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HEALTH AND SAFETY COMMISSION

Hampton Review: Immediate reflections on the final report

A Paper by Phil Kemball, Strategy Division

Advisor: Peter Buckley, Strategy Division

Cleared by Jonathan Rees on 23 March 2005

Summary

The paper summarises the key elements of the final report of the Hampton review and offers a preliminary HSE assessment of its implications. HSC/E is seen to emerge in a positive light but it will still require a full work programme going forward. Commissioners are invited to offer their own reactions

Issue

1. Initial assessment of the final report of the Hampton review '*Reducing administrative burdens: effective inspection and enforcement*' and the Better Regulation Task Force report "Less is More".

Timing

2. Routine.

Recommendation

3. To:
 - a. note the preliminary HSE assessment of implications of this report and for Commissioners to offer their own reactions; and
 - b. agree to the work programme set out in paragraph 11 and to a fuller discussion in June.

Background

4. The Hampton review of regulatory inspection and enforcement, announced by the Chancellor in the 2004 Budget, published its final report on Budget day 2005, 16th March. An outline summary of issues impacting on HSC/E was sent to Commissioners

by e-mail on the day of publication and a hard copy of the full report on 21 March. It can also be accessed at <http://www.hm-treasury.gov.uk/hampton>. Published alongside the Hampton report was the Better Regulation Task Force report '*Less is more*'.

5. The substance of the Hampton report is contained in three chapters: *Assessing risk*; *Fewer, better forms*; and *The right regulatory structure*. Following discussion at its meeting in January, the broad Commission position was set out in the Chair's letter to the team responding to the earlier interim report (Annex A).

Argument

Overall reaction

6. It is clear from the content of the report that the Commission's Strategy and the engagement of HSE officials with the review process has had considerable influence over the review's thinking. Many of the recommendations align with current or developing policies, most notably on the penalties regime. We should interpret this as a vote of confidence in the way we deliver our objectives, and not be shy to say so.
7. Equally, we may need in some areas to build on work already planned (e.g. in the Enforcement Programme or on advice), and to ensure we have a convincing and joined up public narrative. There is likely to be continued interest in how we assess risk, the targetting of inspection effort, and reward for good performance: all issues on which we are already working and have been for some time. In addition, we need to analyse carefully our response to the reports recommendations on reducing forms by 25%.
8. On the structural changes proposed and the new bodies. Timothy Walker has written to all and we have appointed lead officials to liaise with them. Most are small and should be capable of relatively easy absorption, but Gangmasters could prove more difficult given its size, remit and very new status.
9. Reaction in the media has been supportive of the thrust of the report, while tinged with some business scepticism whether the end result of less regulatory burden will actually be delivered and trade union concern that standards of protection must be maintained. Most references to HSE have been positive, though an editorial in the Times did 'shudder at the thought that HSE should grow even larger'.
10. For a more detailed analysis of the implications of the component parts of the Hampton report please see Annex B.

Tasks ahead

11. The positive way in which we emerge from this review will nonetheless mean a very substantial programme of work, the full resource implications of which we have yet to establish. Jonathan Rees is leading a working group, including colleagues from DWP, to take forward – at least initially - the recommendations in the Hampton and Better Regulation Task Force reports. Provisionally, the major components seem to be:
 - Integration of the new bodies, in the process assessing whether this will require primary legislation and exploring opportunities for more efficient working;

- Careful examination of the “risk assessment” concept and our management of inspection and enforcement;
- Vigorous pursuit of our work on accessible channels of advice and studying other points in the report around advice provision;
- Continuing our work on penalties and evaluation of the Enforcement Policy Statement;
- Better Regulation, forms, databases and Regulatory Impact Assessments (*HSC/05/46* provides further details of the better regulation work programme); and
- Involvement with the proposed new bodies, the Better Regulation Executive and the National Regulatory Forum.

Consultation

12. Briefly with relevant interests in FOD and Policy Group. HSE is continuing to keep its staff and its Trades Unions informed of developments on Hampton.

Presentation

13. A Press Notice was issued on the day of publication (attached at Annex C), which welcomed the report overall, viewed it as a vote of confidence, and noted the alignment with the Commission’s Strategy and many of its policies. We may need to consider a fuller response in due course.

Costs and Benefits

14. The overall purpose of the review is to substantially reduce the administrative burdens of regulation on business. It places much greater onus on regulators to recognise and therefore mitigate the cumulative effect of their dealings with business, while not compromising standards and outcomes. Where bodies are merged, they ‘should certainly not be larger, and ideally be smaller than the combination of their predecessor bodies, and that same constraint should apply to their budgets’. (Paragraph 4.71)

Financial/Resource Implications for HSE

15. Resources implications will be significant, though yet to be quantified (see Paragraph 14 above).

Environmental Implications

16. None

Other Implications

17. These reports have very wide ranging implications for the way we conduct our activities.

Action

18. The Commission is asked to note the preliminary HSE assessment of implications of this report and to offer further views.

Contact

Phil Kemball - HSE Strategy Division

0207 717 6725

PAPER HSC/05/51

ANNEX A

Philip Hampton
c/o Odette Fioroni
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

20 January 2005

When we met on 10 January, I explained that the Health and Safety Commission was due to discuss its position on this Review the following day. That discussion took place and I am now passing on our collective views. These are set out in broad terms in the Annex to this letter and are structured around the four main task areas your team has been working to. HSE officials will reply separately to as many of the 40 questions set out in your interim report as lie within our competence. In doing so, they will be guided by the Commission's general approach.

The tenor of our approach is about openness to measured change. Indeed in some of these areas we have already been instigators of change. However, in writing, I would like to reiterate some points I made to you about what we see as strengths of the current system. It was created thirty years ago by merger of a number of industry facing Inspectorates. Two important founding principles were the tripartite structures from the Commission itself on outwards, and the integration within HSE of policy making (including regulation making) and operational activity. The former principle, while at times proving a little cumbersome, has produced solutions in which the stakeholders have been involved and to which they are committed. The latter principle has allowed development of rounded approaches, integrating the wider Government view with operational pragmatism about what works in practice. It also allows a range of delivery mechanisms from operational enforcement to centrally driven support and facilitation for business, and judicious combinations of the two. We believe these principles have been an important factor in the national and international reputation we have established since our foundation.

I appreciate the offer, made when we met, to share drafts of your final report with us. I am happy to meet up again if there were specific issues you think would be helpful to talk through with us.

Bill Callaghan
Chair, Health & Safety Commission

Review of Regulatory Inspection and Enforcement

Health and Safety Commission's approach to issues raised

This Annex sets out the Commission's approach to the issues raised by this Review and in particular the interim report published on 2 December 2004. The format follows the four main task areas identified by the Review team.

Simplification of Regulatory Structures

1. We wholly support the concept that proper consideration must be given by regulators to demands made on duty holders, while not compromising regulatory outcomes. We are, therefore, open in principle to considering structural reform, provided it offered the prospect of improved service delivery to offset the inevitable short-term disruption. This might be possible if we formed part of a wider Labour Inspectorate, though we remain to be convinced. There would certainly be disadvantages about spreading the net beyond those bodies concerned with protection of workers to include those whose responsibilities include taking action against individual workers, such as over illegal working. Beyond that, we consider that mergers with major bodies, such as EA or FSA, would create organisations that were too large without sufficient synergy.
2. We would be keen to maintain separation from economic regulation and bodies responsible for business sponsorship. For 30 years duties under health and safety law have been qualified by *so far as is reasonably practicable*, and the Commission's workplace Strategy reiterates our commitment to sensible risk management. We would also be opposed for a range of reasons to models based round industrial and commercial sectors, though we recognise more can be done by regulators who impact on particular sectors, such as construction.
3. We believe pressing for more joined up working between regulators is a more productive route and there could be a role for co-ordinating bodies here, provided they had an appropriate remit. We have already done much to engender joined up working, e.g. through Memoranda of Understanding and the joint enforcement arrangements with EA under COMAH. We would, of course, be open to any further practical suggestions you have to improve on this front.
4. Your interim report makes reference in places to shifting the balance from inspection to awareness and advice. Consideration of this balance is certainly a crucial regulatory issue. We have given it much thought and believe we have the balance about right. Our aim now is not to shift that balance but to improve both operational productivity and the effectiveness of our advice provision and awareness raising. We would also point out that many 'inspection visits' involve a considerable amount of provision of advice.

Local Delivery of Enforcement

5. While we recognize that local delivery is not synonymous with local authority enforcement, we are committed to make our partnership approach with LAs work. We believe it is a good model and there are early signs of success. We would support any measures you can advocate to raise the profile and rational resourcing of LA regulatory

services, to encourage closer working on the lines we are pioneering, and to promote greater consistency. Inconsistent enforcement corrodes the reputation of the regime but we do not believe the problems are as serious as they are sometime portrayed. The auditing that we and local authorities themselves already perform has had considerable impact.

Penalties Regime

6. We believe HSE's enforcement practices are of a high standard, guided as they are by our Enforcement Policy Statement and Enforcement Management Model. We have frustrations, though, with the justice process itself, particularly the time for completion of cases. We have also long been advocating higher fines.
7. We understand your team believe that the system should be tougher, quicker and more transparent, and we would support any moves in these directions. Alternative penalties can play a part when there is evidence that they will improve compliance, deal with serious risks and deliver justice. We can see some merit in applying administrative penalties in health and safety, and indeed are considering these as part of the evaluation of our Enforcement Policy Statement. However, we cannot see similar merit in on-the-spot fines and would need some convincing as to their effectiveness.

Paperwork Burden

8. Our policy for many years has been to reduce unnecessary form filling and reporting requirements, and accepting electronic and as well as paper based means for communicating these. We support the principle of data sharing between regulators, although there are important issues of confidentiality which flow from data sharing that must be addressed. We also think it important to reduce the number of demands on business from regulators for identical or similar information.

PAPER HSC/05/51

ANNEX B

MORE DETAILED ANALYSIS OF THE VARIOUS COMPONENT PARTS OF THE HAMPTON FINAL REPORT

Assessing risk

1. This chapter broadly considers regulatory practice. They use the term risk assessment (a little confusingly in our view) to mean not using scarce resources to inspect or require data from businesses that are low-risk, either because the work they do is inherently safe, or because their systems for managing the regulatory risk are good (Paragraph 2.13). For such businesses, 'inspections are an inefficient enforcement mechanism' (Paragraph 2.16). Proper application of risk assessment should lead the inspection system to 'become more efficient, releasing resources to be used to improve and tailor advice services' (Paragraph 2.48).
2. Remembering this is a report covering 63 bodies, we consider that the risk assessment principle is correct, though the amount of resource released will vary from body to body. At one point the report estimates that its proposals could lead to one million fewer inspections, based it seems on extrapolation from one specific and limited example. Such a figure must be considered speculative and we do not see this as directly applying to HSC/E. We have already addressed these issues in the Commission's strategy and are tackling them, for instance through the work on accessible channels of advice, and consultation on '*Regulation and Recognition*' (due for separate discussion with paper HSC/05/37).
3. The Chair's response on the interim report covers this point, reiterating what has been said on a number of public platforms:

"We have given it much thought and believe we have the balance about right. Our aim now is not to shift that balance but to improve both operational productivity and the effectiveness of our advice provision and awareness raising."
4. This chapter also covers the penalties regime. A revamping is proposed to increase the level of fines available to all regulators; to introduce administrative penalties as an extra tool; and to review the possible benefits of introducing restorative justice orders. They want the regime to provide an effective deterrent to 'those contemplating illegal activity'. The report balances this by pressing the case for positive incentives, citing the Food Standards Agency pilot award schemes. This is all in line with current Commission policy and therefore much to be welcomed, providing additional impetus to delivering the policy objectives.

Fewer, better forms

5. There is a lot of detailed material in this chapter that we will have to work through. The general principle is that regulators should gain a good picture of the businesses they regulate without requiring duplicated or unnecessary information from business. The review estimates, based on regulators' past experience, that its proposals could reduce

the number of forms regulators send out by perhaps 25%.

6. HSE will also need to respond to the Better Regulation Task Force report '*Less is more*' whose recommendations the Government has accepted. It will require a significant rebalancing of effort between regulation and deregulation, including: quantifying the cumulative impact of HSE's regulations; developing a rolling programme of simplification; and reducing administrative burdens. *HSC/05/46 - Better Regulation: Position Statement and Next Steps*, which is also being considered at this meeting, gives more details of HSE's current better regulation activities.

The right regulatory structure

7. Of the 63 bodies within scope, the report proposes consolidating 31 of them into seven thematic regulators. Health and safety is one of the themes, and the proposal is that an enhanced HSC/E takes on responsibility for: Adventure Activities Licensing Authority; Gangmasters Licensing Authority; The Engineering Inspectorate; and the inspection function of the Coal Authority. The Security Industry Authority is also mooted, but for final decision in two years' time.
8. These organisations will be transferred, together with associated resources. The report estimates HSE taking on up to 167 staff. While a relatively small number, handling the transfer of these staff will nonetheless require considerable care and effort, and sorting out governance arrangements could also be challenging. For instance, we will need to be sure that the reporting lines from the Commission to the various Secretaries of State for these new functions are clear, especially if proposals impact on policy areas which are devolved. Timothy Walker has written an introductory letter to the four organisations who are definitely recommended for merger with us.
9. On tackling the widely accepted need to improve co-ordination and consistency of delivery at local level, and the spreading of best practice, the report proposes establishing a National Regulatory Forum. This would be a 'partnership arrangement between Government Departments, national regulators, and local authorities' (Paragraph 4.112). We believe this approach is to be welcomed, being much more aligned with ours of partnership working, and we would want to play our full part in the Forum, once established.
10. Finally, the report recommends the creation of a regulatory oversight body, the Better Regulation Executive (BRE). This new central body is intended to be the 'enforcer' in the system, responsible for introducing the proposed reforms and thereafter holding regulators to account against the principles set out for inspection and enforcement. This should be helpful, provided it ensures that it adds value, and does not become just another layer of bureaucracy. Again it should offer opportunities to advance our thinking more widely.

PAPER HSC/O5/51

ANNEX C

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16 March 2005

HSC ISSUES RESPONSE TO THE HAMPTON REPORT

Bill Callaghan, Chair of the Health and Safety Commission, today welcomed publication of the final Hampton report 'Reducing administrative burdens: effective inspection and enforcement'.

He said: "The report has a wide ranging set of recommendations, many of which align with the Commission's strategy published last February which was warmly endorsed by Philip Hampton in his interim report.

" For example, the Commission has for some time wanted higher penalties for health and safety offences. So we strongly welcome the recommendations to increase penalties, and to augment the range of sanctions available to our inspectors by using administrative penalties and to explore the use of restorative justice orders – issues which we already have under consideration.

" I am glad too that the report has recognised the legitimacy of our partnership approach with Local Authorities. We have been working hard with our Local Authority fellow regulators to make effective partnerships deliver the health and safety targets agreed by Government.

"We will need to work through the detail of these recommendations to establish exactly what changes we may need to introduce. And we will continue with other strands of our work in support of achieving the *Revitalising* targets – particularly those initiatives which involve trade unions, their health and safety representatives and workers."

Timothy Walker, Director General of the Health and Safety Executive, also welcomed the report.

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Response to Hampton Report .../2

“The report is a vote of confidence in our work and the way we go about our business. The addition to our remit of the inspection role of the Coal Authority, the Engineering Inspectorate, the Adventure Activities Licensing Authority and the Gangmasters Licensing Authority will allow us to build on the synergies between us and the work of these regulatory bodies. We will be working hard to secure a seamless and timely transfer of this work from other government departments to the HSE.

“ The report has many recommendations that we will need to examine in some detail, but our initial assessment is that they dovetail well with much of what we currently do or work already in hand. For example, the report recognises that there is a judgement to be made on the right balance between inspection and the provision of advice – although the Commission’s response to the Hampton Interim Report made clear that we thought we had the balance just about right. We have done much to promote better regulation – for example we were the first body to enunciate the five principles of good regulation. And we have consulted recently on whether, and if so how, we might incentivise good health and safety performance.

“ We look forward to carrying this agenda forward both internally and with our fellow regulators, especially in terms of doing more joint working with these other regulators.”

Notes to Editors

1. The Health and Safety Commission’s strategy was launched on 23 February 2004, with the publication of A strategy for workplace health and safety in Great Britain to 2010 and beyond. This can be viewed at <http://www.hse.gov.uk/aboutus/hsc/strategy.htm>

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