

Health and Safety Executive Senior Management Team Paper		SMT/09/123	
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RECENT BETTER REGULATION DEVELOPMENTS AND THE IMPLICATIONS FOR HSE

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Issue

To ask the SMT to clear the Board paper which updates the Board on recent better regulation developments and the implications for HSE.

To give reassurance that we are managing policy capability in HSE appropriately to respond to Government better regulation requirements.

Timing

1. For the Board meeting on 25 November 2009

Recommendation

2. The Senior Management Team is asked to:
 - clear the attached draft Board Paper; and
 - note HSE's better regulation policy capability to meet current and future better regulation initiatives.

Background

3. See attached Board paper.

Argument

HSE's Better Regulation policy capability

4. Although the relocation to Bootle over the last 18 months has resulted in some loss of policy experience within HSE's policy teams, it has also provided an opportunity to review the policy process and take significant steps to embed Better Regulation principles. A dedicated Policy Capability Team (PCT) was established to provide the relevant support to policy colleagues and to embed good practice.
5. Guidance has been produced to steer policy officials through the processes required when developing and/or maintaining policy, particularly the need for impact assessments to support evidence based policy.
6. PCT recently arranged an event in Redgrave Court for Better Regulation Executive (BRE) representatives to meet with policy leads. A further event to reinforce better regulation messages will be delivered by the end of the year.

7. There are several challenge functions already in existence in HSE, functions that have been identified and put in place to address better regulation principles:
 - **Challenge Panel** – this includes a member of the HSE Board (Judith Donovan) and considers proposals for legislation, testing against the principles of good regulation, promoting best practice and making recommendations, which enable policy officials to make informed decisions;
 - **EU Checkpoint** – a series of regular meetings between senior policy managers to provide advice and an internal check on all aspects of the policy process in relation to European legislative dossiers, including better regulation;
 - **HSE's Better Regulation Oversight Group (BROG)** - has not met for a couple of years and we are considering reinstating and strengthening this group. The group could identify and deliver simplification targets and consider how the better regulation agenda ties in to the strategy. The group should be made up of interested parties at SCS level and include the wider spread of policy responsibility to Sectors, HID and ND. There may also be the opportunity to include an external member from BIS;
 - **Chief Economist sign-off of impact assessments;**
 - **Small Business Trade Association Forum** – this is chaired by Judith Donovan and comprises representatives of trade associations in sectors where small businesses are predominant. The forum consults their members on new initiatives, ensuring that HSE is aware of the concerns of small business; and
8. Consideration will also need to be given to whether another stakeholder group, focusing on larger stakeholders, would add value.
9. The HSE Westminster Office leads on regulatory management through the Better Regulation Team and the International Unit. Both teams work closely with BRE and OGDs to develop HSE's approach to delivering the Better Regulation agenda, The Economic Analysis Unit also has a key role advising on the economics of better regulation, impact assessments and policy evaluation.
10. Departmental Heads of Regulators and Board Level Champions also play an important role influencing strategic direction of the regulatory reform agenda, in particular the agenda beyond 2010, the impact of regulatory reform in the current economic climate and how to influence the flow of regulation from Europe.

Consultation

11. Consultation has taken place internally with other parts of the organisation and externally with BRE. Contributions have been cleared where relevant.

Action

12. The SMT is asked to clear the paper for the Board and note the better regulation policy capability.

Health and Safety Executive Board		Paper No: HSE/09/	
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RECENT BETTER REGULATION DEVELOPMENTS AND THE IMPLICATIONS FOR HSE			

Purpose of the paper

To provide the Board with an update of recent better regulation developments and any implications for HSE.

To seek Board agreement to HSE's approach to work on the Government's new simplification targets led by the Better Regulation Executive (BRE).

Recent Better Regulation Developments

On 2 April 2009, the Government announced that it would strengthen regulatory management during this period of recession. Government measures include:

- **Forward regulatory programmeⁱ** – this is a list, published on 15 October 2009, of all legislation expected to come into force between 2009 to 2011. Departments and regulators were also asked to review all planned regulations that they were prepared either to drop or to delay implementation until October 2011. HSE proposed two sets of regulations: an Amendment to the Electricity Act and a review of the enforcement provisions of the Import and Export of Dangerous Chemicals Regulations. Neither has a fixed timetable for implementation;
- **New simplification targets for 2010-2015** – the Government has now set a new target to cut the ongoing costs of regulation by a further £6.5 billion in total by 2015. This includes reducing the burden of existing regulation by a further £1.5bn net reduction in administrative burdens and a £5bn gross reduction in the policy costs arising from the stock of regulationⁱⁱ. BRE is exploring a cross-Government themed approach to achieving these targets;
- **National Economic Council Sub Committee on Better Regulation (NEC(BR))ⁱⁱⁱ** – set up as a successor to the Panel for Regulatory Accountability (PRA), the NEC(BR) is a Cabinet Committee chaired by the Chancellor of the Exchequer which has a remit to scrutinise all proposals for regulation; and
- **Regulatory Policy Committee^{iv}** – this Committee will have a challenge function, helping ensure that Government proposals are underpinned by robust evidence and that benefits justify the costs. Michael Gibbons is the Chair and members will be appointed shortly. Initially the committee is likely to focus on impact assessments, with Hampton principles likely to be considered later.

Board members will also be aware of the following Government initiatives:

- **Anderson Review - 'The Good Guidance Guide'^v** – this review includes a recommendation for a telephone helpline pilot to provide 'insured' advice^{vi} to SMEs. HSE has assisted the Department for Business, Innovation and Skills (BIS) along with ACAS in the development of the pilot which will begin in the New Year. The Scottish Centre for Healthy Working Lives already provides such a service in Scotland and is mentioned in the BIS report, 'Improving Outcomes from Health and Safety'^{vii};

- **Revised Code of Practice on Guidance on Regulation^{viii}** – revised in response to the Anderson Review. The Code came into force on 21 October 2009 and sets out ‘golden rules’ for guidance on legislation that will have a significant effect on business and the third sector. It applies to all Departments and regulators and will have implications for HSE guidance; and
- **Joint Statement on Better Regulation^{ix}** discussed by the Board on 23 September 2009 (see HSE/09/86) and launched on the 19 October 2009 together with new research, “The Benefits of Regulation – A public and business perceptions study^x”, commissioned jointly by the Better Regulation Executive, HSE, the Environment Agency, and the Food Standards Agency. The Board agreed to sign up to the statement underlining the benefits of regulation.

Other better regulation developments to be aware of include:

- **Regulatory Reform Committee report - Themes and Trends in Regulatory Reform^{xi}** - published on 21 July 2009, this report concluded that a balanced approach to better regulation was required in the context of the financial downturn. The Government’s response will be published in November/December;
- **House of Lords Select Committee on the Merits of Statutory Instruments Inquiry - Post implementation review of Statutory Instruments (SIs)^{xii}** - HSE provided information to the National Audit Office which carried out work on behalf of the Committee. The Work at Height Regulations 2005 was selected for a more detailed interview. The Committee’s report has not yet been published;
- **Risk and Regulation Advisory Council (RRAC) report - ‘Health and safety in small organisations: reducing uncertainty, building confidence, improving outcomes’^{xiii}** – this examines the challenges faced by small businesses when managing health and safety. The HSE Chair provided a quote for the report’s press release^{xiv} and HSE has discussed with RRAC its relevant work in this area;
- **National Audit Office report – ‘Complying with regulation business perceptions survey’^{xv}** – published on 22 October, the report acknowledges work by BIS and HSE to understand how businesses interpret and react to regulations;
- **Scotland’s Regulatory Review Group (RRG)^{xvi}** - chaired by Prof Russell Griggs, the RRG makes recommendations on the impact assessment process and advises the Scottish Government on all aspects of its Better Regulation agenda. (The Local Better Regulation Office (LBRO) does not formally apply in Scotland, although LBRO principles are applied in a similar way).

Argument

Strengthening Regulatory Management

HSE has a strong track record in delivering programmes of this kind; the 1994 Review of Health and Safety Regulation^{xvii} to reduce the stock of legislation for instance, And HSE’s Simplification Plan (see HSE/09/96), shows us on course to achieve our target of reducing administrative burdens by 25% by May 2010.

HSE's proposed approach to the new better regulation simplification targets

The Government is committed to ensuring essential protections are maintained and that reforms do not breach obligations under European law. Much of our work will continue to focus on making it as easy as possible for industry and small businesses in particular, to comply with their duties under health and safety law - a 'win/win' approach. Examples from HSE Simplification Plan 2009 include:

- example risk assessments for a range of businesses and work activities and a combined electronic Health and Safety Policy Statement and risk assessment;
- providing online or other guidance e.g. guidance on the labelling of loads;
- removing outdated forms and requests for data;
- taking advantage of wider changes, campaigns or pilots e.g. the introduction of the Gas Safety Register, Ladder Exchange Campaign; or a pilot in Scotland of a "Health Risks at Work" toolkit tailored to small businesses.

Work of the Strategy Action Teams on strategy themes will help us identify relevant new initiatives and we expect others to come from work with other Government departments and with stakeholders. Possibilities include:

- work updating and simplifying current legislation/guidance such as the review of explosives legislation; a European proposal to replace the Biocidal Products Directive; a proposal to refresh and simplify HSG65, "Successful Health and Safety Management" to make it more accessible; work on a Government single Point of Contact; the Anderson Review 'insured advice' helpline;
- work with insurance companies to encourage alignment of views in relation to what is considered sufficient to comply with health and safety requirements;
- projects such as the work with Local Authorities (LAs) in the East and South East to target SME industrial estates (Estates Excellence) or Workwell Dorset – a project in which all LAs in Dorset are working with Field Operations Directorate (FOD) to develop a joint model for the delivery of health and safety regulation across the whole county throughout 2009/10 and beyond; and
- work in Scotland with RoSPA to develop a self-sustaining 'what works' tool kit.

Many of these strands of work will fall under the SME goal in the strategy and the Board will be kept up to date as further initiatives are proposed.

HSE will also need to influence the drive for better regulation within the European Union (EU), both as an individual organisation and as part of a central Government drive, led by BRE. Recent developments include :

- the European Commission's annual plan to meet its Administrative Burden Reduction (ABR) target of -25% by 2012; and
- the European Commission's High Level Group of Independent Stakeholders on Administrative Burdens, chaired by Edmund Stoiber, has published opinions on administrative burden reduction in the fields of the environment (with relevance to biocides and major hazards) and on the working environment (that is, occupational safety and health) in April and May 2009, respectively.

We will continue to update the Board on European issues.

HSE's Better Regulation policy capability

The Better Regulation Team manages HSE's external better regulation activities. The Policy Capability Team ensures that better regulation principles are integral to HSE's approach to policy making, The International Unit ensures as part of its wider remit that the UK Government's objectives on better regulation are met in Europe. The Economic Analysis Unit advises on the economics of better regulation, impact assessments and policy evaluation.

There are several better regulation challenge functions already in existence in HSE including:

- **the Challenge Panel** – this provides the main better regulation challenge function. This panel, which includes Judith Donovan, considers proposals for legislation, testing against the principles of good regulation, promoting best practice and making recommendations;
- **EU Checkpoint** – a series of regular meetings between senior policy managers to provide advice and an internal check on all aspects of the policy process in relation to European legislative dossiers, including better regulation;
- **Chief Economist sign-off of impact assessments;** and
- **the Small Business Trade Association Forum** – this is chaired by Judith Donovan and comprises representatives of trade associations in sectors where small businesses are predominant which consult their members on new health and safety initiatives ensuring that HSE hears the concerns of small business.

Cross Government senior level meetings also play an important role influencing strategic direction of the regulatory reform agenda. HSE is represented at these meetings by Jane Willis. Additionally, cross Government meetings for Heads of Regulators provide a forum for regulators to discuss issues and share opinions on better regulation. Geoffrey Podger attends these meetings.

Financial/Resource Implications for HSE

The Better Regulation Team, the Policy Capability Team and the International Unit currently provide the HSE resource to meet the requirements of the Better Regulation Agenda and Simplification Targets. Costs for teams equate to £363k per annum (Better Regulation Team £157k, Policy Capability Team £185k and the International Unit £21k) and are affordable within the 2009/10 budgets and 2010/11 indicative allocations. Costs for individual initiatives will be presented to the Senior Management Team and Board as those initiatives are proposed and developed, providing the relevant information on resource implications for HSE. There is also use of Economics Analysis Unit resource in respect of the economics of better regulation, and estimating the impact of initiatives.

Action

For the Board to endorse HSE's proposed approach to the new better regulation targets (paragraphs 7 – 10 refer).

Paper clearance

This paper has been cleared by Jane Willis, head of CCID and the SMT at their meeting on 4 November 2009.

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ⁱ Information is available on the BRE website at <http://www.bis.gov.uk/frp> or on HSE's proposals from the Better Regulation Team

ⁱⁱ <http://www.berr.gov.uk/files/file53203.pdf>

ⁱⁱⁱ <http://www.cabinetoffice.gov.uk/secretariats/committees/necbr.aspx>

^{iv} <http://www.berr.gov.uk/whatwedo/bre/policy/committee/index.html>

^v <http://www.berr.gov.uk/files/file49881.pdf>

^{vi} 'Insured' advice means advice given to a business which if followed will cover that business for any associated legal costs that the business may incur including Employment Tribunal Awards as a result of advice.

^{vii} <http://www.berr.gov.uk/files/file47324.pdf>

^{viii} <http://www.berr.gov.uk/files/file53268.pdf>

^{ix} www.berr.gov.uk/files/file53233.pdf

^x [/www.berr.gov.uk/files/file53236.pdf](http://www.berr.gov.uk/files/file53236.pdf)

^{xi} <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmdereg/329/329i.pdf> and

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmdereg/329/329ii.pdf>

^{xii} http://www.parliament.uk/parliamentary_committees/merits/pn270709.cfm

^{xiii} <http://www.berr.gov.uk/files/file52340.pdf>

^{xiv} <http://www.berr.gov.uk/files/file52348.pdf>

^{xv} http://www.nao.org.uk/publications/0809/complying_with_regulation.aspx#

^{xvi} <http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/regulatory-review-group>

^{xvii} 'Review of Health and Safety Regulation – Main report' May 1994, ISBN 0-7176-0794-1