

Draft Letter From The Chair To The Macrory Penalties Review Team

Thank you for the opportunity to respond on the developing thinking of your review. The Commission are encouraged that serious consideration is being given to the important role of enforcement and effective penalties in tackling non-compliance. We very much hope that this work, and the development of the compliance code, can be brought to a successful conclusion in a way that gives regulators the appropriate level of flexibility, whilst providing the transparency and certainty that business desire.

Against this background, key issues we would like to highlight are:

- i) the need for recommendations from the Penalties Review and Cabinet Office work on compliance code to be aligned;
- ii) that regulators preserve flexibility in deciding whether, and if so, how to change their penalties regime;
- iii) all penalties should apply equally across Great Britain;
- iv) more priority should be given to addressing how we can increase consistency and level of fines under the existing framework.

Under the Health and Safety at Work Act 1974 (HSWA) enforcing authorities already have an effective range of enforcement tools which are applied according to the principles and approach set out in the HSC enforcement policy statement. This policy reflects to a large extent, the key penalties principles and framework for applying penalties proposed in your review.

The enforcement of the Health and Safety at Work etc. Act 1974 and its relevant statutory provisions deals with non-compliance in a range of hazardous environments, including in the higher risk end of the regulatory spectrum and this includes fatalities, serious injury and ill-health. Because of

this and our current enforcement tools, comparison with other regulators is not always appropriate.

We understand from the review that any new tools would be used in accordance with a new compliance code but that existing tools currently used under the Act would operate under HSC's current enforcement policy. HSC welcome that: it should be for the individual regulators to decide, within their own timeframe, what if any alternative penalties should be used. In the case of health and safety the Commission, as the body with responsibility for health and safety in Great Britain, would wish to decide in conjunction with others such as, the Office of the Rail Regulator and Local Authorities what, if any, penalties were to be adopted under health and safety legislation.

It is also essential that the regulator should be able to apply any proposed penalty throughout England, Scotland and Wales. National regulators, such as the Health and Safety Executive, and the regulated may be placed in a difficult position if penalty options could not be applied equally across Great Britain. This may well jeopardize the regulators willingness to explore the use of those penalties and cut across the very principles of consistency we are trying to address.

We agree it is important that the review considers the current effectiveness of criminal courts in dealing with and deterring non-compliance. We find the proposal to review the maximum level of penalties for criminal offences highly desirable. Fines handed down by courts should aim to eliminate the financial gain made as a result of regulatory non-compliance, ensure the fines act as a deterrent and reflect the seriousness of the crime. We feel addressing the currently low level of fines would go a long way to improving compliance by acting as a motivator for those currently disinclined to comply. Your Consultation Document says little on how in practice this will be achieved.

We do however welcome the opportunity to evaluate the benefits of additional tools, which may complement the existing health and safety framework.

Attached is a general response on the main points of review together with a detailed response of specific questions asked in the document.

In considering the possible use of the alternative penalties, we have considered the options with the following criteria in mind -

- the flexibility and discretion currently used in the enforcement process should be maintained
- any new arrangements should not be overly complicated or bureaucratic for the regulator or the regulated
- penalty systems should operate in a way that is fair, clear and transparent to all.

It is our view that where appropriate new arrangements and support for any proposed options for reform should be funded by government and accompanied by guidelines. This is especially the case for Restorative Justice where there is a need for access to competent practitioners in mediation, and other alternative penalties such as Enforceable Undertakings where it should help ensure consistency.

Obtaining the right enforcement tools, applied in the right manner where they are appropriate is essential in bringing about the positive changes we all desire to reduce the levels of death, injury and ill-health in the workplace. Throughout the process HSC\E has worked closely with the BRE and we look forward to continuing dialogue as the review progresses.