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HEALTH AND SAFETY COMMISSION

HSC RESPONSE TO THE DEPARTMENT FOR BUSINESS, ENTERPRISE, AND REGULATORY REFORM (BERR) CONSULTATION DOCUMENT ON THE IMPLEMENTATION OF THE SERVICES DIRECTIVE

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2007

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Issue

1. HSC's response to the Government's implementation plans for the Services Directive.

Timing

2. The Commission's response must be sent before the BERR consultation closes on 11 February 2008.

Recommendation

3. That the Commission supports the Government's implementation plans in broad terms.

Background

4. The Services Directive came into force on 27 December 2006. It creates a free market for the services sector in the European Union (EU), to match those for goods, people and capital. Member States have three years to transpose the Directive and must bring their laws and administrative practices into compliance by 28 December 2009.
5. The BERR consultation document (CD) was launched on 5 November 2007 and closes on 11 February 2008. The consultation explains the Directive's requirements and how the Government plans to fulfil them. A summary of the main provisions of the Directive and the Executive Summary of BERR's CD are at [Annex A](#).

6. The Government strongly supports the Directive's aims and is keen to ensure its effective implementation in the UK.
7. During negotiation of the Directive, the Commission and HSE worked closely with the former Department of Trade and Industry to agree the objectives of upholding UK standards on health and safety in all circumstances and maintaining high standards of protection for workers (see MISC/04/13 and HSC/05/49 for details).
8. These objectives were achieved (see HSC/06/01 and MISC/06/14 for details). This means that HSE and local authority inspectors will continue to be able to enforce against service providers from Member States in the same way as against established service providers.

Argument

9. HSE's advice to the Commission is that BERR's implementation proposals are sensible and well thought out and will not affect essential protections in areas such as health and safety and employment nor will they lower health and safety standards or protection for workers or the public.
10. HSE has identified some points which the HSC may wish to raise in its formal response:
 - a) welcoming the achievement of the UK's negotiating objectives, including public safety;
 - b) identifying potential resource implications of proposals for HSE and local authorities (LAs) for the Point of Single Contact and of administrative co-operation. In particular, it is difficult for HSE and LAs to know at this stage exactly what administrative co-operation will involve, both in practical and resource terms;
 - c) confirming compliance of those HSE's licensing/approval schemes which apply to service providers; and
 - d) supporting the Government's proposals to ensure the quality of services by making information more widely available to consumers.
11. HSE will be responding separately to BERR on the other 61 questions in the consultation document.

a) Achievement of the UK's negotiating objectives on health and safety

12. The Government achieved its objectives of upholding UK standards of health and safety in all circumstances and maintaining high standards of protection for workers, but without a complete derogation for all health and safety law.
13. Labour law, including law on the health and safety of workers is specifically excluded from scope. However, UK health and safety law also covers the safety of others who might be affected by a work activity, including the public.
14. Although 'public safety' is not specifically excluded from the Directive, Member States may impose national requirements and also require service providers to be authorised or licensed provided:
 - (i) this can be justified for reasons of public policy, public security (this includes public safety), public health or the protection of the environment; and

- (ii) the requirements and authorisation schemes respect the principles of non-discrimination, necessity and proportionality set out in the Directive.
- 15. The recitals to the Directive make it clear that the term “public security” includes issues of public safety (recital 41).
- 16. As a result, health and safety legislation covering public safety can clearly be justified under the Directive’s criteria. This means health and safety law will apply to service providers from other Member States in all circumstances and that HSE and LA inspectors will be able to take enforcement action as appropriate.

b) Resource implications

Point of Single Contact

- 17. The Government’s proposal for a mid-range system based on “proactive and helpful” signposting built on to the existing Business Link system seems the most sensible solution.
- 18. BERR estimates a 3.5% rise in cross-border service provision, so the Commission should note the potential impact in terms of increased demands on HSE Infoline and other information services even though the Point of Single Contact’s remit does not formally extend to labour law or worker health and safety. This demand and any subsequent increase in HSE costs have yet to be quantified.
- 19. HSE’s work on e-enabling and involvement in the Transformational Government initiative means that HSE is well placed to respond to BERR’s implementation plans for the Point of Single Contact.

Administrative co-operation

- 20. BERR’s consultation seeks views on whether competent authorities’ statutory regimes need to be amended to comply with the mutual assistance requirements and if so how; as well as on the possible net increase in workload.
- 21. HSE’s view is that there is no need to amend HSE’s statutory regimes. However, where public safety is the primary focus, as in the licensing of adventure activities and gas supply health and safety (including the installation of appliances), then HSE may have to share information with competent authorities in other Member States and respond to their requests for information and assistance.
- 22. The requirement to respond to other competent authorities’ requests and inform them of any action taken is limited in that requests must be clear, precise and give reasons for the request and competent authorities can decide the most appropriate response to each request.

c) Compliance of HSE’s licensing/approval schemes

- 23. HSE’s main permissioning regimes (nuclear and offshore installations/onshore major hazard sites/work with genetically modified organisms and gas distribution through pipelines) are clearly outside of the scope of the Directive because their legal requirements do not relate to service providers. None of the Directive’s provisions will apply.

24. HSE's licensing schemes which apply to service providers and which have a clear public safety element are those relating to adventure activities, work with asbestos and gas supply health and safety (including the installation of appliances). These schemes meet the requirements set out in paragraph 14 and so comply with the Directive.

d) Ensuring the quality of services

25. BERR is also consulting on proposals to ensure the quality of services to recipients such as consumers. These proposals are mainly of interest to BERR and business. BERR leads on consumer safety but HSE works alongside BERR and other regulatory bodies to help ensure public and consumer safety in relation to gas supply health and safety and work equipment. HSE supports the Government's proposals to ensure that information is made more widely available to consumers.

Conclusions

26. None of these issues are sufficient grounds at this stage to prevent a positive Commission response to the Government's implementation plans. Please see the draft HSC response at **Annex B**. The response uses BERR's four Key Questions on the Point of Single Contact; Administrative Co-operation; Quality of Services and Screening Legislation; as its main headings.
27. HSE will respond separately to BERR in detail on the 61 more specific questions in the consultation.

Consultation

28. Enforcement Policy Unit has consulted policy teams responsible for HSE's permissioning, approval and licensing regimes, as well as LAU, HID, NSD and FOD. BSD and the Communications Delivery Service (CDS) have been consulted on the Point of Single Contact. Communications Directorate has been consulted on presentational issues. The Economists have no comments on BERR's Regulatory Impact Assessment. PFPD Strategic Planning Unit has been consulted on the financial and resource implications. The Legal Adviser's Unit has also been consulted on this paper and has been involved in the implementation process.
29. The Services Directive is welcomed by the local government sector. BERR (in conjunction with LGA and LACORS) is working with a number of pilot local authorities to test ideas on how best to implement the Directive. The local authorities will be responding to BERR separately through LACORS.

Presentation

30. Interest in HSC's response is likely to be limited. A positive message is that HSE and LAs are ready and able to provide advice and assistance to temporary service providers from other MS and look forward to future mutual cooperation with its counterparts to ensure high health and safety standards are maintained in the UK and through the EU generally.

Costs and Benefits

31. The BERR Regulatory Impact Assessment (see <http://www.berr.gov.uk/files/file42208.pdf>) estimates that if the Directive is

implemented effectively in the UK, the UK economy would benefit to the tune of at least £1.4 - £2.6 billion per year and if there was effective implementation in other Member States, the additional gain would be £2.6 - £3.4 billion.

Financial/Resource Implications for HSE

32. Estimated Enforcement Policy Unit staff-related full economic costs (FEC), from the Policy Group budget during 2007-08, on policy work arising from the Services Directive are £35,581. Additional resource implications from ongoing policy work, including recent completion of a questionnaire by relevant policy and operational divisions, is estimated at £27,094 (FEC). There will also be additional as yet unquantified costs to BSD and CDS in preparing for the introduction of the UK Point of Single Contact.
33. Once the Directive comes into force in December 2009, HSE information services and operational divisions (BSD/CDS) may face an increase in the number of requests for information or applications from service providers in other Member States seeking health and safety information and guidance or approval or licences. This will result in an increase in calls to the HSE Infoline and a concomitant increase in the price of the HSE Infoline contract. There will also be additional costs in rationalising electronic entry for service providers into HSE Services. It is not possible to quantify these costs at this time as the Government's plans are still under development.
34. From early 2010 onwards FOD and policy divisions may also receive requests for information from competent authorities in other Member States under administrative co-operation. The financial/resource implications have not been quantified at this time. HSE will return to HSC once the potential resource implications of proposals for HSE and local authorities for the Point of Single Contact and of administrative co-operation become clearer.

Environmental/Other Implications

35. None.

Action

36. The Commission is asked:
 - (i) to support the Government's implementation plans in broad terms;
 - (ii) to agree to HSE continuing to work with BERR on detailed implementation; and
 - (iii) to respond to the consultation along the lines of the draft response at **Annex B**

HSE will keep the Commission informed of progress, including the results of the BERR consultation and potential resource implications.

SUMMARY OF MAIN PROVISIONS OF THE SERVICES DIRECTIVE¹

1. The Directive creates significant new opportunities for UK business. It provides for the opening up of the internal market in services through the removal of unjustifiable barriers to service provision and the introduction of measures designed to facilitate the cross-border provision of services. It aims to make it easier for businesses both to establish in other Member States of the EU and temporarily provide services in other Member States.
2. It will achieve this through:
 - setting up 'Points of Single Contact' in each Member State through which providers will be able to find the information and complete the formalities necessary to do business in that Member State;
 - administrative co-operation' or 'mutual assistance' - facilitating greater co-operation between regulatory and authorisation bodies across the EU thereby reducing burdens on business;
 - ensuring quality of services' - engendering consumer confidence in cross-border service provision through access to information and the high quality of services; and
 - 'screening' the UK's rules on service provision - identifying and abolishing restrictive legislation and practices that hinder service providers from setting up business in or providing services within the EU.
3. The Government strongly supports the Directive's aims and is keen to ensure its effective implementation in the UK and believes the Directive will be good for the UK economy, UK business and UK consumers.
4. The Directive will also reinforce good administrative practices within government agencies. Its emphasis on reducing administrative barriers to service provision, clear and accessible information for business and consumers and efficient and quick decision making are consistent with the Government's policy.

**CONSULTATION ON IMPLEMENTING THE EU SERVICES
DIRECTIVE (2006/123/EC)**

EXECUTIVE SUMMARY

1. The Services Directive² aims to develop the single market in the services sector by breaking down barriers to cross-border trade within the EU. This will make it easier for businesses to set up in another Member State or to provide services across borders or on a temporary basis.

¹ Adapted from the BERR Consultation Document - Copies of the CD are on the BERR website at <http://www.berr.gov.uk/files/file42207.pdf>.

² Text available at: http://ec.europa.eu/internal_market/services/services-dir/proposal_en.htm

2. The general rule is that the Directive applies to all services sectors other than those specifically excluded from scope: for example, financial services, transport, healthcare, gambling, temporary work agencies; and the area of taxation. The Directive complements other EU legislation aimed at simplifying regulatory frameworks and increasing transparency.
3. The Directive must be implemented by 28 December 2009, after which Member States must report to the European Commission on their progress and will then peer-review implementation by other Member States.

Points of Single Contact

4. Each Member State must set up a point (or points) of single contact to allow users to find out about relevant rules and procedures should they wish do business in that Member State, and to apply remotely for any necessary licences or authorisations. The UK PSC is primarily intended for service providers established in other Member States, as well as service recipients in other Member States. Competent authorities (authorities with a regulatory or supervisory role) will also be users and it will be accessible by others.
5. A basic Point of Single Contact could simply signpost users to other websites that have relevant information. Whilst this would be relatively inexpensive and simple to set up, it would be unlikely to deliver all the potential benefits of the PSC. At the other extreme, a fully encapsulated decision-making service, whereby all necessary processes, assessments and advice are provided and supported by a single site, would replicate responsibilities of competent authorities, be overly complicated and expensive to build, and would increase the risks of the PSC not being operational by the implementation deadline. The Government therefore proposes to establish a mid-range system based on “proactive and helpful” signposting, which it believes will meet the requirements of the Directive and avoid unnecessary complication. We recommend that the PSC be built on to the existing Business Link although the exact way this should be done needs further investigation.
6. Competent authorities will need to ensure that they can keep track of applications and registration requests from service providers, because the Directive requires that they be processed within a specified period. If the competent authority does not respond in time then the authorisation will be 'deemed to have been granted'.
7. We propose to signpost useful information on matters such as taxation and labour law, although these are areas excluded from the Directive. Views are sought on what other information is likely to be of use to service providers looking to do business in the UK.
8. We propose to have information on the PSC in plain English, and to consider making information available in other languages on a cost-benefit basis – views are sought as to which.
9. We seek views on whether there is a need for e-mail and telephone support and the best means of providing it.

10. We do not intend to charge for using the PSC, but seek views on this and on charging for additional services. Fees related to the issuing of a licence might need to be collectable through the PSC.
11. While we do not think it is necessary to create more than one PSC, views are sought as to whether separate PSCs should be set up for different service sectors or in the devolved administrations.
12. The private sector could have a role in operating the PSC although we do not believe there is likely to be a strong enough business case for the private sector to wish to do so.
13. Users will want to be confident that the information on the PSC is accurate and up to date. We propose to impose a legal obligation on contributors to the PSC and seek other views on this issue.
14. Users also need to be confident that they are in the right place and receiving trustworthy information. We therefore seek views on whether specific PSC EU and/or national branding should be adopted.

Administrative Cooperation

15. The Directive requires competent authorities to cooperate effectively with their counterparts in other Member States, providing 'mutual assistance' to each other to ensure the proper supervision of service providers operating in more than one Member State. An indicative list of relevant competent authorities is set out in Annex D.
16. We seek views on whether competent authorities' statutory regimes need to be amended to comply with the mutual assistance requirements and if so how; as well as on the possible net increase in workload. Any registers containing information about service providers which UK competent authorities can consult will need to be accessible by regulators in other Member States on the same basis.
17. National liaison points must be set up to help facilitate mutual assistance requests. We propose to establish a UK liaison point within BERR, and seek views as to whether they should also be set up in Scotland, Wales and Northern Ireland.
18. The European Commission is developing an electronic Internal Market Information system (IMI) to enable competent authorities to communicate mutual assistance requests and responses electronically. We propose to allow competent authorities to decide for themselves whether or not to register with IMI, but they will all need to take part in administrative cooperation where requested, and we seek views on this point.

Ensuring the Quality of Services

19. Member States are required to ensure that service recipients can find out, in their home country, general information about requirements in other Member States relating to consumer protection, means of redress, and contact details of organisations that could provide practical assistance. We propose to do this through

an online 'consumer portal', and seek views as to what information should be provided and where the portal should be located.

20. Service providers will be obliged to provide certain information to service recipients. Some of this information must always be made available, whilst some must be provided at the recipient's request. Providers will have a choice of ways in which to make this information available. Service providers must also respond to complaints in the shortest possible time and make their best efforts to find a satisfactory solution. Many businesses do these things already, and we believe that these obligations will not create a significant new burden on service providers. We seek views on whether our approach is sensible, on whether there are existing legal or administrative requirements to provide such information and on how "the shortest possible time" can best be defined.
21. The Government is required to take steps to encourage the voluntary development of charters, codes of conduct, accreditation schemes and so on; we seek views on how this can be done and on current initiatives. The Government must also ensure that information on labels and quality marks is easily accessible: we seek views on whether to establish a website and/or to require organisations responsible for labels to provide the necessary information.
22. Member States are allowed to require service providers operating a 'high-risk' service to subscribe to professional liability insurance. We do not intend to change current Government policy by introducing a general requirement of this nature. However where such rules do exist in the UK it will be necessary to recognise equivalent insurance obtained in another Member State. We invite views on these issues.
23. We are required to remove any complete bans on commercial communications by regulated professions. Professional rules on commercial communications are permitted, subject to certain conditions. We seek to find out what professional rules exist and whether they comply with the Directive.
24. The Directive provides that restrictions on multidisciplinary activities are not permitted except in certain circumstances, and we seek views as to how such provisions can be applied.
25. We are required to amend or abolish restrictions on the use of a service from a service provider established in another Member State. Providers must not restrict access to their services on the grounds of nationality or place of residence, although differential treatment may be justified by objective criteria. We intend to impose an obligation in legislation, and seek views as to what might constitute 'objective criteria'.

"Screening" the UK's rules on service provision

26. The Directive requires Member States to "screen" all their legislation and practices affecting services and to check whether discriminatory, unnecessary or disproportionate barriers remain. Requirements that cannot be justified under the terms of the Directive should be repealed or amended.

27. The major programme of simplification work undertaken by the Government already achieves many of the anticipated improvements arising from the Directive. We have built on this in undertaking a thorough review of all primary and secondary legislation and administrative rules.
28. As a result of this review and the previous simplification work we have found little that needs to be changed so far. This process is continuing and we will be publishing updates on our website over the coming months. In this consultation we seek views on barriers that are perceived to exist in the UK that contravene the Directive. We also seek views on barriers to service provision that may exist in other Member States.

Key Questions

29. This consultation includes a variety of questions for respondents, listed on pages 12-17. Respondents should feel free to respond to as many or as few of these as they wish. However the following overarching questions (one for each implementation chapter) cover the breadth of our work; you may prefer to respond to these general questions if you do not wish to go into the detail.

Key Question 1: Do you believe that the Government's proposals for implementing the Directive's requirements for the PSC, as set out in more detail in Chapter A, will meet the needs of users and offer appropriate value-for-money for taxpayers?

Key Question 2: Do you agree with the Government's proposals (set out in detail in Chapter B) for ensuring that authorities with a regulatory or supervisory role cooperate effectively with their counterparts in other Member States?

Key Question 3: Do you agree with the Government's proposals for implementing the quality of services provisions as set out in detail in Chapter C? How can these provisions be implemented so that service recipients have greater trust in the services provided from other Member States whilst minimising regulatory burdens on service providers?

Key Question 4: Can you think of any examples of legislation, administrative practices or licensing regimes either in the UK or in other Member States that should be amended in order to comply with the Directive (see pages 73-74 for examples)?

Impact Assessment

30. The Government is also publishing an Impact Assessment (URN: 07/1521) alongside this consultation, available on the BERR website at <http://www.berr.gov.uk/consultations/index.html>.

Devolution

31. Implementation of this Directive is primarily the responsibility of BERR and this consultation seeks views on how the Directive can best be implemented throughout the UK. However, responsibility for certain legislation within the scope of the Directive is devolved and the Government is therefore in discussion with the Scottish Executive, Welsh Assembly Government and Northern Ireland Executive in developing policy for implementation. The position as to which legislation operates across the whole UK, and which is set out at a devolved level, will vary on a case by

case basis - thus, even where a particular matter is devolved in e.g. Scotland, it may not be so in Wales, or in Northern Ireland.

32. Particular issues being consulted on are whether there should be separate Points of Single Contact to cover Scotland, Wales and Northern Ireland (see page 33) and separate national liaison points to cover Scotland, Wales and Northern Ireland (see pages 42-43 and 45). However we are working with the devolved administrations across the whole scope of implementation and will continue to do so following this consultation. All responses received that refer to devolved issues will be shared with the relevant administration(s).

How to respond

33. We are sending this document to all the key interested parties of this consultation. We would welcome suggestions of others who may wish to be involved in this consultation exercise. A list of consultees is at Annex C. A copy of the document is also available on request from the address on the inside front cover or can be found on the BERR website at <http://www.berr.gov.uk/consultations/index.html>.

34. We welcome comments from readers on any aspects of our consultation. Our major proposals and questions for consultation are set out in the executive summary and we are happy to receive responses to these overall questions alone. In addition, some readers might have a particular interest in certain aspects of our proposals and we would suggest:

- the **Point of Single Contact (PSC)** chapter (pages 23-35) be read by anyone with an interest in how the Point of Single Contact will operate and in the services it should provide, particularly potential users such as business organisations, service recipients and competent authorities.
- the **Administrative Cooperation** chapter (pages 36-47) be read by anyone with an interest in the supervision of service providers, such as competent authorities like regulators and local authorities, and to a lesser extent by those affected by such supervision i.e. businesses.
- the **Quality of Services** chapter (pages 48-62) be read by anyone interested in the sale or purchase of services across national borders, in the rights of consumers and service recipients and in the provision of consumer information. It should be read by businesses as it discusses certain obligations to be placed on them.
- the **Screening** chapter (pages 63-74) be read by anyone interested in how we are examining our legislation and practices for compliance with the Directive. In particular, those with an interest in specific policy areas should read Annex A, which sets out the Government's emerging conclusions on how laws and practices are affected by the Directive.

35. The table of contents on pages 1-2 sets out in greater detail where further information on particular topics covered by this document can be found.

36. This consultation will close on 11 February 2008. A response can be completed online, or can be submitted by post, fax or e-mail to:

Elaine Barley
BERR
Bay 4140
1 Victoria Street, London
SW1H 0ET
Fax: 020 7215 2234
E-mail: servicesconsultation@berr.gsi.gov.uk

37. To complete the response form online, please go to:
https://www.surveymonkey.com/s.aspx?sm=DjQ4vqIgz7I_2fZlqiNcwMDw_3d_3d.
You will need to refer to this consultation text when responding in this way.
38. However you are responding, please state whether you are doing so as an individual, or as an organisation. If responding on behalf of an organisation, please make it clear whom the organisation represents and, where applicable, how the views of members were assembled.
37. Responses will be analysed and taken into account as the Government's policy on how best to implement the Directive is finalised. The Government intends to publish its response to this consultation in May 2008.

DRAFT HSC RESPONSE

HSC RESPONSE TO THE DEPARTMENT FOR BUSINESS, ENTERPRISE, AND REGULATORY REFORM (BERR) CONSULTATION DOCUMENT ON THE IMPLEMENTATION OF THE SERVICES DIRECTIVE

The Health and Safety Commission (HSC) welcomes the Services Directive and agrees that it will encourage better regulation across Europe through its simplification and establishment provisions. This will promote sensible health and safety measures, and a more level playing field for UK business abroad.

The Government's implementation plans are sensible and well thought out and will not affect essential protections in areas such as health and safety and employment nor will they lower health and safety standards or protection for workers or the public.

Single Point of Contact

Key Question 1: Do you believe that the Government's proposals for implementing the Directive's requirements for the PSC, as set out in more detail in Chapter A, will meet the needs of users and offer appropriate value-for-money for taxpayers?

The Commission believes that the Government's proposals will meet the needs of users and offer appropriate value-for-money for taxpayers. The Commission's experience in health and safety regulation leads us to support the idea of points of single contact, electronic access to regulatory services, and requirements to ensure that authorisations are objectively necessary, proportionate, and non-discriminatory. Under health and safety regulation, relevant authorisations include licences for adventure activities, asbestos and gas supply health and safety (including the installation of appliances).

HSE already has a single point of contact, *HSE Infoline*, which deals with more than 280,000 enquiries per year from business and other stakeholders. Although the HSE Infoline is not directly comparable with the proposed Point of Single Contact because it is predominantly a telephone contact centre, BERR may wish to draw on this experience. HSE has also been developing and improving electronic access to its services in response to the Transformational Government initiative.

Administrative co-operation

Key Question 2: Do you agree with the Government's proposals (set out in detail in Chapter B) for ensuring that authorities with a regulatory or supervisory role cooperate effectively with their counterparts in other Member States?

The Services Directive does not apply to health and safety law relating to workers. However, where public safety is the primary focus, as in the licensing of adventure activities, asbestos or of gas supply health and safety (including the installation of

appliances), it may be necessary for HSE to share information with competent authorities in other Member States and to respond to requests. This may have significant implications for HSE resources.

Ensuring the quality of services

Key Question 3: Do you agree with the Government's proposals for implementing the quality of services provisions as set out in detail in Chapter C? How can these provisions be implemented so that service recipients have greater trust in the vices provided from other Member States whilst minimising regulatory burdens on service providers?

The Commission notes the Government's proposals. BERR leads on consumer safety but HSE works alongside BERR and other regulatory bodies to help ensure public and consumer safety in relation to gas supply health and safety and work equipment. The Commission sees no difficulties in the Government's proposals to ensure that information is made more widely available to consumers.

Screening the UK's Rules on Service Provision and the Summary Findings of the Screening Exercise

Key Question 4: Can you think of any examples of legislation, administrative practices or licensing regimes either in the UK or in other Member States that should be amended in order to comply with the Directive (see pages 73-74 for examples)?

HSE's main permissioning regimes (nuclear and offshore installations/onshore major hazard sites/work with genetically modified organisms and gas distribution through pipelines) are clearly outside of the scope of the Directive because the legal requirements do not relate to service providers.

HSE's licensing schemes which apply to service providers and which have a clear public safety element are those relating to adventure activities, work with asbestos and gas supply health and safety (including the installation of appliances). These schemes comply with the Directive.

As the Directive indicates, authorisations should be used only when objectively necessary and proportionate, and they should not be used to discriminate against other Member States' service providers.

Authorisations are only used under health and safety at work regulation where no less stringent measure will be enough to ensure that serious risk is adequately controlled. The authorisation process is vital to an effective working relationship between business and HSE in high risk areas or where justified for reasons of public policy or public safety. As a result, HSC believes that authorisations used in UK health and safety regulation readily meet these criteria.

Other comments

Achievement of the UK's negotiating objectives on health and safety including public safety

The Government achieved its objectives of upholding UK standards of health and safety in all circumstances and maintaining high standards of protection for workers included public safety but without a complete derogation for health and safety law.

Labour law, including law on the health and safety of workers is specifically excluded from scope. However, UK health and safety law also covers the safety of others who might be affected by a work activity, including the public.

Although 'public safety' is not specifically excluded from the Directive, Member States may impose national requirements and require service providers to be authorised or licensed provided:

- (i) this can be justified for reasons of public policy, public security (this includes public safety), public health or the protection of the environment; and
- (ii) the requirements and authorisation schemes respect the principles of non-discrimination, necessity and proportionality set out in the Directive.

As a result, health and safety legislation covering public safety can clearly be justified under the Directive's criteria. This means health and safety law will apply to service providers from other Member States in all circumstances and that HSE and LA inspectors will be able to take enforcement action as appropriate.

Local authorities

Local authorities also enforce health and safety requirements in certain sectors – the Commission understands that local authorities are considering the impact of the Services Directive and the potential cost implications and will be responding separately.

Next steps

HSE will respond separately to BERR in detail on the more specific questions in the consultation and will continue to work with BERR on the detailed implementation of the Directive.

HSE and LAs are also ready and able to provide advice and assistance to temporary service providers from other MS and look forward to future mutual cooperation with its counterparts to ensure high health and safety standards are maintained in the UK and through the EU generally.

We look forward to seeing the results of the consultation exercise in Spring 2008.