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HEALTH AND SAFETY COMMISSION

Simplification Project: Proposed Consultation on Health and Safety Information for Employees Regulations 1989

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Issue

1. To agree in principle to undertaking a public consultation on possible changes to the Health and Safety Information for Employees Regulations (HSIER) 1989.

Timing

2. Routine.

Recommendation

3. That the Commission:
 - (a) agrees in principle to consult on changes to the Health and Safety Information for Employees Regulations 1989 using the options outlined in this paper as a basis; and
 - (b) offers any views it has at this stage on the options, and any further work it would like done before the draft consultative document is presented at the end of the year.

Background

4. Background on the existing regulations is at **annex 1**.

Drivers for the review

5. HSE's simplification plan calls for better and smarter regulation. Under the plan, we are committed to working towards a 25% reduction in administrative burdens by 2010 against a baseline determined by the Better Regulation Executive (BRE). Suggestions for possible simplification projects were encouraged from stakeholders. One such suggestion was received from an Environmental Health Officer that HSIER performed no useful function but imposed an administrative burden and therefore should be revoked. A review of the regulations was initiated and included in the HSE simplification plan. This work is HSE's largest stakeholder-proposed initiative.
6. The regulations are HSE's 17th most costly regulations for employers to administer (out of approximately 200 sets of regulations in total) and according to BRE impose an estimated administrative burden on dutyholders of some £25m per year. This is around 2.5% of HSE's overall administrative cost total. The administrative burden arises from the requirement under HSIER for every employer to either purchase

and display at least one HSE-approved poster or give employees a copy of the HSE-approved leaflet. Employers must also enter the name and address of the enforcing authority and the address of the local office of the Employment Medical Advisory Service (EMAS) and keep them updated. Two further spaces are provided for optional completion, to give details of any safety representatives elected and of the employer's 'appointed person' under the Management Regulations.

7. In addition the regulations and the posters and leaflets approved under them have not been reviewed since 1995. This seems a timely opportunity to explore whether the regulations are delivering the policy objective effectively or whether changes need to be made.

Argument

8. The regulations are intended to implement the policy objectives to give information to employees about their rights and responsibilities so that they can play their part in ensuring good standards of health and safety and to give them information about how to contact the enforcing authority and EMAS for help and advice.
9. The review has asked:
 - Is the policy objective still necessary?
 - Is the policy objective being delivered effectively by the regulations?
 - Could it be delivered as or more effectively by non-legislative means?
 - What changes are necessary to deliver the policy objective effectively?

Is the policy objective necessary and do the regulations deliver it effectively?

10. We commissioned the Health and Safety Laboratory to conduct a number of focus groups amongst workers to explore their current understanding and awareness of the poster and options for changing the format/content of the poster, and its method of delivery. Details are given at **annex 2**. Overall, the groups thought that the health and safety information provided in the poster was of value. It was described as informative, relevant and useful. However, the general consensus was that the content and presentation of the information could be improved upon to make it easier to understand and visually more attractive to encourage people to read it.
11. Informal consultation with a wider group of stakeholders confirmed that there is still a perceived need for employees to be given information about their rights and responsibilities and how to contact the enforcing authority. This is particularly necessary for vulnerable workers; that is, those who work in an environment where the risk of being denied employment rights is high and who do not have the capacity or means to protect themselves from abuse.
12. Based on sales of the poster and knowledge of the number of workplaces in Britain, we estimate compliance with the regulations to be in the region of 50% of workplaces. However, we have no evidence to link employers' health and safety performance with compliance with the HSIER.
13. Recent work by COI on HSE's corporate publications commissioned by the Communications Directorate criticised the poster as poorly designed and difficult to understand. Our equality impact assessment has also highlighted several issues concerning the usability of the approved poster. It is unfriendly to those who have a visual or learning disability and to those who cannot read English (that is, migrant

workers from non-English speaking countries and English-speaking people without literacy skills).

14. We therefore concluded that while the policy objective was still needed, the current arrangements do not deliver it effectively.

Options for non-legislative or legislative remedies

15. Following consultation with stakeholders inside and outside HSE, we have identified four options to take this work forward, though there are different ways of implementing them in detail. In choosing the preferred option, there are difficult issues to be balanced.

- **Option 1** is to **leave the regulations as they are** now, requiring employers to display a poster or hand out a leaflet in a format which can only be obtained from HSE. A variant on this is to revise the design of and information on the poster to make it easier to understand. This could be achieved using existing powers.
- **Option 2** is to **revoke the regulations** entirely and achieve the policy objective by other means, for example through guidance.
- **Option 3a** is to **amend the regulations** to require employers to provide prescribed information in a comprehensible way but not prescribe the format or from where it has to be obtained. Employers could provide the information as part of the other information they give staff, for example in an employee handbook, by means of an intranet, on a poster or in a leaflet.
- **Option 3b** is to **amend the regulations** in a more limited way, to require employers to display a poster or hand out a leaflet in a format which can only be obtained from HSE, but which does not need to be filled in or kept updated. As in option 1, the poster would be re-designed to make it easier to understand.

All except option 1 would require public consultation.

Considerations

16. Option 1, leaving the regulations as they are and using existing powers to revise the poster and leaflet to improve their impact and readability, will not reduce the administrative burden, because the regulations would still require the poster to be filled in and kept updated. Also, because there is no provision in the current regulations for the information provided to be comprehensible, the needs of diverse audiences could be met only partly, for example through a wider range of leaflets.
17. Option 2, revoking the regulations, would remove the entire administrative burden of £25m, which would go some way towards our target of a £500m (25%) reduction. However, there are legal risks associated with revocation without replacement, unless we are able to provide evidence that the system introduced is at least as good at maintaining health and safety standards as the existing system. In addition, it is likely to leave employers uncertain about what information they should provide to staff to comply with their general duty to provide information under section 2 of the Act. There would probably be a reduction in the amount of information given to employees.
18. Both of options 3a and 3b, amending the regulations, could reduce the administrative burden if we remove the requirement for the enforcing authority's name and address and the address of EMAS to be filled in and kept updated. Both

would avoid the legal risks associated with option 2. Retaining the power to prescribe the information to be given would avoid creating uncertainty about how to comply. The prescribed information under these options could perhaps include the InfoLine number and HSE's website address. It might also need to include a means of contacting other health and safety enforcing agencies such as the Office of Rail Regulation and local authorities.

19. However, option 3a, the more radical option, provides two possible additional advantages over the current regime. First, it would allow employers the freedom to choose how to give employees the prescribed information, rather than tying them to printed matter that can be bought only from HSE. Second, it gives us an opportunity to address the needs of diverse audiences by requiring that the information be given in a comprehensible way, albeit at an extra cost to employers.
20. Although developed independently, option 3a parallels DWP's preferred option set out in its recent consultative document¹ for reducing the administrative burden imposed by the requirement to display an Employers' Liability Compulsory Insurance certificate of insurance. DWP's preferred option would require employers to make a copy of their certificate of insurance available for inspection, but not prescribe how this must be done. This would allow larger employers to use electronic means to 'display' the certificate if they wished, while allowing smaller organisations the option of displaying a paper copy as they do now.
21. HSE would market a voluntary poster under options 2 and 3a to make it easy for employers to discharge their obligation to provide information to their employees. Small firms and those whose staff do not have easy access to an intranet system may find this particularly useful. We would expect sales to be less than currently, with a consequent effect on HSE revenue. It is not possible to estimate the impact precisely. When the Highway Code was made available on the internet, sales of hard copies dropped by 90%. While our situation is clearly not directly comparable to this, no better comparators are available.
22. No option would address a fundamental deficiency of the regulations, which is that they rely on employers to provide information to employees. Employees of unscrupulous or careless employers are the ones who most need the information, but they are the least likely to receive it. This suggests that HSE needs to employ other channels of communication with workers, particularly vulnerable workers. We are already building links with voluntary and faith groups who have the trust of migrant workers and who may provide better opportunities for communication.

Next steps

23. If the Commission agrees to take this work forward, we would propose to hold a public consultation on all of these options, presenting a draft consultative document to the Commission before the end of the year and inviting it at that stage to express a preference for one of the options. That would lead to:
 - public consultation in January 2008;
 - amending regulations made in autumn 2008; and
 - new regulations coming into force on the common commencement date in April 2009.

¹ www.dwp.gov.uk/publications/dwp/2007/ELCI-consultation-document.pdf

24. It will be important to ensure suitably long transitional arrangements to alert employers to the change and avoid a heavy, one-off burden on business as they change from the old to the new system.

Consultation

25. The proposed options were put to members of the project's contact group, including the TUC, CBI, EEF and LACoRS for reaction. **Annex 3** gives details, but in summary, the review was welcomed and our approach to take this work forward was supported. The majority viewed HSIER in a positive light and only a minority of those representing employer interests wished to see the regulations being revoked and their intentions achieved by other means (option 2), though this did include the Small Business Trade Association Forum.

Presentation

26. In some quarters, there is a view that these regulations are outdated and unnecessarily burdensome. We can present this consultation and changes (if agreed) as action to make them more modern and less burdensome, while retaining their positive impact on health and safety. A handling strategy to manage stakeholder expectations would be developed if the Commission supports the recommendation to consult.

Costs and Benefits to Business

27. An impact assessment is in preparation, showing the estimated **cost savings to businesses** from the identified options. Our estimates of the impact do not correspond to the BRE's estimate of the administrative burden because we use different assumptions and methods, which are standard methods for compiling impact assessments. In summary:

- Option 1 (as now: fixed format, writing-in required) – no costs or benefits; if the poster were only redesigned, benefits required to outweigh costs are minimal. However, the existing administrative burden (estimated by BRE at £25m) **would remain**. Therefore, in order to reach its administrative burden target, HSE would be required to initiate a number of **additional simplification projects** as there is no other single requirement, not already in the simplification plan, which would be able to deliver the equivalent reduction in administrative costs.
- Option 2 (revocation) – benefits/savings to business £1.2m per year; costs cannot be estimated but if the regulations secure only a 0.001% reduction in accidents and ill health the costs to business arising from their revocation will balance benefits. We would claim a **reduction of £25m** in administrative burden based on the BRE's estimates.
- Option 3a (flexible format, no writing-in required) – benefits to business may be about half those in option 2, compared to the current arrangements. If the better focus on diverse groups achieves improved understanding there could be greater benefits from improved health and safety outcomes, but there would be some cost to business which have not yet been quantified. In addition, this option would particularly benefit employers that occupy multiple workplaces as they could choose a less costly method of compliance than displaying posters. We would therefore claim a **reduction of £11m** in administrative burden based on the BRE estimates and an estimate of the number of workplaces occupied by large employers.

- Option 3b (fixed format, no writing-in required) – benefits to business may be about half those in option 2, but additional costs to business compared to the current arrangements are zero. We would claim a **reduction of £9m** in administrative burden based on BRE estimates of the time taken to write in the name and address of the enforcing authority and EMAS and keep it updated. Some modest further action on improving access for diverse groups may be possible through extending the range of free leaflets, but this would not address the fundamental problem that the regulations allow compliance even though the information provided may not be comprehensible to those it seeks to help.

Thus, revocation (option 2) gives the highest benefit to business, but risks health and safety outcomes. Doing nothing (option 1) retains the £25m administrative burden on business. Option 3 reduces the administrative burden by £9m for option 3b and by £11m for option 3a. In addition, option 3a may give rise to more health and safety benefits. Options 1 and 3b would maintain HSE income (see next section) and the benefits of the range of free publications.

Financial/Resource Implications for HSE

28. The Commission will wish to take its decision on the launch of the proposed consultation and its scope on its view of the proportionality of the options to the health and safety benefits. For completeness, however, the Commission should be aware of the financial implications for HSE of the options and these are set out below.
29. Options 2 (revocation) and 3a (flexible format) would have an impact on HSE revenue, which is not easy to predict but is likely to range from severe (option 2) to, in the best case, difficult but manageable (option 3a). Sales of the poster bring considerable income to HSE. (Revenue from leaflet sales is relatively insignificant, although 1.7m leaflets have been sold). The annual income from the poster, based on 2005/06 figures, is £900k of direct sales plus collateral sales of other publications that are bought at the same time as the poster, of about the same amount, bringing the total revenue to £1.8m. HSE's overall aim, agreed by HM Treasury and the National Audit Office, is to break even across its range of priced and free paper and electronic (internet-based) publications.
30. Under option 2, where the regulations would be revoked but HSE would still produce an optional poster initially to test the market, it is estimated that total poster and collateral sales revenue would reduce by around 80%. The achievable associated savings in production and distributions costs for this scale of sales is likely to be in the order of about £400k with a net loss of annual income to HSE of around £1m. This would require severe reductions in HSE's unpriced publications and internet presence. Option 3a provides employers with the option of selecting their own means of providing information to their employees but retaining the legal requirement to do so, which would include obtaining leaflets, or buying a poster from HSE. The financial consequences are difficult to estimate but a mid-case assumption would be a 50% loss of direct and collateral income on the basis that a significant number of multi-site employers will choose to make their own arrangements. This would imply a reduction in total income (direct poster sales plus collateral sales) of £900k, offset by likely production and distribution savings of £300k and a net loss of annual income to HSE of £600k. This would require significant reductions in HSE's unpriced and electronic publications. A 'best case'

case scenario might result in a net £100k to £200k reduction in HSE's publications effort. It is not possible to quantify where the risks might lie at this stage.

31. There will also be the potential for losses (particularly under option 2) for the need to write off any residual stocks of the poster held by HSE and providing refunds to retailers who have purchased stocks for sale.

32. In parallel with the consultation exercise, we will work up proposals to mitigate the anticipated reductions in revenue, particularly bearing in mind the likely need for long transitional arrangements to avoid a one-off administrative burden.

33. The cost of the review itself is estimated at £69k to date, including the HSL research. Future costs (assuming the consultation goes ahead as proposed) are estimated at £75k, based on full economic staff costs,

Environmental and Other Implications

34. None

Action

35. The Commission is invited to:

(a) agree in principle to consult on changes to the Health and Safety Information for Employees Regulations 1989 using the options outlined in this paper as a basis;
and

(b) offer any views it has at this stage on the options, and any further work it would like done before the draft consultative document is presented at the end of the year.

Background to the Health and Safety Information for Employees (HSIE) Regulations 1989

1. The HSIE regulations were introduced in 1989 as a deregulation initiative and replaced specific requirements to display copies or abstracts of legislation in factories, construction sites, offices, shops and railway premises. Their purpose is to require employers to provide basic information to employees about their health and safety rights and responsibilities, and how to contact the enforcing authorities to obtain advice or to complain about infringements of those rights. This is done by imposing a duty on employers to **either**:

- display sufficient copies of an HSE-approved poster in such places that every employee can conveniently see it (this effectively means one per workplace); **or**
- give to every employee an HSE-approved leaflet.

Most choose the poster option, presumably because of its simplicity. Two spaces on each poster or leaflet **must** be completed, giving the enforcing authority's name and address and the address of the local office of the Employment Medical Advisory Service. Two further spaces are provided for **optional** completion, giving details of any health and safety representatives elected and of the employer's 'appointed person' under the Management of Health and Safety at Work Regulations 1999.

2. Failure to comply with the regulations is a criminal offence, punishable by a fine.
3. Because the regulations revoked pre-1974 requirements, section 1(2) of the Health and Safety at Work etc Act 1974 bound us to deliver a regime that maintained or improved standards of health and safety established by the previous legislative regime. The regulations do not implement any European law.
4. The regulations were amended in 1995 to provide a power for the Executive to approve different posters for different 'classes of employment'. This power has been exercised only in relation to employment offshore.
5. Posters can be bought for £7.50 either directly from HSE or from third parties, but it is Crown copyright and bears the Royal Arms, thus preventing others from producing their own versions. This is relevant because of the risk of small firms being persuaded to buy alternative posters at greatly inflated prices. Leaflets can be downloaded over the internet free of charge, or are available in priced packs of 25.
6. The poster is available only in English and Welsh. Leaflets are available in these languages and a small number of minority languages as an aid to employers. However, it is sufficient compliance with the regulations to provide the prescribed leaflet only in English.

Exploring awareness of the health and safety law poster amongst employees

1. In order to determine what the benefits of the poster are to those who read it, we commissioned the Health and Safety Laboratory to conduct a number of focus groups amongst workers to explore:
 - Their current understanding and awareness of the poster;
 - The function of the poster and its utility; and
 - Options for changing the format/content of the poster (participants were shown 3 alternative designs of the poster), and its method of delivery.
2. The sample size was not intended to be representative of the range of sectoral views or the GB workforce. Six sample groups consisting of 40 workers took part from six firms across construction, health care and retail sectors. The key findings are:
 - The **majority of the sample** had seen the poster and knew where to find it in their workplace, but **had never read it**.
 - The sample had a **vague awareness of the poster's informational content**, and knew it was aimed at them as individual workers.
 - Participants were **critical of the presentational aspects** of the poster, and suggested that this was one of the main reasons they had not read it.
 - On reading the poster for the first time, participants suggested the **information was acceptable and relevant** to their jobs and workplace; though felt that they had previously been exposed to the information through training at their workplace.
 - The majority of the participants felt that the poster would be **helpful in their workplace and perceived a benefit** to the poster being displayed by their employer, in terms of ease of access, and as a basic minimum provision of health and safety information from a source independent of their employer.
 - Participants' **opinions of the mock-up posters were inconclusive**, but indicative of a trade off for any decisions regarding the design of a new poster, between making the poster visually appealing, and the perceived relevancy of the poster to the workforce. That is to say, **there exists potential for the visual appeal of the poster to undermine its perceived relevance**.
 - Participants thought that any redesign of the poster **needed to contain the contact details for the health and safety representative or manager**, and that the sections for employer and employee responsibilities should be more clearly distinguished.
3. Overall, the sample group thought that the health and safety information provided in the poster was of value. It was described as informative, relevant and useful. However, the general consensus was that the content and presentation of the information could be improved upon to make it easier to understand and visually more attractive to encourage people to read it.

Stakeholders' views following Contact Group consultation in April/May 2007

1. To help test our ideas, a contact group was formed to act as expert adviser and comment on the proposals as they develop. Membership consists of the key stakeholders to this project (full list at para 6). A presentation was also made to the Small Business Trade Association Forum (SBTAF) and their views recorded.
2. Overall, the review was welcomed and our approach to take this work forward was supported. However, as expected, there were differing views as to which option would best deliver the project's objectives.
3. Whilst all members agreed that any unnecessary burdens should be avoided, not all were convinced that the poster is a burden in real terms. The majority viewed HSIER in a positive light and there was a distinct preference for option 3. A small minority of those representing employer interests wished to see the regulations revoked (option 2), though this was the strong view of the Small Business Trade Association Forum (SBTAF).
4. It was widely felt that the poster would benefit from being updated both in terms of visual appeal and being made simpler to understand. However, there was no consensus whether the health and safety information provided should remain in the form of a poster or allowed to be made available in an alternative format as selected by the employer and approved by HSE.
5. It seems clear from the discussion with contact group members that the proposed options are broadly the right ones to consult on. These initial views have provided us with an indication of the type of responses we can expect to receive to the consultation document if we pursue these three options.
6. The contact group is made up of representatives from the following organisations:

HSE

- Better Regulation Team
- External Diversity Team
- Communications Directorate
- Communications Delivery Service
- Field Operations Directorate
- Operational Policy Support Division

Government Departments/Bodies

- Department for Business, Enterprise and Regulatory Reform
- Central Office of Information
- Office of Rail Regulation
- HM Revenue and Customs
- Department for Work and Pensions
- Advisory, Conciliation and Arbitration Service
- Local Authorities Co-ordinators of Regulatory Services

Other organisations

- Charities Safety Group
- Confederation of British Industry
- Engineering Employers Federation
- Federation of Small Business
- Recruitment and Employment Confederation
- Trades Union Congress