

Macrory Penalties Principles And Regulatory Principles

The penalties principles and regulatory framework proposed in the BRE Consultation Document are set out below. These do not cut across the principles of enforcement that health and safety enforcing authorities currently follow, which are set out in the Commission's Enforcement Policy Statement (EPS):

- proportionality – i.e. relating enforcement action to the risks
- targeting – i.e. contacts aimed at those whose activities give rise to the most serious risks or where the hazards are least well controlled;
- consistency – i.e. taking a similar approach in similar circumstances to achieve similar ends; and
- transparency – i.e. helping duty-holders understand what is expected of them and what to expect from the enforcing authority.

These general principles, and the approach to enforcement described in the EPS, are supplemented by HSE's Enforcement Management Model (EMM) and Incident Selection Criteria (ISC).

(1) Macrory Penalties Principles

The review suggests the following 'Penalties Principles' that should be the basis for any sanctioning regime. A sanction should -

- aim to change the behaviour of the offender
- aim to eliminate any financial gain or benefit from non-compliance.
- be responsive and take into account what is appropriate for the particular offender and the particular regulatory issue.
- be proportionate to the nature of the offence and the harm caused.
- include an element of restoration.
- aim to deter future non-compliance.

Fundamental to these 'Penalties Principles' is the notion that the underlying regulation is fit for purpose and provides for a greater social purpose such as the protection of consumers, workers, or the environment.

(2) Macrory Regulatory Framework

It is seen that regulators should operate within a framework where they -

- publish an enforcement policy.
- measure outcomes.
- justify their choice of enforcement actions year on year.
- follow up their enforcement actions properly
- enforce in a transparent manner.
- are transparent in the way in which they apply administrative sanctions.