUSSION DOCUMENT

Principle 1

HSE will provide public assurance that health and safety risks in the major hazards industries are properly managed

Principle 2

HSE will continue to work with other regulators that have public safety duties, and specific expertise, to promote a coherent overall approach to public safety, including greater clarity of responsibilities among the regulatory bodies.

- How important is it that there be greater clarity of responsibilities among regulators with public safety responsibilities?
- How concerned should HSE be about confusion and perceived 'gaps' in enforcement in public safety provision? What should be done about them?
- How concerned should HSE be about HSE as the 'enforcer of last resort'?
- Would establishing criteria by which it could set its priorities for public safety protection help HSE to work efficiently and effectively, targeting its resources?

Principle 3

HSE will not unnecessarily restrict the liberty of people to engage in certain hazardous activities, should they wish to do so.

Principle 4

HSE will give particular priority to intervention when the risks to the public from a work activity and the risks to workers from that same work activity are linked.

- Should the guiding principles include a clear link between the risks to the public arising from a particular work activity and the risks to workers from that same work activity?

Principle 5

That where possible and appropriate, risks to public safety that arise in a particular locality be dealt with by those within that locality.

- How local authority expertise in the management of health and safety may best be used in managing risks to public safety arising from local authority activities regulated by HSE – such as swimming pools, public events, etc.
- The level of priority that HSE should attach to local authority managed activities.

Principle 6

HSE will, where circumstances demand, apply its unique expertise in controlling and managing risk to pressing issues of public and national concern.

- Please consider the extent to which HSE should consider occupational road related risk a priority.
- Please consider how best HSE should, where circumstances demand, provide its unique expertise in the control and management of risk to pressing issues of public concern.

Principles of sensible risk management

1. Sensible risk management is about:

- Ensuring that workers and the public are properly protected
- Providing overall benefit to society by balancing benefits and risks, with a focus on reducing real risks – both those which arise more often and those with serious consequences
- Enabling innovation and learning not stifling them
- Ensuring that those who create risks manage them responsibly and understand that failure to manage real risks responsibly is likely to lead to robust action
- Enabling individuals to understand that as well as the right to protection, they also have to exercise responsibility

2. Sensible risk management is not about:

- Creating a totally risk free society
- Generating useless paperwork mountains
- Scaring people by exaggerating or publicising trivial risks
- Stopping important recreational and learning activities for individuals where the risks are managed
- Reducing protection of people from risks that cause real harm and suffering

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