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HEALTH AND SAFETY COMMISSION

Hampton Implementation Review of HSE – key findings from the draft report

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Issue

1. To update the Commission on the key findings and recommendations in the Better Regulation Executive (BRE) and National Audit Office's (NAO) draft report on HSE's Hampton Implementation Review; and to give HSE's view on the report.

Timing

2. Routine

Recommendation

3. The Commission is invited to consider the key findings and recommendations in the draft report and comment on HSE's view on these.

Background

4. The Chancellor's 2006 Pre-budget Report announced that the Government would externally review the five major regulators (HSE, Food Standards Agency, Financial Services Authority, Environment Agency and Office of Fair Trading) on:
 - their progress in implementing the recommendations of the Hampton report: *Reducing Administrative Burdens: Effective Inspection and enforcement*;
 - their fit with the characteristics of an appropriate sanctions regime detailed in the Macrory report

(see Annex 1 for the Hampton recommendations and Macrory characteristics).
5. HSE volunteered to be the first regulator to be reviewed (HSC/07/55 gives further details). HSE's Hampton Implementation Review was conducted this summer by BRE and NAO, plus senior management from LACoRS and the Office of Fair Trading. The Review considered three cross-cutting themes:
 - risk based regulation; transparency and accountability; and economic progress;

and six specific areas:

 - design of regulations; advice and guidance; data requests; inspections; sanctions; and focus on outcomes.

6. HSE has now received the draft report and is submitting a response to BRE and NAO. The draft report will later be moderated by a panel to ensure consistency across all regulators' reviews. HSE's final report will be published by BRE and NAO alongside reports on the other four regulators. Current timing for this is the first part of 2008.

Argument

7. The draft report is generally positive and concludes that, in most respects, HSE complies with the Hampton and Macrory principles. It comments positively on, amongst other things, HSE's relations with business and external stakeholders, and its design and implementation of regulations.
8. The review team identified some key issues and recommendations for HSE to address, and to be followed up at a later date. These include **intelligence on and targeting of businesses** for inspection, including a focus on "**rogue**" businesses; the **influence of guidance** on health and safety outcomes; ensuring **guidance meets audience requirements**; and the **perception and regulatory costs** of legislation.
9. The draft report suggests some other areas where HSE could do more, including: promoting the **business benefits** of good health and safety management; better **communication and consultation** with inspectors on policy development and policy priorities; and further **partnership working** with local authorities and other regulators.
10. HSE had previously identified, and is already addressing, many of these findings, by implementing the key recommendations of the Fine Tuning Review to improve targeting and intelligence, and by producing concise and informative written guidance in key programme areas. HSE therefore broadly agrees with the main issues identified by the review, and has drawn attention to the work it is already carrying out in these areas.
11. However, there is one aspect of the draft's current conclusions which HSE will want to challenge with BRE and NAO. This relates to the costs of gathering information from and providing advice to business. HSE will clarify that such work has to be balanced against value for money and HSE's other priorities. There are also some points of detail that HSE will question, such as a recommendation in the draft report that HSE should conduct a review of RIDDOR – actually carried out by HSC/E last year.
12. The draft report recommends a follow-up visit to HSE to re-examine progress on the issues identified. HSE has registered with the review team that this is a task for the Commission and not for BRE and NAO.
13. The final report will be presented to the Commission, with advice on a response.

Consultation

14. The HSE Board has been consulted on the draft report and is contributing to the response to BRE and NAO.

Presentation

15. None with the draft report. The final report will be published by BRE and NAO in early 2008 and HSE will consider any potential communication activity once it has seen the final report.

Costs and Benefits

16. N/A.

Financial/Resource implications for HSE

17. The total cost of supporting the review is estimated at £22,950 (principally HSE staff time).
18. There are unlikely to be new resource implications for HSE in our proposed response: the key recommendations in the draft report are already being addressed through existing projects.

Other implications

19. None

Action / Next Steps

20. The Commission is invited to consider the key issues for HSE to address in the draft report of the Hampton Implementation Review, and HSE's view on the draft report.

Hampton principles of inspection and enforcement

1. Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most;
2. Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take;
3. All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted;
4. No inspection should take place without a reason;
5. Businesses should not have to give unnecessary information, nor give the same piece of information twice;
6. The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions;
7. Regulators should provide authoritative, accessible advice easily and cheaply;
8. When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed;
9. Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work; and
10. Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

Macrory's principles and characteristics of an appropriate sanctioning regime

A sanction should:

1. Aim to change the behaviour of the offender;
2. Aim to eliminate any financial gain or benefit from non-compliance;
3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
4. Be proportionate to the nature of the offence and the harm caused;
5. Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
6. Aim to deter future non-compliance.

Regulators should:

1. Publish an enforcement policy;
2. Measure outcomes not just outputs;
3. Justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament;
4. Follow-up enforcement actions where appropriate;
5. Enforce in a transparent manner;
6. Be transparent in the way in which they apply and determine administrative penalties; and
7. Avoid perverse incentives that might influence the choice of sanctioning response.