



Department  
for Work &  
Pensions

# **Triennial Review Report: Health and Safety Executive**

**An independent review of the function, form  
and governance of the Health and Safety  
Executive (HSE)**

**Martin Temple**

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**9 January 2014**



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## Foreword by Martin Temple

In April 2013 I was asked to lead the Triennial Review of the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions (DWP). It is Government policy that all Non-Departmental Public Bodies (NDPBs) should undergo a substantive review at least once every three years. This is the first Triennial Review of HSE.

There were two stages to this Triennial Review process. In Stage One I considered:

- whether the functions of HSE remained necessary; and
- whether delivery by an arms length body was the most efficient and effective way to deliver those functions.

Having considered the evidence, I concluded that there is a continuing need for the functions that HSE delivers, and a very strong case for those functions to continue to be delivered by an arms-length body. Having reached that conclusion, I moved on to Stage Two of the review, where I considered whether adequate control and governance arrangements were in place to ensure that the body complies with the principles of good governance.

In this area, I concluded that, on the whole, HSE is operating with the level of control and governance that should be expected of an arms-length body of its size and profile.

However, this is not to say that there is no room for improvement, and I have identified a number of areas where there is scope for innovation and change, to ensure that HSE continues to operate efficiently and effectively in the 21<sup>st</sup> century. I have set these recommendations out in my report.

I would like to thank the many stakeholders who contributed to my Review. Seventy five responses were received to the Call for Evidence and I spoke to over sixty individuals or representatives of organisations, some of whom also responded to the written call for evidence. HSE has also co-operated fully and actively with the review.

I would also like to thank the Challenge Group who have rigorously and robustly probed and challenged the assumptions and conclusions of my Review.

Finally, I would like to thank my Review Team, who have helped to bring this report to fruition.



# EXECUTIVE SUMMARY

## Methodology

1. I have conducted this Review in accordance with the principle and processes set out in the Cabinet Office 'Guidance on reviews of non-departmental public bodies'.
2. To gather evidence for the Review, I and my team:
  - asked HSE to provide a wide range of performance information and data analysis material
  - held a formal call for evidence which ran from 14 June to 26 July 2013 and received 75 responses
  - spoke to over 60 individuals or representatives of organisations, some of whom also responded to the call for evidence.
3. This Review is based on qualitative evidence drawn from these discussions and the responses provided to the call for evidence, and are supported by data provided by HSE itself. By its nature, this type of Review draws from the opinions and views of stakeholders with extensive knowledge and understanding of HSE, but who bring their own particular concerns and interpretations to what they have observed or experienced. I have drawn on the wealth of comments I have received to reach my own conclusions.
4. I comment in the Executive Summary on my major recommendations. The full list of recommendations from my Review can be found in Chapter 5.

## Stage One

5. The blueprint for HSE, as it currently exists, was set out in Lord Robens's 1972 Report 'Safety and Health at Work'<sup>1</sup>. Lord Robens's vision of a goal setting, risk based, and proportionate health and safety framework was enshrined in the Health and Safety at Work etc Act 1974, which also led to the creation – on 1<sup>st</sup> January 1975 – of HSE.

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<sup>1</sup> Lord Robens, Safety and Health at Work Report of the Committee 1970 – 72, 1972 HMSO Cmnd 5034.

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6. The Robens' approach has stood the test of time and – like Lord Young<sup>2</sup> and Professor Löfstedt<sup>3</sup> in their health and safety reviews – I found there was near universal agreement that Health and Safety at Work etc Act 1974 remains valid and is fit for purpose.
7. The 1974 Act gave HSE five functions, which can be summarised as:
  - Standard-setting and making regulations
  - Enforcement
  - Research
  - Guidance and advice
  - Ministerial advice
8. None of the evidence presented to me suggested that these functions were no longer required. While most of the comments I received were focused around the enforcement and guidance and advice functions – perhaps the most publicly visible areas of HSE's work - I received enough evidence across the piece to conclude that the individual functions form a mutually reinforcing whole.
9. I believe that separating one or other of the functions and passing that to another body would have a detrimental effect on the effective delivery of each and all of those functions. Having said that, HSE already delivers some of its functions in partnership with others, and I would encourage the further development of this approach. But, from the evidence I considered, it is clear that there is a real strength and advantage in having a single regulator with a common professional view of work-related health and safety.
10. Turning to whether a Non-Departmental Public Body (NDPB) is the right delivery vehicle for these functions, my review considered HSE's functions against the three Cabinet Office tests for NDPB status (technical function, political impartiality and

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<sup>2</sup> Lord Young of Graffham, Common Sense, Common Safety, 2010. [www.number10.gov.uk/wp-content/uploads/402906\\_CommonSense\\_acc.pdf](http://www.number10.gov.uk/wp-content/uploads/402906_CommonSense_acc.pdf)

<sup>3</sup> <https://www.gov.uk/government/publications/reclaiming-health-and-safety-for-all-lofstedt-report>

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independence), and also considered the alternative delivery models set out in the Cabinet Office guidance on Triennial Reviews.

11. In seeking stakeholder opinions on these issues, I sought out a range of perspectives and my approach was to challenge the status quo. However, my report necessarily sets HSE in a very positive context, reflecting the nearly universal praise from those who responded to this Review. My view is that this support for HSE is a reflection of the impartiality and independence it maintains in its regulatory and other work, in addition to the professionalism and technical competence of its staff.
12. Of course, it is not without its critics, but calls for change were usually about what it should do more or less of, and not calls for its abolition or change of status. Although many stakeholders raised concerns about the overall burden of regulation, HSE as an organisation was not, in their view, the source of the problem.

**Consequently my conclusion is that the answer to both the Stage One questions is an unequivocal yes. That is that:**

**- the functions of HSE remain necessary and are interdependent**

**- a non-departmental public body remains the appropriate delivery model.**

(see pages 33 – 41 for my fuller analysis)

13. But that does not mean that HSE cannot be improved and, in the following pages, I set out a number of recommendations where, I believe, there is scope for delivering HSE's functions with greater efficiency and effectiveness. In particular, I have considered the following areas:
  - a) funding and income
  - b) pace, efficiency and effectiveness of delivery
  - c) commercial options
  - d) relationships with other regulators.

### **a) Funding and income**

#### *Funding:*

14. The efficiency and effectiveness of HSE's delivery of its functions is dependent, in part, on its resources and how it chooses to deploy those, and to make use of others

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to deliver aspects of its work. I have, therefore, found that this review does require me to consider how it administers funding.

15. The funding from Government has decreased over the last 10 years and it is unrealistic to expect in financially constrained times that HSE's budget will be returned to levels at an equivalent value to those it had previously. Indeed, for the foreseeable future, its funding will continue to be reduced in line with the rest of the public sector. It is, therefore, vital that HSE continues to explore innovative approaches to making the delivery of its key functions as effective and efficient as possible.
16. It has not been possible within the resources or timescale of this report to compare elements of HSE activities for cost effectiveness with those of other public or private sector bodies. It is appropriate, however, to comment that HSE has addressed its budget cuts with stoicism and lived within its budget constraints. It has been active in addressing aspects of its cost base and seeking more efficient ways to manage resources.

### *Fee for Intervention (FFI):*

17. While my remit for this Review was primarily to consider the continuing need for HSE's functions, the wealth of comments I received from stakeholders regarding the Fee for Intervention regime (whereby businesses who commit a material breach of health and safety law are required to pay for HSE's time in putting matters right) has compelled me to address this issue in my Report (see pages 58 - 62).
18. I am very concerned at the strength of feeling from stakeholders that FFI has damaged HSE's reputation for acting impartially and independently, and thereby its integrity as a regulator. While few stakeholders disagreed with the principle of charging, concerns centred around two areas:
  - firstly, that FFI is a penalty or fine regime, but without any of the usual safeguards for such statutory schemes
  - secondly, that the introduction of FFI is linked to the need for HSE to fill the gap in its budget created by the reduction in government funding, creating the impression that HSE has an income target to achieve.

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19. This wouldn't be a problem if British health and safety law was black and white rather than goal-setting. But the element of judgement in how health and safety law is interpreted - by both dutyholders and the HSE - means that there is a risk that inspector decisions will be, or be seen to be, skewed by the need to raise income.
20. I have therefore concluded that it is a dangerous model which links, directly or indirectly, the funding of the regulator to its income from "fines".
21. HSE is planning to review FFI now that the first year of operation has passed. My personal view is that the link between funding and "fines" inherent in FFI does damage the positive relationship between HSE and business, which has previously been the basis of improved health and safety performance. At the same time, I recognise that projected FFI income is a significant element of HSE resourcing going forward, and any de-linking of FFI "fines" to funding must not result in an overall reduction in the HSE budget.
22. I recommend that HSE's planned review post October 2013 should include:
  - stakeholder representation in the review team to provide assurance of the impartiality of the findings
  - the views of stakeholders on how FFI is working
  - if FFI is to be retained, whether the threshold for FFI has been set at the right level
  - whether there is evidence that the anticipated incentives to comply have made a difference and improved health and safety performance
  - whether there have been any detrimental impacts on the behaviour of HSE Inspectors and/or those inspected and/or on health and safety performance
  - consideration of alternative sources of income, which should be tested against the same criteria.
23. I recommend that unless the link between "fines" and funding can be removed or the benefits can be shown to outweigh the detrimental effects, and it is not possible to minimise those effects, FFI should be phased out.

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24. I recommend also that as an urgent action there should be at least one independent person involved at the first formal stage in FFI appeals for HSE to ensure that the appeal process is independent and impartial, and is seen to be so.

### ***b) Pace, Efficiency and Effectiveness of Delivery***

25. While it is clear that HSE's work, across the piece, is highly valued by those they interact with, and I was given many examples of successful projects or positive outcomes in individual businesses or sectors, I found there was a lack of firm data by which to assess HSE's overall performance.
26. Overall outcome measures for work-related deaths, injuries and ill-health is available and in the past these were used to set Public Sector Agreement targets for HSE. However, these measures do not capture the specific contribution made by HSE, or allow an assessment of its relative efficiency and effectiveness to be made.

### *Comparable measures for cost effectiveness*

27. Looking at specific areas, I was unable to say whether or not HSE is cost effective in its back office functions compared to similar bodies. This type of benchmarking analysis should take place.
28. I recommend that HSE, the National Audit Office and the Cabinet Office Efficiency and Reform Group work out ways to measure cost effectiveness to enable better and more effective comparisons of performance to be drawn with other similar regulatory bodies in future Triennial Reviews. Preferably this information should be in the public domain in a format that is readily understandable to all. See pages 64 - 66.

### *Performance Measures for Guidance*

29. Working in partnership, as envisioned by Robens, is at the heart of how HSE works and has been particularly successful as a catalyst to strengthen health and safety in a particular sector or high hazard area. However, I have not been able to get a sense of whether HSE is making efficient and effective use of the resources that it dedicates to this work.
30. I recommend that HSE develops and publishes performance indicators for its work to produce guidance. These should include measures that will fall out from robust project management processes, such as whether milestones for delivery are met. It

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should also seek to assess the impact of the guidance in the relevant audience, for example by surveys and feedback from users. See pages 66 - 67.

### *Performance indicators for enforcement work*

31. HSE publishes a range of facts and figures on its enforcement work but these do not provide an insight into the quality of this, very publicly visible, area of HSE's work. That is not to say that I have concerns about the quality of the work, indeed the feedback I received was very much in praise of the professionalism of HSE's Inspectors. But the addition of customer service/perception measures would provide a more balanced picture of HSE performance.
32. I recommend that HSE develops and publishes performance indicators for its enforcement activities that seek to address the quality of the service provided to those it interacts with. Where appropriate, this may be based on customer feedback. They should be readily understandable to a lay person. See pages 67 - 68.

### *Time taken to complete investigations*

33. The time HSE takes to deal with investigations and, where appropriate, to bring a prosecution was raised by a variety of stakeholders. I note that HSE has already put in place a number of management controls to deal with this issue including, in 2012/13, objectives for the completion of investigations.
34. I recommend that HSE continues to improve its performance on the length of time taken to complete its investigations. It should aim for 95% of non-fatal accident investigations to be completed within 12 months of the accident. In addition, there should be a suitable target for the completion of fatal investigations once HSE has assumed primacy. This should be set once the relevant data is available. See pages 68 - 69.

### *Delivery of Löfstedt's recommendations on simplification*

35. Professor Löfstedt's 2011 Review focused primarily on health and safety legislation. While the focus of my review was different, I found that the regulations and associated guidance, rather than the principles of health and safety or the performance of HSE itself, were at the heart of many of the concerns raised with me, and there remains a great deal of support for the Professor's findings.

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36. I recommend and support the necessary continuation of work to complete Löfstedt recommendations by tidying up and removing redundant legislation and, where appropriate, by consolidate and updating legislation. The majority of HSE's effort should be to produce good, clear, helpful guidance and to do so in conjunction with all the parties who will be 'users' of that guidance. See page 69 - 70.

### *HSE's work in Europe*

37. Comments on HSE's work in Europe were supportive and I was given examples of HSE holding the line against proposals for European legislation that were not risk-based. However, I also received a smaller number of comments which raised concern that HSE has withdrawn from other areas in Europe. This work is essential and the HSE Board has some difficult choices to make in how it prioritises this work.
38. I would like to see the HSE Board should regularly take an overview of how and to what effect HSE resources are deployed in Europe and provide a steer on priorities. HSE should, if possible, publish this information, including assessments of the impact on health and safety outcomes as well as the costs to business. See page 70 - 71.

### *Tackling work-related ill health*

39. I received many comments that HSE had not allocated sufficient efforts to 'health' as opposed to 'safety'. However, everyone agreed that taking effective action on work-related ill health can be challenging. The relationship between workplace exposure to a health hazard and disease is often complex and depends on many factors. While inspection is an effective means of regulating health issues where clear standards have been established; the solution involves HSE in a wider range of interventions.
40. Since March 2013, HSE has sought to reinvigorate its approach to tackling work-related ill health and ensure it is not seen as the poor relation to safety issues. It has worked with key players to promote and encourage new and innovative ideas for activity, particularly around occupational cancer and respiratory disease<sup>4</sup>, to refresh existing projects to tackle work-related diseases and to examine whether HSE has the right technical support in this area.

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<sup>4</sup> Examples of HSE's bilateral meetings which have led to projects, are with the Royal College of Nurses, the National Union of Rail and Maritime Workers, the British Occupational Hygiene Society, Safety Groups UK, Crossrail, Institute of Occupational Safety and Health, Bam Ferrovial Keir and Department of Health

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41. I recommend that HSE continues to seek new and innovative ideas for interventions that maximise its impact on the continuing high levels of work-related ill health. This will include opportunities to use all forms of media, including social media, to reach the relevant audiences. See pages 71 - 72.

### *Using alternative means to communicate health and safety messages*

42. It was clear that the advice that HSE provides to businesses on how they can best comply with health and safety legislation is valued. However, the reduction in the number of proactive visits done by HSE Inspectors means that HSE needs to make the best use of other means to communicate. It has some well-established strategies for interventions in specific sectors.
43. I recommend that HSE continues to build on its sector strategies and overall digital strategy to involve the relevant stakeholders in improving the effectiveness of its approaches. In particular, HSE needs to be an expert communicator, based on a good understanding of the audiences, what influences positive behaviour changes and using all the modern forms of media now available including Apps, Facebook and Twitter. See pages 72 - 73.

### *Access for Raising Concerns*

44. I received a number of comments that, following the closure of the 'infoline' in 2011, it is now harder to raise concerns about potential breaches of health and safety law. This is an important element of ensuring safer workplaces.
45. I recommend that the routes for raising a concern with HSE about health and safety at a specific workplace are made clearer on HSE's website, ideally on the Home Page itself. See pages 73 - 74.

### **c) Commercial Options**

46. As set out above, I strongly believe there is real strength and advantage in having a single regulator with a common professional view of work-related health and safety and related functions. At the same time, in the difficult financial climate, it will be vital for HSE to maximise its potential by exploring opportunities to commercialise and to deliver its functions in new and innovative ways.

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47. The HSE Board will need to develop criteria against which to consider and evaluate the various delivery options. It should do this in discussion with DWP. See pages 75 - 76.
48. The following three examples have already begun to be considered by HSE and I discuss them more fully below:
  - i. The Health and Safety Laboratory (HSL);
  - ii. Provision of advice on land use planning; and
  - iii. Inspections of businesses with mature health and safety systems.

### *The Health and Safety Laboratory (HSL)*

49. Despite the difficult economic climate, HSL has already shown impressive progress in growing its commercial income, while maintaining its support to HSE. However, there is evidence that there remains potential for substantial further growth. Privatisation is not appropriate as it would risk the loss of unique science capabilities.
50. I recommend that DWP work with HSE and HSL to complete a fuller analysis of HSL's role to decide the best commercial delivery model going forward. The new high-level principles on the role and delivery model of public sector research establishments, recently issued by the Department for Business, Innovation and Skills (BIS) and the Cabinet Office, will provide a useful framework for an in-depth review of which delivery model best serves the unique and distinctive role that HSL provides to Government.
51. I recommend that this review of HSL is commenced before the end of the current financial year to allow HSL to make the most of the opportunities that clearly exist in global markets to exploit the HSE/HSL brand, for the benefit of the taxpayer. See pages 77 – 79.

### *Provision of advice for land use planning*

52. I support HSE's proposal to move its land use planning advice work into HSL and provide a fee paying service to developers and businesses in the chemical sector for early land use planning advice. This will make a positive contribution to the growth agenda. I recommend that it publishes its intention on how it will progress this proposal by April 2014. See pages 80 - 81.

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### *Inspection of organisations with mature health and safety management systems*

53. A consequence of the reduction in HSE proactive inspections is that HSE is not spending as much time engaging with those organisations with a mature health and safety management system. They are concerned that they do not get enough HSE time/support in stimulating and assisting them deliver continuous improvement in their performance and that of their supply chain – which they see as integral to their business philosophy and sustainability. Some have said they are more than willing to pay HSE for this service.
54. I recommend that HSE investigate the provision of a voluntary, fully chargeable inspection service for organisations with mature health and safety management systems who wish to engage the assistance of the regulator in maintaining and improving their health and safety performance. See pages 81 - 83.

#### ***d) HSE's interface with the Health and Wellbeing Agenda***

55. I found that there can be confusion between HSE's role in tackling work-related ill health and the wider Health and Wellbeing Agenda. HSE has published guidance on the two most common work-related ill health conditions (stress and musculo-skeletal disorders). However, more recently it has not lead on these topics. As a result, messages for businesses about what they must do because health and safety law requires have become conflated with messages about what they might choose to do because they wish to support their employees' general health.
56. Those who promote wellbeing in the workplace should not allow it to be confused with health and safety requirements. I recommend that HSE should ensure its own guidance sets out clearly what employers must do to control work-related health risks and be prepared to challenge others if they inadvertently misrepresent what the law requires to promote the wider wellbeing agenda. See pages 84 - 85.

#### **e) HSE's Relationships with Other Regulators**

57. The Robens Report set out the principle of bringing together regulatory responsibilities to ensure professionalism, consistency and cohesion in health and safety at work. I believe that this principle of convergence remains valid today.
58. HSE currently works with an extensive range of regulators in a complex system which can be difficult for users to navigate. My view is that convergence over time to

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a smaller number of regulators, brought together under a common set of principles, and common professional and operational values, should be the goal.

59. I recommend that opportunities for further convergence between regulators should be taken up where this makes operational sense and would reduce the burden to business. To this end, future Triennial Reviews of HSE should be aligned with reviews of similar regulatory bodies and should actively consider the opportunities for greater convergence.
60. It should be for the regulators to bear the burden of sorting out the complexities that arise where regulators responsibilities interface. BIS's Focus on Enforcement Review of the Chemicals Industry has led to some examples of good practice on how this can be addressed. I also found that too many of HSE's Memorandum of Understanding with other regulators are overly procedural.
61. I recommend that HSE continues to work with other regulators to ensure that the procedures for dealing with the interfaces between them and the associated Memoranda of Understanding (MOU) are up to date, reflect best practice, and are user tested by external stakeholders.
62. I recommend that the Environment Agency and HSE should continue to deliver the action programme identified by the Focus on Enforcement Review of the Chemical Industry. I believe this action programme contains some arrangements to address a single approach that could be useful in HSE's relationships with other regulators and therefore any lessons to be learned should be shared. See pages 86 - 88.

### *HSE and ORR*

63. I found the interface between HSE and ORR generally worked well. There is some overlap on major projects during the HSE-regulated construction phase, when early design considerations could address issues that will later be regulated by ORR. I did not find a case for changing enforcement allocation.
64. I recommend, to help avoid instances of uncertainty, particularly on large-scale rail infrastructure projects (e.g. High Speed 2), that HSE and ORR review their Memorandum of Understanding to ensure the arrangements are fit for purpose for early involvement of ORR in design issues and handover for such projects. See page 88.

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### *Local Authorities (LAs)*

65. As co-regulators with HSE, LAs are key partners in maintaining the health and safety regime. However, both HSE and LAs are going through change and adjustment to meet new and existing demands within smaller budgets and I believe there may be temptation for both sides to cut back on partnership working as a seemingly low-impact way of saving resources. In reality, such partnerships should be central to finding new ways to work better for less.
66. I recommend that there should be HSE/Local Authority Liaison Groups in all areas. Those that already exist should be maintained strengthened. HSE's role should be to provide expert professional guidance, constructive challenge and leadership.
67. Ideally, there should be a senior champion and a single point of contact and single regulatory organisation in each LA or grouping of LAs. But what works well locally and local political accountability is just as important. I welcome that HSE actively reviews LA annual performance returns.
68. I recommend that, where there is evidence of significant deviations from the norm in LAs, HSE should actively explore the reasons with the outliers. Where LA performance is significantly out of step, HSE should draw the resulting risks to the attention of the relevant political leadership.
69. The Local Authority Enforcement Code should be reviewed and amended in 2014 in the light of experience to identify areas for change and amendment. See pages 88 - 91.

### *HSE and DECC's Offshore Environment Unit*

70. There is a great deal of commonality between the work of HSE's Energy Division and DECC's Offshore Environment Unit, but also some crucial divergence. Businesses in the offshore oil and gas sector told me they would prefer a single regulator and at least a convergence of approach. On balance, I believe there is strong case for a single regulator to be responsible for offshore safety and environmental protection.
71. I recommend that in implementing the Directive 2013/30/EU on the prevention of major accidents related to offshore oil and gas operations that HSE and the Department for Energy and Climate Change (DECC) should look at moving, where

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appropriate, environmental protection inspection functions currently carried out by DECC's Offshore Environment Unit into HSE as part of the new Competent Authority.

72. I recommend that in any case, the DECC approach to regulating offshore environmental pollution risks needs to be brought significantly closer to HSE's preventative approach. I believe the structural change of bringing them within HSE would facilitate the necessary operational changes to address the concerns about consistency of approach raised by businesses in the sector. See pages 91 - 94.

### *HSE and Care Quality Commission (CQC)*

73. The Government response to the Francis Report on Mid Staffordshire NHS Foundation Trust sets out how the Government will implement changes that will effect the regulatory relationship between HSE and the Care Quality Commission (CQC).
74. I support these proposals which I understand are in line with my general recommendation that regulators should seek a single approach and that the interfaces between their activities are clear to those that they regulate and to those who are protected.
75. Any additional work to be undertaken by HSE arising from the implementation of the Francis report recommendations must be properly resourced, so that there are not any negative impacts on HSE's existing commitments.
76. The revision of the Liaison Agreement between HSE and CQC should include input from those who are regulated and those who represent patients to ensure it is clear to them how the interfaces between the regulators will work.
77. I recommend that HSE must also work with the various other parties involved in regulating social care to see how equivalent arrangements for improved co-ordination might be extended to that sector, including LAs. See pages 94 - 96.

### **Stage Two**

78. Having concluded that there was a continuing need for the functions, of HSE, and that a non-departmental public body was the best vehicle for delivering those functions, I turned to stage two of the review, consideration of whether adequate

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control and governance arrangements were in place to ensure that HSE complies with the principles of good governance.

79. The comments made by respondents to the Call for Evidence, along with the changing financial model for HSE, led me to conclude that there are implications for the governance of HSE. In particular, the formal framework agreement that sets out the arrangements it has with its sponsoring department have not been updated to reflect current requirements. There were also some issues raised with me around the potential to improve the performance of the HSE Board.
80. An independent, suitably qualified, Board is critical to provide oversight and good governance in delivering value for money for the public, particularly given my previous comments regarding the need for the HSE to develop an updated strategy and business plan, and commercial income generating options.
81. I recognise the importance to the HSE Board of the principle of tripartism, and the benefits it has brought to the British health and safety system. I fully accept the need to retain employee and employer representation on the Board. However, I believe tripartism has a qualitative value and not a numerical value. HSE involves relevant representatives of employers, employees and others at many levels of its work. While it is essential that the HSE Board holds the executive to account for delivery of this engagement, I did not find that a numerical requirement for Board representation is essential to achieve this.
82. I recommend that HSE and DWP urgently review and revise as necessary the existing Framework Document to ensure that it reflects the current working arrangements and updated procedures and that it is fit for purpose as HSE moves forward.
83. I recommend that in light of the other changes recommended in this report that the remit of the HSE Board should be reviewed and refreshed.
84. I recommend that a matrix of desirable skills/competencies and required experience/background for HSE Board members is drawn up by DWP to reflect the remit for HSE. I suggest the current Board is engaged in this process. Appointments on the basis of the new matrix should begin as soon as possible.

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85. I recommend that if it is not possible to achieve the appropriate balance of skills/competences and required experience/background of HSE Board members and retain the current statutorily specified number of Board members (appointed after the Minister has consulted with specific representative groups) that the number of specified Board members should be reduced. See pages 98 - 103.

# Introduction

## Chapter 1 – Background and Role

### Background to Triennial Review

1.1 It is Government policy that a NDPB should only be set up, or remain in existence, where the model can be clearly evidenced as the most appropriate and cost-effective way of delivering the functions in question. Since April 2011, all NDPBs have to undergo a substantive review at least once every three years. These Triennial Reviews examine:

- Stage 1 - whether the functions of the NDPB remain necessary and whether delivery by an arms length body is the most efficient and effective way to deliver these functions
- Stage 2 - if it is concluded that the functions of the NDPB should continue to be delivered by an arms length body, whether adequate control and governance arrangements are in place to ensure that the body complies with the principles of good governance.

1.2 All Triennial Reviews are carried out in line with the Cabinet Office “Guidance on Reviews of Non-Departmental Public Bodies”, June 2011 - see Annex A for more detail on the scope and methodology etc of the Review.

### **Role of the Health and Safety Executive:**

- 1.3 HSE is the national, independent regulator for work-related safety and health. Its mission is the prevention of death, injury and ill health to those at work and those affected by work activities.
- 1.4 The purpose, functions and form of HSE are set out in the Health and Safety at Work etc Act 1974. This Act followed the report of the 1970 – 72 Committee on Safety at Health at Work, led by Lord Robens<sup>5</sup>, which recommended the merging of nine separate groups of statutes dealing with safety and health at work. These were separately administered by five central Government departments with seven separate central inspectorates.
- 1.5 These separate regulatory bodies merged into what became HSE in line with Robens recommendation which proposed the creation of:
- “a separate and self-contained organisation, clearly recognisable as the authoritative body responsible for safety and health at work”.
- 1.6 More information on HSE’s various roles, its agencies, structure and staffing is contained in Annex C (Background to HSE).
- 1.7 In addition, Annex D sets out HSE’s relationships with its in-house agencies – the Health and Safety Laboratory (HSL) and the Office for Nuclear Regulation (ONR). ONR work is specifically excluded from this Review. This is in preparation for ONR’s proposed move to become an independent statutory corporation in the Energy Bill which is currently being considered by Parliament.

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<sup>5</sup> Lord Robens, Safety and Health at Work Report of the Committee 1970 – 72, 1972 HMSO Cmnd 5034.



# Stage One

To consider:

- **whether the functions of HSE remain necessary;  
and**
- **whether delivery by an arms length body is the  
most efficient and effective way to deliver those  
functions.**



## Chapter 2: Triennial Review Findings

### Context:

- 2.1 I received nearly universal praise and support for HSE from those who responded to this Review. Of course, it is not without its critics, but calls for change were usually about what it should do more or less, and not calls for its abolition or change of status. I particularly sought to speak to small firms, who I thought might have a contrary view of HSE, and also spoke to their representatives (Federation of Small Business and British Chambers of Commerce). Although they raised concerns about the overall burden of regulation, HSE as an organisation was not, in their view, the source of the problem.
- 2.2 A fundamental of Great Britain's approach to health and safety is that it is based on the principles set out by Lord Robens<sup>6</sup> that:
- legislation should be goal-setting, not prescriptive
  - those who create risk must take responsibility for controlling it
  - requirements for controls should be practical and proportionate to the risk.
- 2.3 Since HSE was created in January 1975, it has led work to build on these principles and apply them in its regulatory work in the wide range of industries and risks in which it is involved. There has been massive change in the nature of Britain's business base, patterns of employment and the demographic of the workforce. There have been major incidents, sometimes involving many fatalities, from which HSE and business have learnt. With business and unions, HSE has developed modern standards for risk assessment and health and safety management<sup>7</sup>. Working in partnership with others, as intended by Robens, is at the heart of how HSE works. This approach has stood the test of time and there was near universal agreement that the Health and Safety at Work etc Act 1974 remains valid and is fit for purpose.
- 2.4 Overall, there is a positive change in outcomes in terms of numbers of people killed or injured at work and with work-related health conditions, maintaining Britain's

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<sup>6</sup> Lord Robens, Safety and Health at Work Report of the Committee 1970 – 72, 1972 HMSO Cmnd 5034.

<sup>7</sup> HSE's latest guidance on Managing Health and Safety was launched as an online guide in the summer of 2013: [www.hse.gov.uk/managing/legal.htm](http://www.hse.gov.uk/managing/legal.htm)

## Chapter 2 – Triennial Review Findings

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premier position in the world class. See Annex G for more detail. But the job is not done. Risk is being managed better but it has not disappeared.

- 2.5 Of course, it is employers, and their employees, implementing safe systems of work that have brought about these reductions in injuries. However, the overwhelming view was that the lead taken by HSE to focus on regulatory measures that address real risk, and to provide advice and support to employers, has been key to improved health and safety standards as a whole.
- 2.6 I have briefly considered whether an international comparison provides an alternative model for delivery of the functions currently delivered by HSE. I found that no other country had a system that could be transferred wholesale. Some felt the greater link between the prevention regimes and the accident/ill-health compensation schemes in Germany (and Italy), meant the compensation schemes are not as adversarial as in Britain, which removes much of the uncertainty and the legal costs involved in Britain's civil compensation scheme. In the US, the functions performed by HSE are split between federal, state and local bodies. Both the German and US systems were characterised as being far less flexible than Britain's. For example, both are based on numerous and not necessarily compatible standards and inspections and enforcement tend to be 'compliance-based', so that adherence to a standard is required even where it is not the best means of risk control in particular circumstances. One person commented that in many European countries everything is forbidden, unless it is explicitly permitted. Others raised a concern that in the US information is not always readily shared between agencies. Respondents told me these approaches can lead to confusion and inconsistencies.
- 2.7 The Government is currently undertaking action to reform the health and safety system<sup>8</sup>, based on reviews by Lord Young and Professor Löfstedt, who looked primarily at the legislation and sources for the negative effects of a perceived 'compensation culture'. Though neither commented directly on the need for HSE's functions, their recommendations concern how HSE delivers and, on occasion, areas where it should do more, not that it should cease any of its functions. While I have not repeated their work, I have found that my conclusions broadly support theirs.

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<sup>8</sup> Information on the wider health and safety reform agenda is available on gov.uk. Copies of the reports referred to by Lord Young and Professor Löfstedt are included: <https://www.gov.uk/Government/policies/improving-the-health-and-safety-system>

## Chapter 2 – Triennial Review Findings

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- 2.8 I also found that blame for disproportionate advice to businesses was primarily aimed at others than HSE. An ill-defined fear of being sued seems to drive overly bureaucratic or risk-averse behaviour by employers and others with health and safety responsibilities. This in turn impacts on how they comply with health and safety legislation enforced by HSE. I believe it is appropriate for the regulatory bodies (HSE included) to find a proportionate and consistent way through these distractions and allow businesses to get on with addressing the real risks. More recently HSE has been seen as a voice of reason, countering some of the wilder claims laid at the door of 'elf and safety'. The HSE Myth Busters Challenge Panel campaign<sup>9</sup> was praised by several parties.
- 2.9 The intention of a goal-setting, risk-based approach to health and safety legislation is to allow employers the flexibility to select the most effective, reasonably practicable control measures for their circumstances, in consultation with their workforce. However, what constitutes 'reasonably practicable measures' requires interpretation at the margins. It is for this reason that HSE as the regulator is key to giving advice on how the legislation will be enforced and, where appropriate, what it means in practice. HSE has been a strong, trusted advocate of the need for proportionate, effective risk control, for robust safety management systems and for engagement of workers, based on its experience of what has been proven to make a difference.
- 2.10 HSE has been an active contributor to the various Government drives to improve regulation. From Sir Phillip Hampton's 2005 Review<sup>10</sup> onwards the principles of better regulation have been established and refined. More recently, the better regulation agenda has become a key aspect of the Government's drive to support growth and health and safety legislation has again been scrutinised under the Red Tape Challenge Health and Safety theme and the Focus on Enforcement Review of the Chemical Industry.
- 2.11 This Review is not addressing the same questions as any of the above reviews; in particular it is not a review of the Government's health and safety reforms. However, I have noted that HSE has responded to the numerous recommendations made, has

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<sup>9</sup> Information on HSE's myth busters panel is available on the HSE website: <http://www.hse.gov.uk/myth/>

<sup>10</sup> *Reducing administrative burdens: effective inspection and enforcement*, Philip Hampton (March 2005) available from the Department for Business Industry and Skills website: <http://www.bis.gov.uk/files/file22988.pdf>

## Chapter 2 – Triennial Review Findings

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already implemented many of the changes demanded of it, and is working effectively to deliver those that require more time.

2.12 So I have deliberately begun by setting HSE in a very positive context, to reflect the evidence that I have received. I have concluded that this support for HSE is a reflection of the impartiality and independence it maintains in its regulatory and other work in addition to the professionalism and technical competence of its staff. But that doesn't mean that HSE can't be improved.

### Are the functions of HSE still necessary?

2.13 HSE's functions are set out in the Health and Safety at Work etc Act 1974, and are to:

- propose and set necessary standards for health and safety performance, including submitting proposals to the Secretary of State for health and safety legislation (Standard Setting and Making Regulations)
- secure compliance with these standards, including making appropriate arrangements for enforcement (Enforcement)
- carry out of research and the publication of the results of research and encouraging research by others (Research)
- provide an information and advisory service, ensuring relevant groups are kept informed of and adequately advised on matters related to health and safety (Guidance and Advice)
- provide a Minister of the Crown on request with information and expert advice (Ministerial Advice).

2.14 The business aims and objectives to deliver these functions are set out in HSE's Business Plan<sup>11</sup>. See Annex C for more detail.

2.15 HSE's priorities for delivery are based on its expert knowledge of work-related risk:

- work-related hazards
- proportionate and practical control measures
- successful health and safety management systems
- worker engagement and human factors.

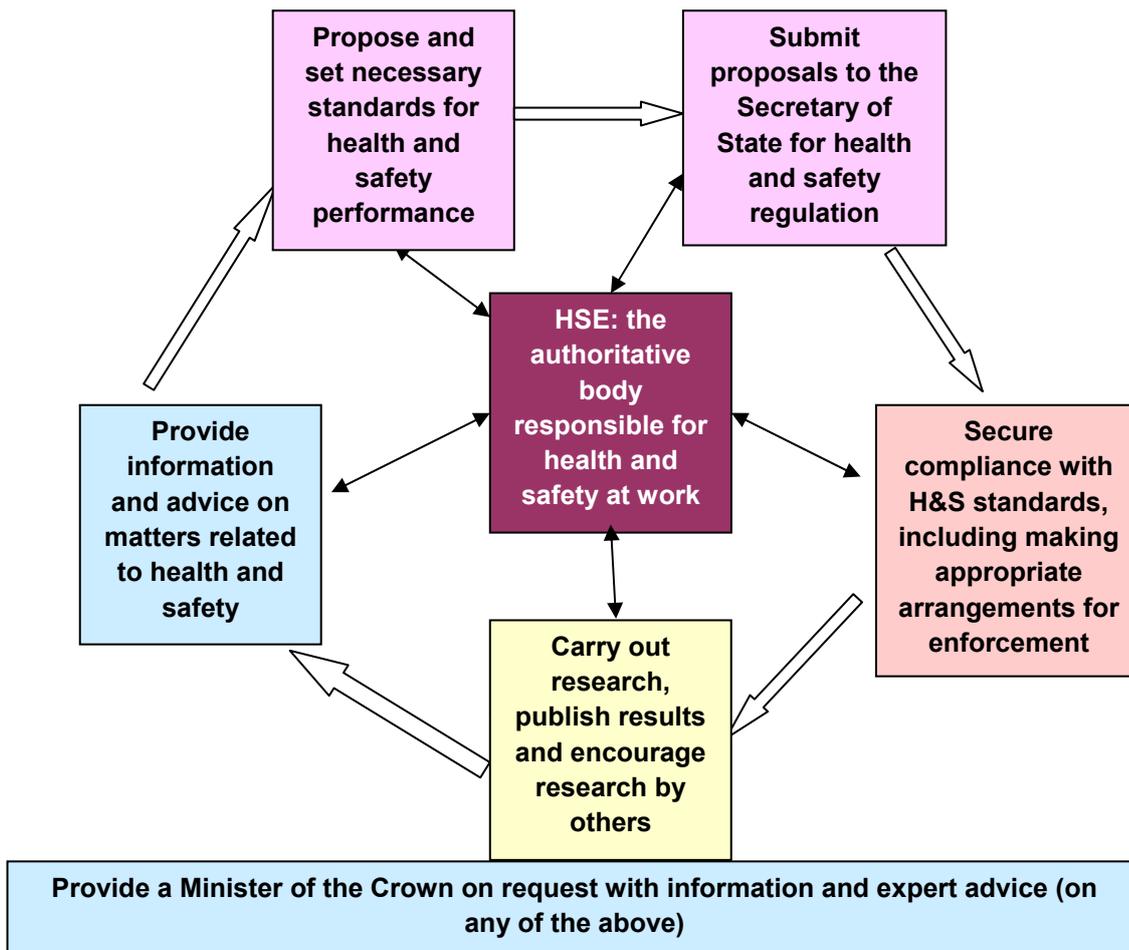
2.16 In general, in the comments that I received about HSE and its functions, the weight of information was about HSE's enforcement and advice functions. However, I received sufficient information across the piece to draw appropriate conclusions.

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<sup>11</sup> HSE's Business Plan 2012-2015 (Updated June 2013) is available from the HSE website: <http://www.hse.gov.uk/aboutus/strategiesandplans/businessplans/>

## Chapter 2 – Triennial Review Findings

2.17 The authority and trust that is necessary for HSE's role as regulator, relies on the knowledge gained from HSE's involvement in the delivery of each and every one of its functions. The further understanding gained by securing compliance with health and safety standards feeds back into how it carries out research, provides advice, sets those standards and prepares proposals for legislation, reinforcing knowledge and impacting positively on outcomes:



2.18 The diagram above sets out how HSE's functions are, in my view, mutually reinforcing and iterative and lead to an approach of continuous improvement. None of the evidence presented to me suggested that the functions carried out by HSE were no longer required. I believe that separating out one or other of them and passing that to another body (Government department, other NDPB/agency or private/not-for-profit provider) would damage the effective and efficient delivery of the whole of those functions. However, having recognised this synergy and reinforcing

system, I also found that HSE already delivers some parts of each of these functions in partnership with others, or through others.

**I have concluded that the functions of HSE remain necessary and are interdependent.**

### **Whether delivery by an arms length body is the most efficient and effective way to deliver those functions?**

2.19 In carrying out my analysis of the delivery options, I have grouped the five statutory functions into three functional areas:

- policy functions - setting standards; submitting proposals to the Secretary of State for health and safety legislation (see pages 42 - 44).
- operational functions - enforcement; advice (see pages 44 - 49)
- research and technical support (see pages 50 - 53).

#### *Current status*

2.20 Under the current model, HSE is a Crown Executive Non-Departmental Public Body, an independent body which receives a grant-in-aid via the Department of Work and Pensions (DWP). DWP has a sponsorship relationship with HSE on behalf of the Secretary of State for Work and Pensions<sup>12</sup> and the arms length relationship is set out in the Health and Safety at Work etc Act 1974. In particular, Section 12 of the Act sets out that the Secretary of State can approve proposals for legislation, with or without modifications, can give such directions as he thinks fit with respect to its functions, but can not give directions in respect of the enforcement of the relevant statutory provisions in any particular case. A Framework Document provides more detail on the relationship between HSE and DWP<sup>13</sup>.

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<sup>12</sup> Currently, within the Department of Work and Pensions, this brief is within the portfolio of the Minister of State for Disabled People.

<sup>13</sup> The framework document is available on HSE's website: <http://www.hse.gov.uk/aboutus/howwework/management/dwphse.pdf>

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### *Analysis of the options*

2.21 There are several options for provision of the functions carried out by HSE that I have considered. The different models are those set out in the Cabinet Office guidance on Triennial Reviews. Table 1 summarises my conclusions. The evidence that I considered as part of this analysis is set out in more detail below. I found that in a number of areas HSE already delivers some part of its functions in partnership, with or through other organisations. As I have set out above, the majority feedback strongly stressed that HSE’s functions are interrelated. Therefore, while my analysis deals with them as three separate areas, any decision to separate off entirely any one of those areas would in itself have detrimental effects on the delivery of all and each of those functions.

**Table 1 – Analysis of delivery options for HSE’s three functional areas**

2.22 In the following table, shaded sections denote that HSE delivers some aspects of that function in partnership with the relevant authorities, public bodies or voluntary/private sector organisations.

<b>DELIVERY OPTIONS</b>		<b>Standard setting and advice to the Secretary of State on legislation</b>	<b>Enforcement and advice</b>	<b>Research and technical support</b>
<b>Abolish</b>		<ul style="list-style-type: none"> <li>- Stakeholders and recent Government reviews of health and safety support the continued need for HSE.</li> <li>- Aspects of HSE’s functions are required to comply with EU legislation.</li> <li>- the 2006 ILO Convention (C187) on Occupational Health and Safety which the UK ratified in 2008 requires the UK to maintain a national system for occupational health and safety including an authority or body designated as responsible for this area and a system of inspection for ensuring compliance with national laws.</li> </ul>		
<b>Move out of central Government</b>	<b>Delivery by local Government</b>	Health and safety standards and legislation are generally applicable GB-wide. Delegation of standard setting to individual authorities would potentially result in multiple, conflicting standards that would be burdensome on business. Therefore, this function requires a national body.	Local Authorities deliver enforcement functions in certain premises as co-regulators with HSE.	Individual Local Authorities would not have sufficient resources to support the necessary research expertise or facilities in-house.

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DELIVERY OPTIONS		Standard setting and advice to the Secretary of State on legislation	Enforcement and advice	Research and technical support
<b>Move out of central government (continued)</b>	<b>Delivery by voluntary or private sector (existing provider or change HSE to this model)</b>	<ul style="list-style-type: none"> <li>- HSE has a good record of delivering standards after extensive engagement with the relevant business and wider stakeholders. They told us that only HSE, as regulator, can provide the role of final arbiter as to what the law should require.</li> <li>- Some aspects of standard setting are delivered by existing voluntary or private sector providers (eg trade associations or British Standards Institute).</li> </ul>	<ul style="list-style-type: none"> <li>- The enforcement function was specifically highlighted as one in which it is essential to maintain the independence of the regulator from those they regulate and from commercial interests.</li> <li>- The high level advice on compliance with the law can only be provided by the regulator.</li> </ul>	<ul style="list-style-type: none"> <li>- Research and other technical support are currently carried out by both HSE's agency, HSL, and by University or private sector research organisations.</li> <li>- In time, a private sector delivery model may be appropriate for aspects of HSE's research functions currently delivered by HSL (see recommendations in main report, pages 77 - 79).</li> </ul>
		<ul style="list-style-type: none"> <li>- HSE carries out a range of functions in support of Ministers, that can only be carried out by a Government Body (eg to progress government legislation in Parliament).</li> </ul>	<ul style="list-style-type: none"> <li>HSE currently has agreements with private sector companies for services provided to deliver the Gas Safe Register and Adventure Activity Licensing Services.</li> </ul>	<ul style="list-style-type: none"> <li>- The core technical support for HSE's regulatory functions, including the enforcement function must be independent and impartial.</li> </ul>
	<b>Delivery by a mutual, community interest company or social enterprise</b>	<ul style="list-style-type: none"> <li>- HSE's standard setting and policy functions do not have the necessary community interest or social service function to make a CIC or SE model viable.</li> <li>- Delivery of aspects of these functions by a mutual model would be possible, but would be a relatively novel approach.</li> </ul>	See above	<p style="text-align: center;">See above</p> <p>A mutual delivery model may be appropriate for aspects of HSE's research functions currently delivered by HSL (see recommendations in main report, pages 77 - 79)</p>

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DELIVERY OPTIONS		Standard setting and advice to the Secretary of State on legislation	Enforcement and advice	Research and technical support
<b>Bring in-house</b>	<b>Delivery by the parent Department (also see Table 2)</b>	<ul style="list-style-type: none"> <li>- DWP does not have in-house the technical knowledge required to set standards and make proposals to the Secretary of State on health and safety legislation.</li> <li>- Bringing this function in-house would not reduce costs.</li> <li>- Some standard setting and policy advice benefit from being developed independently of the Minister</li> </ul>	The enforcement and advice function was specifically highlighted as one in which the independence of the regulator from any Government department or Secretary of State was seen as essential.	The Department does not have the necessary research expertise or facilities in-house.
	<b>Delivery by an existing agency of the Department</b>	DWP has no agencies.		
<b>Merge with another body</b>		Merger with other bodies has been considered in the main body of the report. While convergence should be the strategic aim – at this time I not recommending HSE be subsumed into any other body.		
<b>Delivery by a new Executive Agency</b>		<ul style="list-style-type: none"> <li>- Executive agencies do not have a separate legal personality from the Department, but do operate as if they were a separate organisation.</li> <li>- An agency would not have sufficient independence to carry out all HSE's functions (as set out above).</li> <li>- Agencies typically deliver a service on behalf of the Department and do not generally have any role in strategic policy development for the issue that they deal with. I have set out below why I believe HSE's functions should not be split in this way and therefore that an agency is not a suitable model for HSE.</li> </ul>		
<b>Continued delivery as an Executive NDPB</b>		<ul style="list-style-type: none"> <li>- The majority of evidence received has supported this option, with some areas in which HSE can improve delivery and explore options for further commercialisation or delivery through others. These are explored in detail in the main text of the report.</li> <li>- I have also considered the three functions against the Cabinet Office tests for whether an arms length body is appropriate, set out in table 2 below. I found that it fulfils those tests.</li> </ul>		

## Chapter 2 – Triennial Review Findings

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The majority of evidence gathered by the Review is overwhelmingly in favour of maintaining the current delivery model, an Executive NDPB. Accordingly, I have also considered HSE's functions against the Cabinet Office tests for whether an arms length body is appropriate, as set out in Table 2 below.

## Chapter 2 – Triennial Review Findings

**Table 2 - Analysis of HSE’s three functional areas against the Cabinet Office tests for its status as an NDPB:**

<b>CABINET OFFICE TEST</b>	<b>Standard setting and submitting proposals to the Secretary of State for health and safety legislation</b>	<b>Enforcement and advice</b>	<b>Research and technical support</b>
<b>Is this a technical function (which needs external expertise to deliver)?</b>	In part*.  Standard setting and aspects of the preparation of health and safety legislation are technical functions. DWP does not have the necessary technical expertise in-house. If this was not delivered by HSE this expertise would have to be bought in.	In part.  Aspects of enforcement and provision of advice on health and safety legislation is a technical function which requires external expertise.	Yes.  HSE’s research and technical support covers a wide range of specialist disciplines, including engineers, occupational hygienists, occupational nurses and doctors, ergonomists and human factor specialists.
<b>Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?</b>	In Part*.  The setting of technical standards and aspects of legislation must be seen to be done impartially.	Yes.  The need for political impartiality in individual enforcement decisions is essential to the credibility of HSE and, in the case of enforcement decisions, including prosecutions, of the criminal justice system.	Yes.  Individual research projects must be carried out impartially and free from political or other interference.
<b>Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity?</b>	In Part*.  The setting of standards and the collection and analysis of facts and figures to support HSE’s work in this area must be done, and seen to be done, independently of Ministers.	Yes.  The need for independent investigation, collection of evidence, analysis of that and individual enforcement decisions is essential to the credibility of HSE and, in the case of prosecutions, of the criminal justice system.	Yes.  Individual research projects must be carried out independently and any facts and figures that they produce must hold up to peer review and independent scrutiny.

\*The Secretary of State has the right to set the overall policy direction within which HSE must prepare its proposals for legislation.

2.23 Taken as a whole, HSE demonstrably fulfils requirements justifying NDPB status, in that it delivers a technical function, including a regulatory function, which requires impartiality and independence from Ministers. However, as a regulator, it must also be independent from those it regulates and, therefore, it must remain as a Government body. Furthermore, no single alternative delivery model was put forward.

## Chapter 2 – Triennial Review Findings

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2.24 Having said that, HSE already delivers some of its functions in partnership with or through others;

- co-regulators
- other public bodies
- private and voluntary organisations.

2.25 Some evidence that I received suggested that further aspects of HSE’s activities could also be better delivered by such partnerships or alternative delivery models. I have, therefore, concentrated my enquiries at the boundaries of what HSE does and considered whether and in what ways there may be opportunities to improve how HSE delivers its functions and see how any inefficiencies, duplications and overlaps might be addressed.

**I have concluded that HSE meets all three of the Cabinet Office tests and should remain an Executive NDPB. However, there are some areas in which HSE and HSL can improve delivery and explore options for further commercialisation or delivery through and in partnership with others.**

### **Evidence provided on HSE’s functions and analysis:**

*Policy Functions - Setting standards and submitting proposals to the Secretary of State for health and safety legislation*

2.26 HSE’s functions to submit proposals for health and safety regulation to the Secretary of State are currently dominated by work in Europe and the relevant Government health and safety reform recommendations. However, HSE also continues to propose and set standards for health and safety, reacting to emerging evidence on new work-related risks, and has been developing improved approaches to tackling work-related health issues. In addition, its work on standards is often prompted by requests from individual sectors for HSE involvement.

#### *i) European work*

2.27 HSE staff in Europe negotiate on behalf of the UK with the European Union (EU) bodies and other Member States on proposals for European legislation and standards to support that legislation. The Minister agrees HSE’s negotiating position on legislation and the relevant Parliamentary European Committees have a role in scrutinising this work. HSE negotiators have ready access to operational colleagues, who in turn have access to businesses who advise on the real hazards and risks they are dealing with in workplaces. Many of those I spoke to had not personally needed to have access to HSE during EU negotiations. For example, many would feed their views into their relevant trade association and expect them to take the lead on their behalf. However, the broad view was that access to HSE and the ability to have a voice heard in the EU negotiation process was reasonably transparent.

2.28 I did not receive any evidence that suggested HSE gold-plated EU legislation in British legislation. To the contrary, some of the respondents who had had personal involvement with HSE in development of new European Directives provided examples of HSE holding the line against disproportionate proposals from Europe. Examples were given in relation to HSE’s positive and influencing role on behalf of the UK in relation to the recent offshore and Seveso Directives (concerned with the prevention of major accidents) and achieving the withdrawal of planned EU Commission Directives on hairdressing and musculo-skeletal disorders and which would have done nothing to improve domestic safety standards. See page 70.

### *ii) Delivery of Professor Löfstedt's recommendations*

2.29 In delivering Professor Löfstedt's recommendations, HSE has removed 20 pieces of obsolete or redundant legislation. Seven pieces of legislation concerned with biocides and chemicals have been consolidated into one (from 1<sup>st</sup> October 2013) and further consolidations are in progress. HSE has begun the work to revise and update guidance and streamline its suite of Approved Codes of Practice. In this area, a few respondents commented that they felt recent consultations had been too limited or too late to allow them to comment on the real policy. However, in general the feeling was that HSE sought out a balanced input to its deliberations. The full range of completed and ongoing health and safety reforms to which HSE is contributing are listed in DWP's progress report<sup>14</sup>. See page 69 - 70.

### *iii) Developing standards*

2.30 There was strong support from business and unions for the role HSE provides in developing sector and hazard specific guidance. When there is a demand for clarification, HSE has an excellent record of working with the various interested parties, bringing all together, establishing the issues as required, commissioning independent research, tests or trials, and working with the parties to agree what controls are reasonably practicable. I was provided with several examples of where HSE has been the voice of independent expertise when stakeholders within a sector could not agree amongst themselves (e.g. lift engineers, vehicle body repair, and glazing sector bodies). At this level, providing advice on how the law will be interpreted is a role that only the regulator has the authority to fulfil. In some cases the sector body produced its own guidance and HSE endorsed this, in others HSE published the agreed guidance itself. See pages 72 - 73.

In both development of standards and submitting proposals for legislation, HSE's strength was seen to be its technical expertise and its access and contact with all the relevant stakeholders (employers and employee representatives). I return here to the strength of HSE's risk-based, proportionate approach to health and safety which carries across from how it ensures compliance, the research it does and the

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<sup>14</sup> DWP Progress report on implementation of health and safety reforms (February 2013)  
<https://www.gov.uk/Government/policies/improving-the-health-and-safety-system>

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depth and breadth of its technical support. HSE's work in this area was generally regarded as good and there were no suggestions for an alternative body that was better placed to carry out this work as a whole. However, HSE already works with and through others in some aspects of this role, such as the various sector bodies and the British Standards Institute.

### *Operational Functions - Enforcement and Advice*

2.31 The evidence provided to me argued very strongly that HSE's role of high level advisor, clarifier and promoter of health and safety is vital. However, that role and the value of that advice is dependent on it being the authoritative advice of the regulator as to what the law means in practice and the standards it will enforce.

#### *i) Proactive Inspection and response to incidents and concerns*

2.32 HSE Inspectors carry out around 22,000 proactive inspections of work premises each year. These inspections are targeted at higher risk premises and where HSE has information about poor performance. Last year HSE investigated over 3,200 reported incidents that met its criteria for selection (these are the more serious accidents (a fatality or major injury) and certain dangerous occurrences, cases of work-related ill health and domestic gas incidents). It also received and followed up information on around 10,000 concerns raised by an employee or member of the public. HSE deals with such concerns in a variety of ways, and may do so by a site inspection.

2.33 The Government's plans for reform of the health and safety system 'Good Health and Safety, Good for Everyone' (March 2011) set out how HSE would target and reduce the number of inspections it does, focusing on comparatively high-risk areas and where there is identified poor performance. As a result, HSE's proactive inspections have reduced by about 11,000 per year from around 33,000 in 2010/11 to 21,603 in 2011/12 and 22,240 in 2012/13. I discuss some of the implications of this change below.

2.34 An inspection may result in advice or some form of formal action, including a letter or a notice of contravention, a Prohibition Notice (to stop an activity which is an immediate serious danger), an Improvement Notice (which requires compliance with

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the law by a specified date) or a prosecution. In 2012/13, HSE issued approximately 3,020 Prohibition Notices and 5,660 Improvement Notices and in 2011/12<sup>15</sup> completed 584 prosecution cases. See pages 67 - 69.

### *ii) Co-regulation and partnership with Local Authorities*

2.35 HSE is a co-regulator of the Health and Safety at Work etc Act 1974 with Local Authorities (LAs). The debate and balance between central and local control is an old one<sup>16</sup>. The current position is that the enforcement of health and safety remains split between HSE and approximately 382 LAs in accordance with the Enforcing Authority (Health & Safety) Regulations 1998. In general LAs are the main enforcing authority for retail, wholesale distribution and warehousing, hotel and catering premises, offices, and the consumer/leisure industries. Like HSE, they carry out inspections and provide advice on compliance with the law, in a number of different ways.

2.36 LAs undertook 14,400 proactive inspections in 2012/13<sup>17</sup>. This represents an 80% drop against the 2011/12 figures (71 thousand inspections) and an 88% drop against 2009/10 (118 thousand inspections). A National Local Authority Enforcement Code<sup>18</sup> was published in May 2013 which sets out priorities against which LAs should target their inspections. LAs report to HSE against these categories. However, the data shows a number of outlier LAs – the small number undertaking the majority of the lower risk inspections and those undertaking no inspections at all. The data needs to be treated with some caution as, at this early stage, there is evidence of inconsistencies in how some LAs are reporting.

2.37 It is both a strength of the LA approach and a potentially confusing factor for businesses that LAs often include health and safety enforcement and advice within wider regulatory teams, and/or within the context of their wider statutory functions to promote public health and environmental protection. In some areas LAs work closely

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<sup>15</sup> Final figures for prosecutions are delayed a year to allow for appeals.

<sup>16</sup> In October 1869 Alexander Redgrave, Her Majesty's Chief Inspector of Factories, submitted his annual report to the Secretary of State. The principle concern of that report was to review progress with the then recent inclusion of LAs into the regulatory regime for workplaces.

<sup>17</sup> From data provided to HSE by Local Authorities and published on HSE's website: <http://www.hse.gov.uk/lau/enforcement-lae1-returns.htm>

<sup>18</sup> <http://www.hse.gov.uk/lau/la-enforcement-code.htm>

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with neighbouring LAs and share resources or professional leadership. They also often work closely with local voluntary organisations.

2.38 HSE has a small unit that supports the partnership between HSE and the LAs. It promotes and monitors LAs consistency, proportionality and targeting of enforcement activities, supports the HSE/LA partnership governance arrangements, facilitates effective communications between LAs and HSE (e.g. through the Health and Safety Executive/Local Authorities Enforcement Liaison Committee (*HELA*) Extranet online resources) and assists LAs to access guidance and technical support. See pages 88 - 91.

### *iii) Regulating activities involving licensing, authorisation or other permissions*

2.39 In industries with certain higher risks and those with major hazard potential, HSE is responsible for regimes that involve some form of permission. For example, HSE licenses asbestos removal companies and issued 195 licences in 2012/13. It assessed over 200 safety cases and reports (for large-scale hazardous chemical processing plant), and granted approvals or authorised derogations, licences, approvals or notifications for over 500 applications (e.g. for the classification of explosives, or use of genetically modified organisms in contained laboratories). It delivered agreed intervention plans for these major hazard sites<sup>19</sup>, including over 1,230 site visits. Some of this work HSE performs as the competent authority appointed to regulate the relevant European legislation, either on its own or as part of a joint competent authority with another regulator such as the Environment Agency or Defra.

2.40 HSE is the competent authority for European legislation on the supply of biocides, pesticides, detergents and certain industrial chemicals. In 2012/13 it evaluated over 2,250 new and existing active substances used for biocides or pesticides, and applications for product authorisations. It processed the three industrial chemical substance evaluations received and the 395 prior informed consent notifications.

2.41 HSE currently has agreements for services supplied by:

- Capita Group plc, operating as Gas Safe Register, who maintain the register of businesses and operatives who are competent to undertake gas work on piped

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<sup>19</sup> Chemical process sites with major accident potential, offshore gas and oil installations, onshore gas pipeline operators, explosive manufacture and storage sites, mines and high-level containment laboratories for biological agents

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natural gas and liquefied petroleum gas (LPG) under the Gas Safety (Installation and Use) Regulations 1998. For a gas engineering business to legally undertake work within the scope of the Regulations they must be on the Gas Safe Register

- Tourism Quality Services Ltd, who are designated as the Adventure Activity Licensing Service (AALS). The AALS carry out certain functions on behalf of HSE, in its role as the Adventure Activity Licensing Authority, including the receipt and consideration of licence applications, inspections, and the granting or refusal of a licence. The Activity Centres (Young Persons' Safety) Act 1995 and the Adventure Activities Licensing Regulations 2004 make it a legal requirement for providers of certain adventure activities for under 18 year olds to undergo an inspection of their safety management systems and to hold a licence.

### *iv) Advice to planning authorities on land use around sites with major accident potential*

2.42 HSE is a statutory consultee for planning applications that involve use of land in the vicinity of certain sites that have the potential for a major incident, which could involve multiple injuries to members of the public. HSE is also consulted by LAs when a site operator makes an application for consent for the storage or use of large amounts of hazardous substances, including applications for changes. In 2012/13, HSE provided advice to LAs on over 830 planning applications and 140 hazard substance consents (see Annex H for more information on HSE's role in land use planning). See page 80 - 81.

### *v) Advice on health and safety for businesses and others*

2.43 HSE provides advice in a number of ways. It publishes guidance, including Approved Codes of Practice, where appropriate. However, HSE has clearly made progress on the Government's digital by default policy. For example, more and more it is moving to digital delivery and seeking to use its website as the main source of guidance. HSE forecasts that it will receive 34 million website visits in 2013, a significant increase on previous years. In 2013, customer feedback was that around three-quarters of these are repeat visitors and 96 per cent expected to visit again. 76 per cent of those who responded said they had found what they wanted from the site, and 86 per cent that they were very satisfied or satisfied with their visit to the website.

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- 2.44 HSE also provided me with details of customer feedback which was all overwhelmingly positive for various training courses, health and safety awareness days and Estates Excellence partnership work.
- 2.45 From the evidence I received, there was a very strong majority view that HSE, as the regulator, is the only body that can provide this high level advice on what represents compliance with the law, and the standards against which its Inspectors (and LA Inspectors) should inspect. See page 72 - 73.
- 2.46 A number of respondents commented that HSE has an established brand, and its approach to enforcement is known and understood across the wide variety of businesses that it inspects. The criticisms I received of HSE's inspection and enforcement work were mostly, I believe, related to specific isolated cases. Indeed, in some of these incidents I was also provided with good examples of how HSE had responded positively to a complaint once it had been raised.
- 2.47 A number of respondents argued that, in light of the need to reduce the number of inspections HSE carries out, it ought to divest itself of regulatory responsibilities that it has gained beyond traditional 'occupational' health and safety. While I have some sympathy with the view that dealing with too complex a mix of regulatory priorities can be difficult, I am convinced that the value of HSE is that it endeavours to bring the same preventative, risk-based, proportionate approach to whatever risks it is engaged in regulating and there is a real strength and advantage in having a single regulator with a common professional view of work-related health and safety. See page 86 - 87.
- 2.48 There was near universal agreement that HSE, as a NDPB, is the appropriate organisation to ensure compliance with health and safety legislation<sup>20</sup>. This was specifically mentioned as being a function to which the independence and the impartiality of the organisation is crucial. The feedback was that this independence needs to be from:
- primarily, those that it regulates or to whom it grant licenses, consents or other permissions

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<sup>20</sup> The only dissenting suggestions were from two respondents who had been involved in defending cases brought by HSE. They expressed concern over the thoroughness of HSE investigations and quality of the evidential review process. They suggested this would be better performed by an independent and separately accountable body, conforming to independent professional standards. Other respondents from the same sector/perspective did not support this counter view.

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- other Government departments concerned with policy that may seek to influence standards for health and safety
- other interested parties who for commercial, or other, reasons wish to promote their own interests through health and safety standards
- any risk of political operational interference.

2.49 However, HSE's enforcement work which involves an application by a business for a specific approval, consent or licence, especially where it acts as a gateway to a specific market, may be amenable to being delivered by some other means than by in-house HSE staff. This is already done for the Gas Safe Register. The HSE oversight to ensure the process remains independent and impartial is essential.

2.50 In support of the need for independence from other Government departments, I was pointed to the conclusions of the Lord Cullen report following the Piper Alpha disaster, 25 years ago. He found the then Department for Energy had had, in relation to its duty to ensure safe operations, too close a relationship with the offshore oil and gas businesses it was responsible for regulating. As a result, the regulatory regime for safety moved to HSE. In HSE, the offshore safety regime has shared expertise on the means of preventing and mitigating the consequences of both onshore and offshore major accidents, to the benefit of both regimes. Similarly, other areas of regulatory responsibility have come to HSE over the years, in part because other regulators have been judged not to be sufficiently separate from the department responsible for sponsoring the work that needs to be regulated.

In all its various enforcement and advice activities the majority view was that HSE is independent, impartial, risk-based and proportionate. HSE already delivers through others for the Gas Safe Register and the Adventure Activity Licensing (contracts with private companies) and in partnership with others (e.g. where it is a co-regulator with LAs or as part of a joint competent authority). This was an area where views expressed were particularly strong that HSE's enforcement decisions and the high level advice that it provides to businesses and others must remain independent from any Minister, but also from commercial and other interests.

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### *Research and technical support*

2.51 Science, research and evaluation provision is essential for HSE to fulfil all its statutory functions, underpinning its role as an evidence-based regulator<sup>21</sup> to:

- understand the causes of incidents and ill-health
- propose remedial measures
- contribute to the evidence base to develop and deliver its priorities and programmes
- make the knowledge gained widely available<sup>22</sup>
- have regard to, and use, relevant science activities in Britain and internationally and seek to collaborate with others.

2.52 Most of this provision is sourced through the Health and Safety Laboratory (HSL), which operates as a non-statutory in-house agency of HSE. Since April 1996, HSL has worked under a framework agreement, the terms of which require it to recover its costs through charges it makes to HSE and other public and private sector customers. Other specialist scientific and technical support is provided by in-house teams such as occupational hygienists, nurses, ergonomists, engineers and other health and safety professionals.

#### *i) Support for operational and regulatory work*

2.53 HSE's core requirement for scientific, technological, engineering and medical support is for its operational and regulatory work, which accounts for about two-thirds of its expenditure on commissioned science. It includes support for investigations and major incidents conducted by both HSE and LAs. HSE also commissions technical support for operational and policy projects, such as developing early thinking on the evidence base for formulation of options for legislative proposals. Wherever possible, HSE commissions research in partnership with relevant industries and stakeholders, and collaborates with national, international and EU programmes.

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<sup>21</sup> More detailed information on HSE's research and technical support, including examples of individual investigations, projects and published papers, is available in the HSE Board paper Science Report 2013, 30 January 2013.

<sup>22</sup> HSE is committed to making its research publicly available subject to over-riding considerations for national security and/or HSE's intellectual property policy.

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### *ii) Research*

2.54 HSE does not normally commission purely academic or blue-skies research. However, there is a futures capability in HSL to identify emerging trends and technologies to inform HSE's future priorities and strategy.

2.55 The majority of HSE's research is applied. Examples in 2012 included:

- an evaluation of the efficacy of safer sharps devices
- mine fire detection
- tank overfilling incidents – learning the lessons from Buncefield
- occupational health provision on the Olympic park and the athletes' village
- approaches to health and safety teaching and learning in undergraduate schools of architecture
- on-tool controls to reduce exposure to respirable dusts in construction work
- 'Find-It' - a tool to improve efficiency and effectiveness of HSE inspection visits
- supporting the prevention of respiratory ill-health among workers exposed to metalworking fluids.

### *iii) Other technical and professional support*

2.56 An in-house statistics team, who are part of the Government's Statistical Service gather, analyse and publish statistics on:

- work-related ill health
- fatalities and injuries
- enforcement statistics (numbers of Notices issued and companies prosecuted)
- other data, e.g. costs to Britain of health and safety failings and European comparisons.

2.57 Sources of data for these purposes include reports to HSE under statutory requirements, but also information from the annual Labour Force Survey, from voluntary reporting schemes administered by the Centre for Occupational and

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Environmental Health at Manchester University, Industrial Injuries Benefit information collated by DWP, death certificates (from Office for National Statistics and National Records of Scotland) and European data sources collated by Eurostat.

- 2.58 Legal support for HSE’s enforcement work (e.g. Notice appeals, prosecutions) is provided by an in-house team of legal advisors, who are part of the Government Legal Service, and by contracted solicitor agents. A panel of approved solicitor agents provide advice on and conduct enforcement cases on HSE’s behalf in England and Wales. Where rights of audience in the Higher Courts are required, HSE uses advocates from the Attorney General’s Unified Panel of Prosecuting Advocates. In Scotland, all prosecutions are led by the Procurator Fiscal Service that has a dedicated Health and Safety Division.
- 2.59 Specialist support for the development of proposals for legislation and guidance, impact assessments and other operational and policy projects is provided by lawyers based in the Treasury Solicitors’ Department. HSE also has in-house economists, analysts and communications specialists who provide technical support for such work.
- 2.60 HSE Books publishes HSE’s printed and multi-media products. HSE Books is a trading name and not a separate legal entity to HSE. The content and design of publications is governed by HSE staff. Bulk printing and distribution is contracted out to private companies. HSE retains the copyright to its publications and other communications material, but does so under the Open Government licence (others may use the information so long as they attribute it to HSE). HSE has a mix of free and priced publications. Free downloadable copies of all priced publications, apart from the Health and Safety poster and accident book are available from HSE’s website.

The majority of respondents told me that it was essential that HSE’s technical support for its enforcement work was impartial and sufficiently expert to carry the confidence of those it advises, takes enforcement action against and, ultimately, in support of prosecutions. Similarly, its research should stand up to scrutiny that it is based on objective scientific approaches and, wherever possible, be subject to peer-review and published in the appropriate academic journals. HSL is the key provider in this area. It is clear that HSE’s core health and safety research and

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technical support functions are, by their nature, specific to HSE and would not be readily available within a Government department or any one other institution. However, the way that HSE already obtains this support and gathers information is very much done in collaboration and partnership with other British and international bodies, public bodies, universities and commercial research organisations



## Chapter 3: Improving HSE delivery for the future

3.1 Having established that HSE's functions are still required and that an NDPB is the appropriate delivery model I have gone on to examine how it might improve its efficiency and effectiveness for the future looking at:

- HSE funding, income and expenditure
- improving the pace, efficiency and effectiveness of delivery
- commercial options
- HSE and other regulators.

### HSE funding, income and expenditure

3.2 The efficiency and effectiveness of HSE's delivery of its functions is dependent, in part, on its resources and how it chooses to deploy those, and to make use of others to deliver aspects of its work. I have, therefore, found that this Review does require me to consider how it administers funding.

3.3 I was told by many that HSE's budget had been 'slashed', I did obtain a comparison of HSE's funding and income today with that of ten years ago. But this was not meaningful due to:

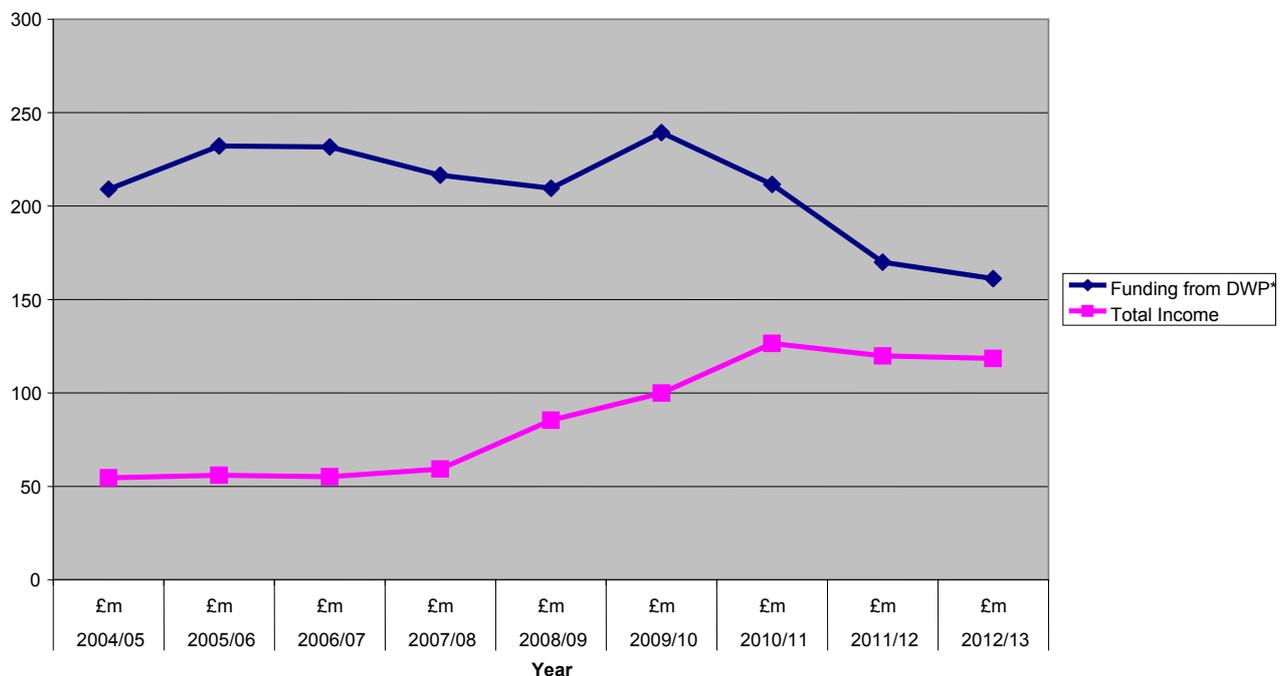
- significant changes in HSE itself (e.g. gaining the regulation of biocides and pesticides and losing the regulation of rail safety in 2008)
- the increase in activity in some chargeable sectors (particularly nuclear new build)
- changes in accounting practices.

3.4 However, it is clear that Government funding has reduced from £239 million 2009/10 to £161 million in 2012/13 representing a reduction of 33 per cent in nominal terms. Funding is set to reduce further over the remaining two years of the 2010 Spending Review and of the 2013 Spending Round which will mean a total reduction in excess of 40 per cent. The cost reduction programme reflects the reality of the UK's economic circumstances. It has also been beneficial in driving challenge to HSE's senior management about its ongoing activities, resources and priorities.

## Chapter 3 – Improving HSE Delivery For The Future

3.5 Table 3 shows HSE’s funding and income 2004/5 to 2012/13. HSE’s funding is from Government (known as grant-in-aid) and income is what it receives from other sources (see Annex C – Background to HSE). This shows that, in the last three years, the rate in reduction in Government funding has been accelerated but HSE has faced steadily decreasing funding over a much longer period. The grant-in-aid has increased in only two out of the last eight years. What is certainly true is that HSE has been and will be required to recover a greater proportion of its costs by charging for services and/or recovering the costs of its regulatory work if it is to maintain current activity levels.

**Table 3: HSE’s funding and income 2004/5 to 2012/13**



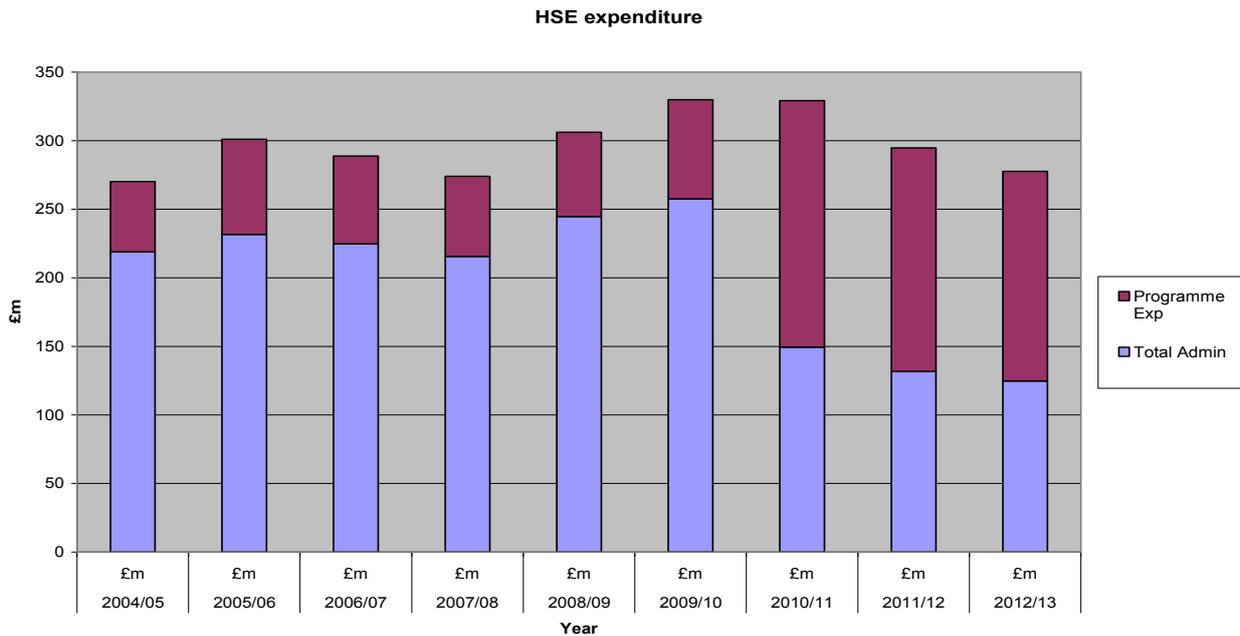
3.6 Inevitably, there is a limit to the areas in which HSE can charge and the amount it should seek to raise in this way. While there has been an increase in overall income from fees and charges, over the last three years this has dropped back, and has levelled out. Indeed, with the proposed departure of the ONR, HSE’s income will reduce markedly in 2014/15 (it estimates by up to £55 million). While this will mean that year-on-year comparisons will be more difficult to make, under Government Accounting rules there is no cross subsidy of other HSE functions and therefore it should not impact on the overall funding of those other functions.

### Chapter 3 – Improving HSE Delivery For The Future

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- 3.7 There are still income opportunities for HSE, some of which I explore more fully below. I do so while keeping in mind that developing new income streams may itself divert resources and/or increase costs and therefore any such venture does need to be properly evaluated before HSE commits.
- 3.8 Having looked at funding and income I also looked at HSE's expenditure. Changes to the categorisation of programme (frontline activity) and administration (running) costs in 2010/11 mean that it is not possible to compare directly across ten years – however, what the following does show is that HSE is currently decreasing its spend on administration more sharply than its spend on programme work (which includes its Enforcement and Advice functions) - see Table 4 below.
- 3.9 Alongside all Government departments and Public Bodies, HSE is having to find savings and efficiencies and has rightly targeted these savings in its support functions, such as a re-let of the IS/IT services contract, rationalisation of its estate including the closure of some offices, reducing research and communications expenditure, significant reduction in administrative staffing through more efficient use of IT systems. HSE has also moved to use of Shared Services for human resources, finance and procurement processes in common with central Government departments and other public bodies (this means the service previously provided by in-house staff is now provided by an external provider with common systems across Government). This has helped HSE minimise the impact of reductions on its front line resource so it can continue to deliver an effective enforcement regime and the other core activities that it is uniquely placed to deliver.

**Table 4: HSE Administration and Programme Expenditure**



3.10 It is unrealistic to expect in financially constrained times that HSE’s budget will be returned to levels at an equivalent value to those it had previously. Indeed, for the near future its funding will continue to be reduced in line with the rest of the public sector. Therefore, it is vital that HSE continues to explore innovative approaches to making the delivery of its key functions as effective and efficient as possible.

3.11 It has not been possible within the resources or timescale of this report to compare elements of HSE activities for cost effectiveness with those of other public or private sector bodies. It is appropriate to comment that HSE has addressed its budget cuts with stoicism and lived within those new budget constraints. It has been active in addressing aspects of its cost base and seeking more efficient ways to manage resources.

**Fee for Intervention**

3.12 The Fee for Intervention (FFI) regime, introduced in October 2012, has been one of the biggest issues raised by stakeholders throughout the Review, particularly in response to questions about the independence of HSE. My role in this Review is, of course, primarily to consider the need for HSE’s functions. However, I am very concerned at the strength of feeling from stakeholders that FFI damages HSE’s reputation for acting impartially and independently. I comment on it here because of

## Chapter 3 – Improving HSE Delivery For The Future

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the impact it appears to be having on HSE’s reputation for independence and its integrity as a regulator.

3.13 Prior to FFI, there was no charge for an HSE inspection, except for certain sites where a permissioning, licencing or authorisation regime operates. The Government believe that it is right that businesses that break health and safety laws should pay for HSE’s time in putting matters right and taking enforcement action, rather than these costs being met by the taxpayer<sup>23</sup>. They also argue that FFI should help to encourage businesses to comply or to put failings right quickly, and discourage businesses who might otherwise undercut their competitors by cutting corners and putting people at risk. In comments to me few disagreed with this principle.

3.14 Under FFI, if an HSE inspector visits a business and finds a material breach of health and safety law, the business pays a fee, based on an hourly rate for the time taken by the Inspector at site and to complete the necessary follow up work. A material breach occurs where a health and safety law has been broken and the inspector judges this is sufficiently serious to write a notification of contravention or to issue an improvement or prohibition notice. More detail on the operation of FFI is available on HSE’s website.

3.15 Concerns put to me about FFI fell broadly into two categories:

firstly, FFI has been understood by many to be penalty or fine regime. At its worst, stakeholders told me that it is against the principles of justice for HSE to act as “police, prosecutor, judge and jury”. While this may be a bleak response, I believe this reaction is genuine, and I am inclined to agree.

secondly, FFI has been strongly linked to the need for HSE to fill the gap in its budget created by the reduction in Government funding. This leads to an impression that HSE has an income target to achieve and, therefore, suspicion that Inspectors’ decisions about where and who to inspect, and what to do once there, will be based on the potential for raising income, rather than an analysis of the risk. For example, a fear was expressed that FFI would create a perverse incentive for Inspectors to

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<sup>23</sup> Costs for prosecutions are charged by the Court in the event of a conviction, and paid to HSE.

## Chapter 3 – Improving HSE Delivery For The Future

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inspect established companies with ‘good credit’, to find ‘technical breaches’ and hence earn income.

- 3.16 The threshold for FFI applying to any given inspection is related to whether or not *in the Inspector’s opinion* there has been a ‘material breach of the law’, and the level of fee is related to the time they spend. As I have already discussed, health and safety legislation is goal-setting and risk-based. This means that the discussion that takes place between the regulator and the regulated about what is reasonably practical is vital. I was told that prior to FFI this discussion was focussed on problem-solving and reaching agreement on the appropriate risk controls. Indeed in some cases, HSE would effectively work with the individual employer to establish appropriate risk controls, which could then be applied more widely in a sector.
- 3.17 An employer in obvious breach of well-known health and safety rules will not necessarily need more of an Inspector’s time. The Inspector will spend more time, and might need to call in specialist support, if they are dealing with an issue where the balance between the level of risk and the practicality of risk control is not as clear. This perversely means that the FFI bill for an employer who has committed a serious breach of health and safety law may receive a smaller fee than an employer who has endeavoured to comply with the law, but has not quite achieved a satisfactory level of control. It was put to me that this is against the established principle that financial sanctions should be used as a last resort and be in proportion to the breach (taking into account any mitigating circumstances), with safeguards such as appeal systems to ensure justice. HSE do, of course maintain that the scheme is a cost-recovery regime, rather than a penalty scheme.
- 3.18 In relation to the second issue, that Inspectors’ behaviour will be changed as a result of pressure for them to raise income, HSE point out that the money recovered goes first to the Treasury, with a cap on how much can be returned to HSE. Indeed, I was not presented with any substantial evidence of Inspectors’ behaviour changing. HSE’s own monitoring during this initial phase of the operation of FFI has led them to conclude that decisions that give rise to FFI charges have been taken in line with HSE’s existing enforcement policy and operational procedures<sup>24</sup>.

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<sup>24</sup> HSE Board paper 13/62 – at June 2013 Board meeting

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- 3.19 My concern here is that, while the principle behind FFI is valid, its introduction has primarily been driven by HSE's need to raise more income. In the first six months of its operation (October 2012 to March 2013), FFI raised £2,673,773 for HSE. It is too early to say at what level FFI income will typically settle<sup>25</sup>. However, I understand that without FFI, HSE's financial model going forward would incur a significant shortfall in the order of £20 million a year. Therefore, I recognise that FFI is a critical part of HSE's business and finance model and loss of this income, without replacement, would seriously impact HSE.
- 3.20 In their comments to me, the majority of stakeholders were concerned about the negative impact that FFI is bringing to the relationship between Inspectors and businesses. This is not a concern about the money itself, or whether FFI fees are too costly. I received clear evidence that FFI is having a negative impact on previously constructive relationships between HSE Inspectors and those they inspect. Businesses believe that there is a risk that Inspectors' decisions will be skewed by the need to raise income and that businesses have changed their behaviour in anticipation of changed Inspectorial behaviour. They told me they have been reluctant to seek advice or extend an inspectorial visit that could lead to a potential FFI charge. They did not disagree with the principle of charging, but it has altered how HSE is perceived. This is potentially very damaging. I have concluded that it is a dangerous model which links, directly or indirectly, the funding of the regulator to its income from "fines". If this link could be broken, the anticipated benefits of FFI, that it would be an incentive to compliance, could be realised.
- 3.21 HSE is planning to review FFI, now it has reached the end of the first year of operation (October 2013) and again within three years of its commencement (October 2015 at the latest). My personal view is that the link between funding and "fines" inherent in FFI does damage the positive relationship between HSE and business, which has previously been the basis of improved health and safety performance. However, HSE has had to deliver substantial cost savings and recent spending rounds will require more. It is clear that HSE cannot at this stage absorb the loss of the FFI projected incomes, before new sources of income are achieved.

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<sup>25</sup> HSE Board paper 13/62 – at June 2013 Board meeting

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Consequently, any de-linking of FFI “fines” to funding must not result in an overall reduction in the HSE budget.

I recommend that HSE’s planned review post October 2013 should include:

- stakeholder representation in the review team to provide assurance of the impartiality of the findings
- the views of stakeholders on how FFI is working
- if FFI is to be retained, whether the threshold for FFI has been set at the right level
- whether there is evidence that the anticipated incentives to comply have made a difference and improved health and safety performance
- whether there have been any detrimental impacts on the behaviour of HSE Inspectors and/or those inspected and/or on health and safety performance
- consideration of alternative sources of income, which should be tested against the same criteria.

I recommend that, unless the link between “fines” and funding can be removed or the benefits can be shown to outweigh the detrimental effects, and it is not possible to minimise those effects, FFI should be phased out.

3.22 Finally, I was told that HSE’s appeals system for FFI was not trusted as it was understood to be an entirely internal process. I understand that there are independent panel members appointed to consider the second formal stage of any appeal (there is an initial line management appeal stage). However, no appeals have reached this stage so the independent members have not yet had any cases to consider.

I recommend that, as an urgent action, there should be at least one independent person involved at the first formal stage in FFI appeals for HSE to ensure that the appeal process is independent and impartial, and is seen to be so.

### Improving the pace, efficiency and effectiveness of delivery

- 3.23 Having concluded that the three broad categories of HSE's functions are required and should be retained, I do not intend to avoid the question of how they should be delivered. As I have already indicated HSE's future funding will necessarily continue to be restricted. This is going to require further tough decisions about what HSE can do and how best to do it.
- 3.24 The evidence is that HSE's work, across the piece, is highly valued by those it interacted with and to whom it provide support. For example, the independent company who administered the customer feedback survey on HSE's website state that its results are a third higher than other public sector website surveys. I was given many examples of successful projects or positive outcomes in an individual business or sector. However, when I asked for views on HSE's overall performance, the question was turned on me and I was asked how stakeholders and the wider public were to judge HSE when they do not know what criteria HSE should be judged against? This has led me to explore this question.
- 3.25 Overall outcome data for work-related deaths, injuries and ill-health is available and in the past was used to set Public Sector Agreement targets for HSE. However, this type of high-level target proved difficult. While the information for work-related fatalities and major injuries is reasonably clear, much of the health data is far more complex. For example:
- for some ill health conditions there is a time lag between exposure to the hazard and onset of disease. This means that the numbers suffering from a work-related disease now reflects the working conditions of years or decades ago. This data cannot be used to measure the effectiveness of current risk control measures
  - some work-related diseases or ill health conditions also have non-work-related causes, including genetic factors or exposure to hazardous substances or agents outside of work (eg flour dust allergy/asthma, noise-induced hearing loss or certain musculo-skeletal disorders). This does not make it impossible to measure the work-related contribution to the overall disease burden, but it introduces uncertainty.

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3.26 Such complications mean the data is not necessarily suitable to be used for comparison purposes. But in any case, as set out by Lord Robens, the duty to control the relevant risks rests with those who create them, businesses and other dutyholders. The link between HSE's actions as the regulator and any change in the outcome measures involves so many interactions and other possible influences; it is not possible to pin down cause and effect.

3.27 I then looked at what data is available for the public on HSE's performance on specific activities as set out in its business plan. This led me from efficiency and effectiveness to a number of areas where the feedback to me was sufficiently strong in support of HSE's existing approach, with some suggestions for improvement, that I wish to reflect what I found. These were in relation to:

- comparable measures for cost effectiveness for back office functions
- performance indicators for guidance
- performance indicators for enforcement work
- time taken to complete investigations
- delivery of Lofstedt recommendations on simplification
- HSE's work in Europe
- tackling work-related ill health
- HSE's interface with the Health and Wellbeing agenda
- using alternative means to communicate health and safety messages
- access to HSE for raising concerns.

### *i) Comparable measures for cost effectiveness*

3.28 I wanted to make comparisons between what HSE does and other regulatory bodies, other Government departments or private sector organisations doing similar things. However, this has been hard to evaluate. HSE provides information on the costs of its corporate services functions (comprising Human Resources (HR), finance, procurement, legal and communications) to DWP each quarter. DWP publishes its quarterly data summaries (QDS), but HSE is not separately identified

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within this information<sup>26</sup>. The QDS data assists in identifying trends over time within an organisation and HSE is able to demonstrate that its costs have been reduced. However, undertaking any meaningful comparison of costs across Government bodies even of a similar size is difficult due to the very different nature of its business. In addition, HSE completes quarterly returns to Cabinet Office on the size and cost of its HR function, as well as annual returns to HMT on its finance function. Comparative information between organisations is not, however, routinely provided.

- 3.29 In 2009, the HM Treasury Operational Efficiency Programme (OEP) carried out an analysis of data on ‘back office’ costs from a number of sources in a way that allowed cost comparisons between different Government departments. The data published at that time separately identified HSE and showed that it was at or about the mean across Government for the various measures.
- 3.30 I should emphasise that HSE’s internal financial processes are clearly there. For example, it has completed Value for Money audits which have helped to identify areas of potential savings for management action and these have been followed through, largely successfully. HSE has undoubtedly found savings, for example, moving to shared services for its HR functions and renegotiating IT contracts. HSE continues to strive to find further efficiencies and has a culture which seeks to make cost savings and efficiency improvements.
- 3.31 However, given the data available today, I was unable to say whether or not HSE is achieving as reasonable cost effectiveness in its back office functions as it could do. This sort of analysis should happen and the National Audit Office and the Cabinet Office Efficiency and Reform Group should consider what measures are the most appropriate to assist future Triennial Reviews, not just of HSE, but of other similar bodies.

I recommend that HSE, the National Audit Office and the Cabinet Office Efficiency and Reform Group work out ways to measure cost effectiveness to enable better and more effective comparisons of performance to be drawn with other similar regulatory bodies in future Triennial Reviews. Preferably this information should

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<sup>26</sup> This data for all Government departments is published on gov.uk. DWP’s data is available at <https://www.gov.uk/Government/organisations/department-for-work-pensions/series/business-plan-quarterly-data-summary--2>

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be in the public domain in a format that is readily understandable to all.

- 3.32 There are HSE activities that are not necessarily directly comparable to other public bodies. The National Audit Office may not be able to provide comparative data in this area. However, it should be possible for HSE to provide some cost effectiveness analysis of aspects that can be measured. These are likely to be around activities that relate directly to HSE's outputs that provide value to HSE's stakeholders and ultimately to the wider public.

I recommend that HSE considers how their activities that are not directly comparable to other public bodies can be measured for cost effectiveness. I recommend that HSE considers how this can be done. It would bring HSE much closer to being able to make transparent what it is that it provides that is of value to the wider public and the taxpayer.

### *ii) Performance measures for guidance*

- 3.33 HSE has been particularly successful where it has worked in partnership as a catalyst to strengthen health and safety in a particular sector or dealing with a hazard where it has identified a particularly high injury or ill health record. Examples provided to me included several from the construction sector that are now well-established, where HSE worked with the supply chain, the construction companies and the trade union representatives to agree a radically different approach to solve problems.
- 3.34 An Institute for Employment Studies evaluation of these projects found: *“Isolating the direct impact of HSE’s work from other influences was not possible in most cases, however, stakeholders and workers/managers on the sites visited were able to highlight how practice in the industry had changed in areas where the supply chain work had been active”..... In order to monitor and demonstrate progress, supply chain work (like most interventions) needs to have clear objectives that are measurable and achievable. ...*
- 3.35 *Better general recording, preferably to some form of relatively standardised format, would allow a better assessment of the progress and achievements of individual*

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*strands and the supply chain work as a whole.*<sup>27</sup> I believe this conclusion applies to more than the construction supply model. The need for good project management, recording and monitoring is equally relevant to HSE's work in other sectors. For example, HSE has been working with the various organisations involved in logistics to tackle incidents involving delivery vehicles and with the waste handling sector to address the high incidence of injuries there.

- 3.36 While HSE reports on key milestones for projects of this type, it is not possible to get a sense of whether it is making efficient and effective use of the resources that it dedicates to this work.

I recommend that HSE develops and publishes performance indicators for its work to produce guidance. These should include measures that will fall out from robust project management processes, such as whether milestones for delivery are met. It should also seek to assess the impact of the guidance in the relevant audience, for example by surveys and feedback from users.

### *iii) Performance indicators for enforcement work*

- 3.37 HSE has published objectives in relation to inspection and other enforcement activities including, authorisations or other permissions to businesses engaged in activities that present particular hazards (e.g. asbestos removal) or to comply with European requirements (e.g. the supply of hazardous chemicals). The HSE Annual Report gives facts and figures on the number of inspections carried out by HSE and licences etc that it issues. However, this does not provide an insight into the quality of this very publicly visible area of HSE's work. I emphasise that I am not raising a concern about the quality of the work, indeed the feedback I received was very much in praise of the professionalism of HSE's Inspectors. HSE's operational management reviews the quality of inspections, and has arrangements for peer review of enforcement decisions (to ensure they are made in accordance with operational guidance). I was pointed to the Marine Management Organisation (an NDPB of Defra) which publishes both marine licensing performance indicators<sup>28</sup> and business as usual customer service statistics<sup>29</sup>. While they are not necessarily the

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<sup>27</sup> *Achieving Change Using the Supply Change Model in Construction* (HSE Research Report, prepared by the Institute for Employment Studies, 2011). <http://www.hse.gov.uk/research/rrpdf/rr843.pdf>

<sup>28</sup> Available on the MMO website: <http://www.marinemangement.org.uk/licensing/performance/index.htm>

<sup>29</sup> and [http://www.marinemangement.org.uk/about/customer\\_statistics.htm](http://www.marinemangement.org.uk/about/customer_statistics.htm)

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right indicators for HSE they are very straightforward and understandable to the lay person.

I recommend that HSE develops and publishes performance indicators for its enforcement activities that seek to address the quality of the service provided to those it interacts with. Where appropriate, this may be based on customer feedback. They should be readily understandable to a lay person.

### *iv) Time taken to complete investigations*

3.38 An issue that did give me cause for concern was the time HSE takes to deal with investigations and, where appropriate, to bring a prosecution. This was raised by a variety of respondents:

- those speaking on behalf of the injured and bereaved families, because they have to wait to hear what happened and whether anyone will be prosecuted
- by companies subject to an investigation, because they are in limbo until the investigation is complete
- others in the same sector, with insufficient insight into the causes of an incident to allow them to address the same hazards in their business<sup>30</sup>.

3.39 Professor Löfstedt recommended that “*all those involved should work together with the aim of commencing health and safety prosecutions within three years of an incident occurring*”. As a result of this recommendation, HSE has put in place a number of management controls to deal with long-running investigations and address backlogs, where they exist. In the 2012/13 Annual Report HSE has included objectives for the completion of investigations. In 2012/13 HSE completed over 3,620 non-fatal incident investigations with 79 per cent completed within 12 months of the incident date<sup>31</sup>. The figures were not available for an equivalent performance measure for completion of investigations of fatal accidents as this is more complex because other parties, including the police and, in England and Wales, the Crown Prosecution Service are involved, although they should be

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<sup>30</sup> HSE does operate a safety alert system by which it can share information on causes of incidents before any criminal proceedings are complete, where it believes this is necessary to help others prevent similar occurrences. However, this is necessarily limited to information that is absolutely safety critical. Some of the wider contextual information that is released by HSE and by the company itself during and after a trial is also useful to other companies.

<sup>31</sup> HSE Annual Report and Accounts 2012/13 - <http://www.hse.gov.uk/aboutus/reports/1213/>

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available for 2013/14. While HSE provides these figures in its Annual Report it has not published a target.

- 3.40 It is vital that all investigations are concluded more quickly than at present. To ensure that the necessary improvements in pace and performance are achieved HSE should be set challenging targets and be held accountable for its performance against them.

I recommend that HSE continues to improve its performance on the length of time taken to complete its investigations. It should aim for 95% of non-fatal accident investigations to be completed within 12 months of the accident. In addition, there should be a suitable target for the completion of fatal investigations once HSE has assumed primacy. This should be set once the relevant data is available.

### *v) Delivery of Löfstedt recommendations on simplification*

- 3.41 HSE's delivery of the Löfstedt recommendations, including the tidying up and consolidation of existing legislation, is already a major part of its work and a high priority task. There was a great deal of support for this work and it must be completed. However, there was a note of caution that the benefit to business is in having clear, authoritative guidance that states clearly and simply what business is required to do, if appropriate in an Approved Code of Practice (ACOP). Simplicity is welcomed, dumbing down is not.
- 3.42 I was told that any burdens on business arising from health and safety were about the overall number of regulations and the impression that these are difficult and complex. Therefore, perhaps the most important recommendations to address this are those aspects of the Löfstedt proposals which deal with simplification. However, simplifying the legislation and in turn producing genuinely helpful, practical guidance is a process which takes time. Once changes have been made all parties need time to adjust and update their own practices.
- 3.43 This work is subject to oversight by DWP and it is publishing regular progress reports. This public reporting is helpful. So far HSE has been delivering under this programme broadly on time.

I recommend and support the necessary continuation of work to complete Löfstedt

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recommendations by tidying up and removing redundant legislation and, where appropriate, by consolidate and updating legislation. The majority of HSE's effort should be to produce good, clear, helpful guidance and to do so in conjunction with all the parties who will be 'users' of that guidance.

### vi) HSE's work in Europe

3.44 The evidence is that HSE's negotiations in Europe consistently hold the line against, or bring about amendments to reduce the adverse impact of, disproportionate proposals. It is ultimately very difficult to put a value on this work, as these proposals are things that have never come into effect. For example, changes in 2013 to the Seveso Directive were aimed at aligning the existing Directive with a new classification of chemicals scheme (the Directive is concerned with the control of risks at sites with major-accident potential). The changes were not intended to introduce improved health and safety benefits. However, the initial proposal included a broader scope and some prescriptive requirements for inspections of such sites that HSE successfully argued were unnecessary. It estimates this prevented around £40 million of unnecessary costs to British business and the regulators, without reducing workers' health and safety. So this work is clearly of value to Britain. However, I was provided with examples<sup>32</sup> where, in the view of the commentator, HSE has chosen to withdraw from aspects of EU work, with detrimental effect.

3.45 The HSE Board receives a monthly update on progress with those health and safety dossiers that HSE leads on for the UK or that HSE has an interest in but does not lead. However, it is less clear how this work is prioritised. In light of reduced resources, HSE will have to prioritise and make judgments about where and when it can best intervene and where it is best to work with and through others. The basis of these decisions should be transparent.

I recommend that the HSE Board should regularly take an overview of how and to what effect HSE resources are deployed in Europe and provide a steer on priorities. HSE should, if possible, publish this information, including assessments

<sup>32</sup> The examples provided to me were that HSE no longer is involved in setting standards for personal protective equipment and occupational exposure standards for exposures to chemicals.

of the impact on health and safety outcomes as well as the costs to business.

### *vii) Tackling work-related ill health*

- 3.46 In response to my question about whether or not HSE's business aims and objectives have the right balance, many argued that HSE had not allocated sufficient efforts to 'health' as opposed to 'safety'. Some respondents provided evidence of the levels of work-related ill health<sup>33</sup>, and it is clear the numbers involved are significantly higher than those who suffer work-related injuries. There was near universal agreement that more should be done in this area. However, I was not provided with many specific examples of what this might involve for HSE.
- 3.47 Everyone agreed that taking effective action on work-related ill health can be challenging. The relationship between workplace exposure to a health hazard and disease is often complex and depends on many factors. Some advocated more traditional workplace inspections to address ill health issues. However, while I agree inspection is an effective means of regulating health issues where clear standards have been established (such as exposure to welding fumes or silica dust), I do not agree it is the only solution.
- 3.48 In line with Robens' principles, I believe those who create the risk remain those best placed to tackle them. Therefore, I support the action that HSE has taken to act as a catalyst in this area. It has secured the contributions of relevant sectors, businesses, safety representatives and other partners. For example, it is working to establish standards that have broad support and to deliver interventions that address the necessary behavioural changes for sustained risk control of health hazards.
- 3.49 HSE's interventions include sustained programmes of activity spanning many years. For example, many mentioned to me the success of the 'Hidden Killer' asbestos campaign aimed at trades people who are most at risk of disturbing asbestos at work (plumbers, electricians etc). Strengths of this campaign were that it was informed by a good understanding of the target audience and focussed on the very

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<sup>33</sup> For example, the British Occupational Hygiene Society state that "12,000 people die annually from diseases caused by past exposures at work, predominantly chemicals and dust and that 1.1 million people who worked during the last year were suffering from an illness they believed was caused or made worse by their current or past work".

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specific action that HSE wanted them to take. It used traditional media to promote messages, supported by online guidance. For the future, this approach can be further strengthened by making the most of opportunities to use all forms of media, including social media (see below).

- 3.50 In other areas, where the evidence is less clear, HSE's activity focuses on developing understanding of current exposures and working with and through other stakeholders, e.g. on the factors affecting the health effects of shift work and diesel engine exhaust emissions.
- 3.51 Since March 2013, HSE has sought to reinvigorate its approach to tackling work-related ill health and ensure it is not seen as the poor relation to safety issues. It has worked with key players to promote and encourage new and innovative ideas for activity, particularly around occupational cancer and respiratory disease<sup>34</sup>, to refresh existing projects to tackle work-related diseases and to examine whether HSE has the right technical support in this area.
- 3.52 I welcome the work being done by HSE to tackle work-related health issues, building on its existing work to understand the relevant audiences and to design approaches that address the behavioural changes needed to improve occupational health outcomes. This does not necessarily mean additional resources, but may involve investing in new skills.

I recommend that HSE continues to seek new and innovative ideas for interventions that maximise its impact on the continuing high levels of work-related ill health. This will include opportunities to use all forms of media, including social media, to reach the relevant audiences.

### *ix) Using alternative means to communicate health and safety messages*

- 3.53 Perhaps contrary to popular opinion, there was a concern raised as much by business as other stakeholders about the impact of reductions in the number of inspections that HSE does. They value the advice they receive from an HSE Inspector's visit. I was told an Inspector often guides business to focus on real risks

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<sup>34</sup> Examples of HSE's bilateral meetings which have discussed potential projects, are with the Royal College of Nurses, the National Union of Rail and Maritime Workers, the British Occupational Hygiene Society, Sector Groups UK, Crossrail, Institute of Occupational Safety and Health, Bam Ferrovial Keir and Department of Health

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and practical control measures, in contrast to some of the other voices that may be urging the use of unnecessarily expensive control measures or irrelevant paperwork. This reflects a majority view of stakeholders.

- 3.54 HSE changed how it regulates the agricultural sector some years ago. It has moved away from inspections and instead concentrates on Safety and Health Awareness days and other ways to inform and influence farmers and others in the sector to work safely. Although some respondents argued that Inspectors should inspect farms again, HSE's experience is that unannounced inspections were not as effective at engaging farmers as its current approach.
- 3.55 HSE's digital strategy will also be vital. The continuing HSE #safersites<sup>35</sup> campaign on Twitter is a really good example of what can be done to influence safer behaviour. The success and impact of campaigns like this should be evaluated and results published.
- 3.56 I am not arguing that the same approach would be right for all sectors. HSE has developed individual sector strategies, based on its analysis of the hazards and the make-up of businesses in each sector. These strategies largely informed the selection of the sectors that are now subject to targeted inspection and those for which HSE is using alternative approaches.

I recommend that HSE continues to build on its sector strategies and overall digital strategy to involve the relevant stakeholders in improving the effectiveness of its approaches. In particular, HSE needs to be an expert communicator, based on a good understanding of the audiences, what influences positive behaviour changes and using all the modern forms of media now available including Apps, Facebook and Twitter.

### *x) Access to HSE for raising concerns*

- 3.57 Many people commented that HSE has improved its website but argued that this does not make up for the loss of HSE's free Infoline (provided by an external contractor and closed on 30 September 2011); as small businesses value person-to-person contact. HSE would argue that the value of person-to-person contact is in

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<sup>35</sup> Individual posts available on HSE's twitter feed. A summary of the safer sites campaign is available on HSE's website at: <http://www.hse.gov.uk/construction/campaigns/safersites/index.htm>

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the ability to tailor the advice to the circumstances of the business, which in reality Infoline was unable to do. Aside from improving the information available on its website, HSE does still provide an advice and concerns service, in a more efficient way with in-house resources.

3.58 In this context, I received a number of comments that it is now harder to raise a concern with HSE about a workplace where there is a belief that health and safety law is being broken (whistle-blowing). It is welcome that HSE has provided a phone number<sup>36</sup> as an alternative to an on line form. But how to raise a concern should be more prominently and visibly placed on the HSE website.

I recommend that the routes for raising a concern with HSE about health and safety at a specific workplace are made clearer on HSE's website, ideally on the Home Page itself.

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<sup>36</sup> Information on HSE's website: <http://www.hse.gov.uk/contact/raising-your-concern.htm>

### Commercial Options

- 3.59 Over the next few years HSE must actively seek further opportunities to commercialise and to deliver working with and through others. The HSE Board should be open to considering a range of delivery methods.
- 3.60 The following three examples have already begun to be considered by HSE and I discuss them more fully in the following pages:
- i. The Health and Safety Laboratory
  - ii. Provision of advice on land use planning
  - iii. Inspections of businesses with mature health and safety systems.
- 3.61 Other in-house activities which this review has not had the time to explore, but which might be amenable to some form of alternative delivery model include the support provided by lawyers on enforcement cases (already in part delivered by contracted solicitor agents), other in-house specialist advice, HSE Books and some of HSE's licensing or other consent/authorisation processes. However, although I have mentioned these specific examples, it does not mean that these areas are suitable for change or that this represents an exhaustive list of the activities to be considered. Clearly, I do not mean to imply that alternative delivery models for individual activities should break up HSE.

The HSE Board will need to consider and evaluate the delivery options, the full business case for any changes, and weigh the risks and benefits. In doing so the Board will wish to develop criteria against which to consider the relative merits of options put before it and it should do this in discussion with DWP.

- 3.62 I suggest, that the HSE Board's consideration should include the following:
- changes do not have a negative impact on health and safety outcomes
  - delivery of any of HSE's statutory functions through or in partnership with others remains in accordance with HSE's aims and the principles of risk-based, proportionate regulation

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- the best means to provide public value, in the immediate, medium and longer term, including opportunities to contribute to cross-Government requirements and over-arching priorities
- the timing of change should take account of any external changes that provide an opportunity to reconsider the delivery model (for example, new European legislation, review breaks in existing contracts)
- the change will, over an appropriate time period, reduce HSE's costs or where the activity provides non-financial benefits to HSE, must be sustainable by at least covering costs by the income that will be raised
- where a case needs to be made on an invest-to-save basis a return on the investment should be achievable within a reasonable time-scale (within five to seven years)
- HSE can establish and sustain arrangements to act as the intelligent customer for any external providers, including arrangements for monitoring the efficiency and effectiveness of delivery
- consideration of ownership of any assets (including brand identity and intellectual property) that could be transferred out of HSE or that will be produced by the activity, and where it is appropriate for such ownership to lie
- any new delivery model must not involve unsustainable diversion of resources from delivery of HSE's core functions. For example, the analysis should include consideration of the consequences if higher than expected success leads to high demand on HSE's limited specialist skills
- potential conflicts of interest for HSE as the regulator of health and safety at work will be identified and avoided
- suitable arrangements can be made for appropriate data protection and confidentiality to apply to information transferred from HSE or collected and managed on behalf of HSE.

3.63 The existing business model should be as rigorously tested as any alternative models, and the presumption should not be that the status quo must be the best way.

### Health and Safety Laboratory (HSL)

- 3.64 HSE's relationship with HSL is set out in more detail in Annex D. Despite the difficult economic climate, HSL has already shown impressive progress in growing its commercial income. However, there is evidence that there remains potential for further growth.
- 3.65 There are clear advantages to HSE of having ready access to provision of bespoke, technical support services e.g. if forensic and analytical support is needed for a large-scale investigation at short notice. HSL is HSE's preferred provider for much of the technical support it requires for its investigation and enforcement work. HSL attends around 200 industrial and domestic gas safety incidents every year, or one every working day, and its staff act as expert witnesses on a weekly basis. Recent high profile incidents include the Gleision Colliery mining accident in September 2011, the Elgin Well major gas release in the North Sea in March 2012, and the mobile elevated work platform accident which closed the M25 at Buckinghamshire in June 2013.
- 3.66 This does, of course, reduce the opportunity for other organisations to compete for HSE work. The fixed costs of HSL's facilities at its Buxton site mean that it is not necessarily the cheapest provider. The current Private Finance Initiative contract for its accommodation is relatively costly and the very specific facilities at the site, such as the explosives testing rigs, make it more difficult for HSL to economise on accommodation than other parts of HSE. This also can make HSL's unit costs for relatively routine analysis work relatively expensive, so that it would struggle to survive if it were entirely reliant on commercial income. This means HSE's opportunities to reduce its research costs by competitively tendering are also limited. However, much of the support that HSE requires would not necessarily be a commercially viable service and, therefore, if HSL was privatised at this time there is a real risk this vital support capability for HSE would be lost along with a science capability based on a unique combination of disciplines that is valuable to GB.
- 3.67 However, HSL's 359 full time equivalent staff and high-quality technical facilities are not solely on standby to provide support to HSE. HSL supports other Government agencies and departments with ongoing scientific evidence and analytical support. It also provides a range of services and products to external customers in a wide

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range of scientific fields, ranging from Analytical Chemistry, Occupational Medicine through to Explosives, Occupational Hygiene, Process Safety, Work Psychology and more.

- 3.68 The integrated nature of HSL's facilities and expertise allow it to deliver a distinctive science capability. Some aspects could only be safely carried out at two or three other facilities in the UK. For example, HSL's innovative combination of knowledge of human physiology, chemical toxicology, human factors, ventilation systems, personal protective equipment and analytical chemistry have been applied to reduce the incidence of respiratory disease from exposure to paints during car repair work. The benefit of the combined work was greater than the contribution of the individual disciplines and is almost unique in world terms.
- 3.69 Beyond HSL, HSE's goal-based approach to health and safety is well respected abroad for being proportionate and conducive to innovation. Many countries are prepared to purchase support in adopting health and safety regulatory or safety management systems based on British principles and methods. The commercial demands are for the combined HSE and HSL knowledge and intellectual property. Currently, neither body is set up to provide this. To address this, HSE and HSL are considering a new business model that would make the most of this commercial potential for them both. This would not affect the status of the part of the organisation that delivers the statutory functions of HSE and HSL.
- 3.70 HSL's drive to widen the sources of its income from non-HSE customers would, in some specific areas, mean that it is competing directly with the private sector and other public sector research institutions for such work. However, by developing a commercial arm, it will have the potential to seek joint ventures, and collaborative work, that will both increase its own commercial income and widen the opportunities for partnerships with private sector providers, voluntary bodies and Universities.
- 3.71 During the period of this Review, the Department for Business, Innovation and Skills (BIS) and Cabinet Office (CO) issued new high-level principles on the role and delivery model of public sector research establishments<sup>37</sup>. They have asked all Triennial Reviews to consider these principles where appropriate. Unfortunately,

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<sup>37</sup> *Additional guidance for reviews of Public Research Establishments* (August 2013), available on the Gov.uk website: [https://www.gov.uk/Government/uploads/system/uploads/attachment\\_data/file/237343/Additional\\_Guidance\\_for\\_Reviews\\_of\\_Public\\_Sector\\_Research\\_Establishments.pdf](https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/237343/Additional_Guidance_for_Reviews_of_Public_Sector_Research_Establishments.pdf)

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this new guidance arrived too late for me to fully consider the relevant issues for HSL in this Review. However, the new guidance will provide a useful framework for an in-depth review of which delivery model best serves the unique and distinctive role that HSL provides to Government (based on its capabilities, assets, expertise and activities).

- 3.72 Until such a review is completed it is not appropriate to consider a change in the status of HSL. Its core service is vital and its unique mix of capabilities would not easily transfer elsewhere without much loss of knowledge and expertise. Instead there is currently a real opportunity to increase its benefit to the taxpayer by exploiting its knowledge and promoting innovative growth. Consequently, I would like to see, in the short term, HSE continue its efforts to maximise the commercial potential of HSL.
- 3.73 In carrying out this further review, DWP, HSE and HSL must test the various delivery models for HSL against how they ensure the viability of its distinctive role in the short, medium and long term. They must avoid creating any adverse impact on HSL's or HSE's sources of funding or compromising the core role of HSL/HSE as a regulatory body. It will be the role of the HSE Board to ensure that this does not happen. But the business case being prepared should cover the need for HSL to have sufficient working capital to develop and innovate.

I recommend that HSL's work to support HSE remains in HSL (as an agency of HSE) at this time.

I recommend that DWP work with HSE and HSL to complete a fuller analysis of HSL's role to decide the best commercial delivery model going forward. The new high-level principles on the role and delivery model of public sector research establishments, recently issued by the Department for Business, Innovation and Skills (BIS) and the Cabinet Office, will provide a useful framework for an in-depth review of which delivery model best serves the unique and distinctive role that HSL provides to Government.

I recommend that this review of HSL is commenced before the end of the current financial year to allow HSL to make the most of opportunities that clearly exist in global markets to exploit the HSE/HSL brand, for the benefit of the taxpayer.

### Provision of advice for land use planning

- 3.74 During this Review, businesses in the chemical sector and property developers have told me that they feel frustrated by the planning system in a number of respects. HSE is responsible for advising LAs, when requested, on the risks from chemical process sites storing or using large amounts of hazardous substances (see Annex H for more information on HSE's role). This was the only example where the regulator (in this case LAs) was accused of impeding economic growth.
- 3.75 Businesses in the chemical sector want applications for changes in their inventories of hazardous substances dealt with quickly so that they can take advantage of market opportunities. They also point to examples of decisions that allowed developments in the vicinity of one or two sites, which introduced a significant change to the consequences of any accident on that site. This in turn required them to take further measures to mitigate public risk and increased their cost. Developers say that they can sometimes incur significant costs in design work, land acquisition etc only at the final stage to have a proposal turned down on the basis of public risks (from existing sites using or storing large amounts of hazardous substances of which they were unaware).
- 3.76 In short, the planning process, and HSE's role within it, does influence a range of important investment decisions. HSE has been looking at how it can address these concerns, and is proposing it should become engaged earlier in the planning and development process. For example, a developer's initial proposal might create a significantly increased public risk. However, if they could have a dialogue with HSE while the proposal is on the drawing board, relatively inexpensive modifications could be made to reduce the risk and enable the development to go ahead. Currently, and driven by limited resources, HSE can only be involved in such pre-application discussions very rarely. The prize of earlier engagement and, with it, increased certainty for developers, has significant value and is something for which they have indicated that they are prepared to pay.
- 3.77 HSE's unique knowledge and expertise makes it an important advisor to the planning process. This should remain the case. How that advice is delivered to LAs, developers and businesses in the chemical sector is the key question. One option HSE is pursuing is to place HSE's land use planning advisory functions within

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HSL and provide a fee paying service to developers and businesses in the chemical sector for early advice.

- 3.78 Such funding should also enable HSE to provide more support to LAs. They could have some early input from HSE and additional discussions on the context, scale and nature of the risks from an installation should lead to planning decisions which are both speedier and better informed. This combination will enable HSE to provide a service which is more responsive to the broad needs of society in balancing development, growth and public risk.

I support HSE's proposal to provide a fee paying service to developers and businesses in the chemical sector for early land use planning advice. I also support the proposal to move this advice work into HSL, as part of the above recommendation for HSL to increase its commercial activity. I recommend that it publishes its intention on how it will progress this proposal by April 2014.

### **Inspection of organisations with mature health and safety management systems**

- 3.79 A consequence of the reduction in HSE proactive inspections, and the behavioural changes arising from FFI (discussed above) is that HSE is not spending as much time engaging with organisations with a mature health and safety management system. By this, I mean organisations that:

- can demonstrate they have effective health and safety procedures in place
- are committed at the highest level of the organisation to managing their health and safety risks
- have effective arrangements to engage their workforce in health and safety
- are not in the highest risk sectors
- have injury and ill health rates above average in performance for their sector.

- 3.80 In the evidence that I received, a number of such organisations have not welcomed this change in HSE's emphasis and priorities. They are concerned that they do not

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get enough HSE time/support in stimulating and assisting them to deliver continuous improvement in their performance – which they see as integral to their business philosophy and sustainability. They often also wish to engage HSE assistance to influence others in their supply chain to improve their health and safety performance. Some have said they are more than willing to pay HSE for this service.

3.81 It is clear to me that this demand from businesses should be met. As it would be entirely voluntary, the volume of such work would reflect the market demand and would not be funded by the public purse. HSE expertise is seen as a valued input by businesses (but different in nature from the normal commercial consultancy function available). Such a scheme would facilitate access to HSE's wide-ranging experience of working with and improving the performance of large organisations across many sectors and industries. HSE also benefits from such interactions as:

- it provides HSE with examples of what is possible
- such companies have unique links with other businesses in their supply chain, local area or wider sector
- which in turn can be used to improve the performance of others.

3.82 For such a scheme to be successful I would envisage:

- some similarities to the primary authority scheme, which is available for LA-enforced national companies, or to the structured approach taken by HSE's site-specific Intervention Plans (used for major hazard sites). HSE's Intervention Plans identify what HSE will do with a company (or site) during a rolling period of between one and three years. The topics in the plans are identified by an HSE inspector and are based on the hazards present, the site operator's ability to manage risk, and the sector's strategic priorities with a view to achieving sustainable performance. The Intervention Plan would set out the key issues that will be sampled by HSE Inspectors in order to provide the clearest picture of safety management performance
- no change to the current reactive approach of investigating incidents and concerns. The 'normal rules of engagement' should continue to apply for such reactive work, driven by HSE's incident selection and concerns criteria, and there

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would be no changes of the application of HSE's Enforcement Policy Statement<sup>38</sup>. It is important that organisations are not seen as being able to buy themselves out of public accountability for any significant failures of their management systems

- no requirement to apply charges under FFI during the course of visits as the organisation would already have committed to paying for all the time HSE spends with them, as well as any time spent preparing the intervention plan or following up in the office.

I recommend that HSE investigates the provision of a fully chargeable inspection service for organisations with mature health and safety management systems who wish to engage the assistance of the regulator in maintaining and improving their health and safety performance.

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<sup>38</sup> <http://www.hse.gov.uk/pubns/hse41.pdf>

### HSE's interface with the Health and Wellbeing Agenda

- 3.83 Many of the responses that I received supported the need for HSE's statutory functions to address work-related ill health and, as I have addressed above, called for HSE to do more in this area. A note of caution was raised with me that the interface between health and safety law and the wider Health and Wellbeing agenda can be confusing.
- 3.84 In short, Wellbeing seeks to promote healthier behaviours among the working age population<sup>39</sup>, particularly on issues such as obesity, smoking and alcohol abuse, but includes other public health issues. The potential confusion particularly comes to the fore on ill health conditions that have both work and non-work causes. These include the two most common work-related ill health conditions: musculo-skeletal disorders (MSDs) and stress.
- 3.85 It was put to me that ten years ago HSE was very active in research and publishing of new guidance on these areas. For example, the HSE Management Standards for Work-related stress<sup>40</sup> published in 2004. Following that, HSE has reduced the resources invested in these topics. It was alleged that HSE has lost control of its 'brand' in this area and that others, including other government bodies such as Public Health England (PHE), the National Institute for Health and Care Excellence (NICE) or the Advisory, Conciliation and Arbitration Service (ACAS), have stepped into this space to provide advice to businesses. In doing so, the messages for businesses and for individual workers about taking action on stress have become conflated and confused.
- 3.86 I recognise that it is difficult for HSE to get the balance right in this area. However, there is a clear statutory role for HSE to take the lead on the work-related causes of ill health. In particular, it is for HSE to provide absolute clarity about what employers must do because it is a legal requirement to control risks from work activities, and what they may choose to do (e.g. because they see business benefits and/or they

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<sup>39</sup> For example, in England the Department of Health, Public Health England and the LGA's Public Health Responsibility Deal seeks to mobilise businesses to support health improvements for their employees, tackling issues such as poor diet, alcohol, physical activity and smoking. Similarly, in Scotland a wide partnership of Health and Local Authorities has an agreed programme that also addresses issues such as accidents in the home or on the roads.

<sup>40</sup> <http://www.hse.gov.uk/stress/standards/>

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wish to support employees to improve their general health). As the regulator, HSE's role in providing straightforward guidance is as essential here as it is on safety.

- 3.87 In doing this, HSE should be prepared to actively engage with other public bodies that are developing wellbeing programmes. HSE's role should be supportive of wellbeing and wider public health programmes, where it is able. But promotion of those agendas is not its core responsibility. It may have to challenge other public bodies if they inadvertently misrepresent what health and safety law does and doesn't require. I recognise that given the range of bodies that does work in this area there are resource implications for HSE to do more engagement on these issues.

Those who promote wellbeing in the workplace should not allow it to be confused with health and safety requirements. I recommend that HSE should ensure its own guidance sets out clearly what employers must do to control work-related health risks and be prepared to challenge others if they inadvertently misrepresent what the law requires to promote the wider wellbeing agenda.

### **HSE and Other Regulators:**

- 3.88 Lord Robens' report set out his vision of bringing the then multiple work-safety regulatory authorities together, where possible and practicable, to ensure professionalism, consistency of standards and cohesion. I believe that this principle of convergence is as relevant today.
- 3.89 As I have already set out, HSE has established a regulatory approach that is based on many years experience of applying risk-based, proportionate enforcement principles. Where there have been major incidents, such as the rail crashes of the late 1980s, the offshore Piper Alpha explosions and fire in 1988 and the foot and mouth disease outbreak of 2007, HSE has been the regulator to which Government has turned to impose an effective regulatory regime.
- 3.90 HSE now co-regulates work-related health and safety with LAs, the Office of Rail Regulation (ORR) and the Maritime and Coastguard Agency (MCA). There are a number of other public bodies who lead regulation on non-health and safety issues with which HSE closely interacts, e.g. the Environment Agency. I asked my Triennial Review team to draw up a list of all relevant regulators with whom a business may need to interact, but even they were not certain they could produce a definitive list.
- 3.91 Where regulators cover similar issues, but for different aspects, there is often a complexity around the interface between regulators that too often businesses have to resolve. My view is that convergence over time to a smaller number of regulators, brought together under a common set of principles, and common professional and operational values, should be the goal. I believe that in general, HSE should be the regulator into which other regulators would be moved. This would create a more consistent regulatory regime.
- 3.92 However, the practicalities involved in such institutional change mean that the cost and distractions would, in the majority of cases, not be worthwhile at this time. I have suggested to the Cabinet Office that future Triennial Reviews might wish to look at groups of regulators to identify whether opportunities to converge present themselves.
- 3.93 There would of course be potentially very significant funding and business continuity implications of some of these changes. Where any further functions are taken on by

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HSE then the merger and the ongoing functions should be resourced appropriately for their effective delivery.

I recommend that opportunities for further convergence between regulators should be taken up where this makes operational sense and would reduce the burden to business. To this end, future Triennial Reviews of HSE should be aligned with reviews of similar regulatory bodies and should actively consider the opportunities for greater convergence.

- 3.94 In the meantime, it is vital that the various regulators improve how they work together. HSE and other regulators have Memoranda of Understanding which aim to address the interfaces between them<sup>41</sup>. While the Memoranda of Understanding are not wrong, I found they are too often written from the perspective of the insider. The procedures and processes designed to facilitate interactions between the regulators must be devised with the external business user in mind and the Memoranda should be reviewed to reflect this.
- 3.95 Many businesses who regularly work across regulatory divides argued that interface of responsibilities should firstly be clear to those they regulate and those who they protect, and it should be for the regulators to bear the burden of sorting out the complexities that arise. In particular, they wanted regulators to share information and work together where possible to provide a single approach, for example avoiding clashes of timing for their interventions. This theme came through strongly in the recent BIS Focus on Enforcement Review of the chemical industry<sup>42</sup>. HSE and the Environment Agency have developed a joint action plan to address the findings of that Review. Actions include providing a single account manager for larger sites and inspections of smaller, lower-risk sites to be carried out by one body on behalf of both. While this action plan is still in its early stages, I believe these are very positive examples of radically different approaches, designed to improve the regulatory approach, while not reducing the necessary robustness of the controls required for these major hazard sites.

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<sup>41</sup> HSE maintain a list on their website, but some are hosted on other organisations websites:

<http://www.hse.gov.uk/aboutus/howwework/framework/f-2001-3.htm>

<sup>42</sup> The Focus on Enforcement: Chemicals (COMAH) report and related action plan are available from the gov.uk website:

<http://discuss.bis.gov.uk/focusonenforcement/review-findings/chemicals-comah-review-regulatory-reform-package-announced-summary/>

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I recommend that HSE continues to work with other regulators to ensure that the procedures for dealing with the interfaces between them and the associated Memoranda of Understanding (MOU) are up to date, reflect best practice, and are user tested by external stakeholders.

I recommend that HSE and the Environment Agency should continue to deliver the action programme identified by the Focus on Enforcement Review of the Chemical Industry. I believe this action programme contains some arrangements to address a single approach that could be useful in HSE's relationships with other regulators and therefore any lessons learned should be shared.

### *HSE and ORR*

3.96 I found that the interface between HSE and ORR generally worked well. However, some construction contractors, and ORR, raised that where a major rail project moves from being a construction site (enforced by HSE) to being regulated by ORR there can be issues that could have been dealt with more effectively if they had been included in early design. This leads to pressure on HSE to hand over to ORR at an earlier point. I did not think there was a case for changing the current enforcement allocation, but the issue may be resolvable by an appropriate working arrangement, for example using something akin to the single account manager model being applied to chemical sites.

I recommend, to help avoid instances of uncertainty, particularly on large-scale rail infrastructure projects (e.g. High Speed 2), that HSE and ORR review their Memorandum of Understanding to ensure the arrangements are fit for purpose for early involvement of ORR in design issues and handover for such projects.

### **Local Authorities**

3.97 I have considered HSE's links to LAs with whom they are coregulators of the Health and Safety at Work etc Act 1974. Overall, the evidence I heard supported the view that LA inspection is a concern for a number of reasons. Stakeholders said they are concerned about variable enforcement, conflict of priorities, limited professional leadership and limited exchange of knowledge across to HSE and to a degree, other

authorities. Having said this, I was also provided with examples of local authority inspectors using tailored approaches to make the best use of the resources they and HSE have to address the health and safety issues most relevant to businesses in their local area.

- 3.98 The reasons for variability in enforcement approaches between LAs are not straightforward. There are currently severe pressures on LAs from reduced funding, which is playing out in different ways according to whether health and safety is a priority locally. There is a real risk that the financial pressures facing LAs will mean that health and safety will command less attention and resource than is necessary to maintain a minimum service. Professor Löfstedt<sup>43</sup> said *“To ensure that enforcement is consistent and targeted on risk, there needs to be one single body directing health and safety enforcement policy across all workplaces currently regulated by HSE and LAs.”* As a result he recommended that *“legislation is changed to give HSE the authority to direct all LA health and safety inspection and enforcement activity, in order to ensure that it is consistent and targeted towards the most risky workplaces”*. The Government in responding fully supported the overall objectives of the recommendation, which they said *“provided a clear case for change and reducing the burdens on business. At the same time, the Government did not want to create an even more centralised approach that is further removed from local businesses and communities”*. This recognised the important role for local inspectors to use their knowledge and experience to engage with businesses across a range of regulatory issues.
- 3.99 On balance, the evidence provided to me also points to the benefits of a single regulatory body, but acknowledges that the current split of responsibilities between HSE and LAs is a “pragmatic compromise”. My personal view, supported by many, remains that health and safety regulation should be enforced at all workplaces by HSE. But I recognise that it would require an increase in HSE resources, potentially a transfer of existing LA inspectors into HSE and other disruption which it is simply not practical to embark on at this time. Therefore, resources are best utilised in enabling the existing relationships to work better.

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<sup>43</sup> The Professor Löfstedt report, *Reclaiming health and safety for all: an independent review of health and safety legislation*, (28 November 2011) available on the gov.uk health and safety reform website.

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3.100 As part of the Government's health and safety reform the National Local Authority Enforcement Code was issued in May 2013 (see Annex I). At this early stage, evidence is limited on its effectiveness. It will need time to bed in properly.

I recommend that HSE should actively review LAs annual returns on their inspection and advisory activities. Where there is evidence of significant deviations from the norm they should explore the reasons with the outliers. HSE should draw the attention of the appropriate political leader of those LAs where its performance is significantly out of step of the potential risk this may pose.

I recommend that the National Local Authority Enforcement Code is reviewed in 2014 in the light of experience to identify areas for change and amendment.

3.101 HSE and LAs have established liaison groups, organised in regions. LAs cited the value of these groups in sharing knowledge, experience and peer review. However, HSE seems to have wholly or partially withdrawn from many of these and the organisation and leadership of these groups has now passed to LAs, with HSE attending where possible or by invitation. LAs and HSE are going through change and adjustment to meet new and existing demands within smaller budgets. I believe the temptation from both sides may be to withdraw from partnership working as it seems to be a lower priority than frontline work. However, improved working relationships and partnerships between HSE and LAs should be key to finding ways to work better for less.

3.102 Ideally, there should be a defined level of service for LAs to protect inspection programmes and the agreed Key Performance Indicators. But this would be difficult as the circumstances and geography of LAs will vary greatly. HSE already receives data from LAs on their inspection and advisory work. It publishes this to allow LAs to compare their performance against others. However, I believe HSE should be more active in monitoring this and addressing those LAs whose returns appears to be an outlier. For example, from last year's returns, there were 41 LAs doing no proactive inspections at all and 11 LAs (3 per cent) out of the 348 who appear to have carried out 35 per cent of the inspections in lower risk businesses. Of course there may be data recording, or other reasons, that would explain the apparent anomaly, but this needs to be actively addressed. HSE is the only body in a position to do this for all LAs.

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I recommend that HSE's LA Liaison Groups should be strengthened and maintained and that HSE's role in those Groups should be to provide expert professional guidance, constructive challenge and leadership.

I recommend and value LAs working together and in partnership with HSE to ensure value for money. Ideally, there should be a senior champion and a single point of contact and single regulatory organisation in each LA or grouping of LAs. But what works well locally and local political accountability is just as important.

### *The Offshore Oil and Gas Environment and Decommissioning Unit*

- 3.103 The Department of Energy and Climate Change's (DECC's) Offshore Oil and Gas Environment and Decommissioning Unit (OGED) responsibilities include the regulation of environmental issues for offshore oil and gas exploration and production, offshore gas unloading and storage and offshore carbon dioxide storage activities. HSE's Energy Division is responsible for the regulation of health and safety issues on the same installations including the prevention of major incidents that could involve multiple fatalities to offshore workers and could result in significant environmental consequences.
- 3.104 Following the Deepwater Horizon disaster in the Gulf of Mexico in 2010, Professor Geoffrey Maitland's review examined the recommendations which emerged from the various reports into that disaster. His report considered their relevance to the oil and gas industry in the UK and reviewed the extent to which they might inform modification or improvement of the regulatory regime in this country, published December 2011. While he in general found that there was a strong regulatory system in the UK, one of his conclusions was that there is a need for "*[a] more integrated regulatory system. Given the intrinsic link between the safety of those employed on offshore installations, the protection of the physical environment in which they operate, and the management systems in place to control these risks, closer collaboration between relevant regulators is likely to contribute to a strengthened and more efficient regime.*"

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- 3.105 On the 10 June 2013 the European Commission introduced a Directive<sup>44</sup> with an objective of reducing as far as possible the occurrence of major accidents related to offshore oil and gas operations and limiting their consequences where they do occur. This requires Member States to have arrangements to ensure that the risk of such an accident in European waters is reduced and is as low as reasonably practicable. Given the loss of life and significant environmental damage caused by the Deepwater Horizon disaster, the Directive covers both worker safety and environmental protection.
- 3.106 The Directive requires close integration of safety and environmental issues, for example the current safety case regime overseen by HSE will need to be supplemented by the Directive's requirements relating to environmental protection. It also requires Member States to set up a Competent Authority (CA) to oversee the regulation of offshore safety, and related aspects of environmental protection and emergency response. The Directive requires appropriate measures to ensure the independence of the CA, in particular avoiding conflicts of interest with Government bodies responsible for the licensing functions and the promotion of the benefits of oil and gas extraction. DECC and HSE are jointly leading the transposition of the Directive, which requires implementation by July 2015.
- 3.107 Towards the end of this Triennial Review (11 November 2013), Sir Ian Wood has published his Interim Report: United Kingdom Continental Shelf (UKCS) Maximising Recovery Review<sup>45</sup>. This review looks at how the Government's stewardship of the extraction of oil and gas on the UKCS can be improved to ensure that the maximum benefit to the UK economy is realised. This review did not look at safety or environmental regulation. Sir Wood has recommended separation of the functions currently performed by OGED and proposes that this could be achieved by moving the licensing and promotion functions to a new arms-length body. He is currently consulting on his interim report and will publish his final conclusions next year.
- 3.108 There is a great deal of commonality in the work of HSE's Energy Division and DECC OGED, but also some crucial divergence. From the evidence that I received, I have concluded that the majority of businesses in the offshore sector would prefer to have

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<sup>44</sup> Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 2004/35/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:178:0066:0106:EN:PDF>

<sup>45</sup> <http://www.woodreview.co.uk/>

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a single regulator and, in relation to safety and environment regulation, at least a convergence of approach. The issues that apply to all regulators concerning the benefits to those who are regulated of a single approach apply here.

- 3.109 For offshore installations, uncoordinated inspections can be especially burdensome to the businesses concerned, as they are necessarily difficult to access. I understand that HSE and DECC inspection staff have been working to resolve this for a number of offshore activities, but it remains an issue. The current Memorandum of Understanding sets out how the two regulators work together<sup>46</sup>
- 3.110 However, the key divergence between the regulators was characterised to me as their different approach to regulation. HSE's approach focuses on the prevention of accidents and incidents. The work done by HSE on the implications of ageing infrastructure was provided as an example of a regulatory intervention that has been very significant to improved safety offshore. In contrast, OGED's approach was described as more reactive, focusing on recording and issuing penalties for oil leaks, rather than on preventive measures. I recognise that the OGED environmental regime includes prescriptive measures to satisfy EU and other international requirements. OGED have also made clear that they undertake preventative work in addition and the risk-based approach is a feature of all impact assessment work.
- 3.111 On balance, I believe there is strong support for a single regulator to be responsible for offshore safety and environmental protection. There are a number of ways in which this can be achieved, however HSE has a proven record of applying its risk-based, proportionate, preventative approach to regulation to a variety of risks and therefore I would like to see them take the lead. There remains work to do to establish the Competent Authority required by Directive 2013/30/EU and the final conclusions of the Wood review are likely to address the structure of DECC's OGED. These changes provide an opportunity to seek greater convergence between HSE and OGED on the regulation of safety and environmental protection.

I recommend that in implementing the EU Directive 2013/30/EU requirement for a Competent Authority by 2015 that HSE and DECC should consider moving into HSE, where appropriate, environmental protection inspection functions currently

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<sup>46</sup> [http://www.hse.gov.uk/aboutus/howwework/framework/f-mou\\_f.pdf](http://www.hse.gov.uk/aboutus/howwework/framework/f-mou_f.pdf)

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carried out by DECC's Offshore Oil and Gas Environment Unit.

I recommend in any case that the DECC approach to regulating offshore environmental pollution risks needs to be brought significantly closer to HSE's preventative approach. I believe the structural change of bringing them within HSE would facilitate the necessary operational changes to address the concerns about consistency of approach raised by businesses in the sector.

### *Care Quality Commission (CQC)*

3.112 Following the Francis Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry<sup>47</sup> and the recent publication of the Government response<sup>48</sup>, work is underway to tackle what were clearly severe failings to manage patient care at that Trust. Of the 290 recommendations in the report 4 relate explicitly to HSE (numbers 87 to 90) and others impact on the boundaries between what CQC and HSE will do. The response sets out how the Government will implement changes that will effect the regulatory relationship between HSE and the Care Quality Commission (CQC).

3.113 I found that there is a complex interface between the two bodies, with overlap but not alignment in their responsibilities. HSE is involved in health and safety issues (but not care quality) of healthcare workers and, in some instances, patients. CQC is involved in both safety and care quality for patients, that might also impact on worker safety or work standards. In addition, HSE has responsibilities in the regulation of service user safety in social care, where there are perhaps even more complex interfaces with LAs as service commissioners, service providers and regulators. However, this is outside of the remit of CQC. HSE is keen to ensure some consistency about the extent of its remit across its areas of responsibility.

3.114 The two bodies had significantly different approaches to handling information about poor performance and procedures to respond to individual adverse incidents or concerns raised by the public. This has, on occasion, led to information not being passed between HSE and CQC or evidence has not been obtained by one body in a format that can be used by the other.

<sup>47</sup> Report available online at <http://www.midstaffspublicinquiry.com/> published February 2013.

<sup>48</sup> Government response available online at: <http://francisresponse.dh.gov.uk/>, published November 2013.

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3.115 I am of the view that CQC clearly remain the primary body to regulate the safety and quality of patient care. As the government response has been published at a late stage in my enquiries there was uncertainty at the time that I was receiving evidence about the implications for HSE. A number of responses to me expressed concerns that HSE could be drawn into much more work on patient safety than it has previously been involved in and this would detract from its ability to deal with worker safety.

3.116 The Government response takes into account the overall activities of CQC and in greater detail than it is appropriate for me to consider. My views on the need for greater convergence, with the maintenance of a proportionate, risk-based approach to regulation have, however, been shared with Department of Health officials.

3.117 In summary, with respect to the HSE/CQC interface, Government concluded that:

- CQC's approach to enforcement needs to be strengthened and that this will be achieved through revised requirements for registration and improved fundamental standards that will allow CQC to take more effective action where there are clear failures to meet basic standards for care.
- Care Quality Commission and the Health and Safety Executive will together develop and agree criteria and handling arrangements for the matters that the Health and Safety Executive will investigate.
- The Health and Safety Executive will support the Care Quality Commission in developing its role in investigating and prosecuting in cases of unacceptable care.
- HSE will share, on a more frequent basis, information it receives on accidents involving patients under the Reporting of Injuries Diseases and Dangerous Occurrences Regulations.
- the CQC/HSE Liaison Agreement<sup>49</sup> will need to be revised to reflect the above changes.

3.118 I support these actions which I understand are in line with my general recommendation that regulators should seek a single approach and that the

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<sup>49</sup> <http://www.hse.gov.uk/aboutus/howwework/framework/mou/cqc-hse-liaison.pdf>

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interfaces between their activities are clear to those that they regulate and to those who are protected.

I recommend that any additional work to be undertaken by HSE arising from the implementation of the Francis report must be properly resourced, so that there are not any negative impacts on HSE's existing commitments.

I recommend that the revision of the Liaison Agreement between HSE and CQC should include input from those who are regulated and those who represent patients to ensure it is clear to them how the interfaces between the regulators will work.

I recommend that HSE must also work with the various other parties involved in regulating social care to see how equivalent arrangements for improved co-ordination might be extended to that sector, including LAs.

### *Gangmasters Licensing Authority*

3.119 I received a number of comments on the relationship between HSE and the Gangmasters Licensing Authority (GLA), stating that it is not appropriate to bring gangmaster licensing functions within HSE. I believe these arose because consideration has previously been given to merging GLA with HSE. This proposal was discounted at that time because of differences in the GLA and HSE remits, and resulting operational procedures, meaning that it was determined that there was very little scope for real operational benefits or synergies to be achieved.

3.120 Currently, GLA is itself subject to a Triennial Review by its sponsor Department, Defra. My conclusion, that merging the two bodies at this time is not appropriate, has been endorsed by Defra in their Review of GLA. However, overall there is still a need for greater convergence of approach in regulatory bodies and specifically that there is a requirement to update the HSE/GLA Memoranda of Understanding (see Annex J).

I recommend that HSE and GLA review and refresh their Memorandum of Understanding.

## **Stage Two**

**If it is concluded that the functions of HSE should continue to be delivered by an arms length body:**

**Whether adequate control and governance arrangements are in place to ensure that the body complies with the principles of good governance.**

## Chapter 4: HSE Corporate Governance

- 4.1 Having concluded that HSE should continue as an Executive Non-Departmental Public Body (NDPB), I have moved onto the second stage of the Review process.
- 4.2 The Cabinet Office has published principles for good corporate governance for Executive NDPBs, listed in an Annex to the main Triennial Review guidance<sup>50</sup>. I considered each of the principles against evidence from HSE, DWP and others to evaluate whether HSE complied with the Code, or where alternative arrangements had been put in place that there was a satisfactory explanation of how these met at least an equivalent standard for governance (the “comply or explain” approach). Annex J contains the full assessment against each principle. In summary, my initial conclusion was that HSE is satisfactorily achieving compliance against Governance principles.
- 4.3 I also took into account the comments made by respondents to the Call for Evidence on the Stage Two question of the Review. Many chose not to respond or indicated that the governance arrangements were not something of which they had personal knowledge. Therefore, the evidence here was more limited than for some other questions that I have addressed. A good number of those that did comment simply stated that the governance arrangements remain appropriate. Those that offered a counterview mainly said that they believed there has been greater political control and interference in the work of HSE in recent years and/or commented on the HSE Board (which I address more fully below).

### DWP sponsorship of HSE

- 4.4 HSE sets its own strategy and business plan (see Annex C). As set out in Annex J, there are regular meetings between the HSE Chair, Chief Executive and the Minister to discuss delivery of the plan and any emerging issues. The Chief Executive is HSE’s accounting officer, responsible for ensuring that HSE’s finances are in accordance with the relevant standards and requirements for managing public money. There are formal processes by which DWP monitors HSE’s delivery of its plan and conformity with the relevant DWP planning and performance monitoring frameworks. This includes a quarterly HSE Sponsorship Board, chaired by a DWP

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<sup>50</sup> The Cabinet Office guidance for triennial reviews is available from the gov.uk website: [http://www.civilservice.gov.uk/wp-content/uploads/2011/09/triennial-reviews-guidance-2011\\_tcm6-38900.pdf](http://www.civilservice.gov.uk/wp-content/uploads/2011/09/triennial-reviews-guidance-2011_tcm6-38900.pdf)

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Director, which meets quarterly. Reports on HSE's delivery of its plan are also submitted to the DWP Executive Board.

4.5 HSE and its DWP sponsorship team have an established and close working relationship. The sponsorship team is responsible for overall delivery of aspects of the Government's health and safety policy. For example, the 2008 Government health and safety reform agenda, as set out in *Good Health and Safety, Good for Everyone*<sup>51</sup>, including Professor Löfstedt's review of health and safety Regulations. HSE is subject to the direction of the Minister and HSE has been involved in delivery of many of the changes that arise from these reforms. Under previous administrations HSE was equally involved in delivering previous government strategies for health and safety<sup>52</sup>. I did not find that the fundamental relationship between HSE and its Minister had changed.

4.6 There have been some relatively recent procedural changes to requirements concerning the relationship between an arm's length body and their sponsoring department (for example, the requirement for a Triennial Review was only introduced in 2010). I found the existing Framework Document<sup>53</sup> between DWP and HSE which dates from 2009 does not fully reflect the current position.

I recommend that HSE and DWP urgently review and revise as necessary the existing Framework Document to ensure that it reflects the current working arrangements and updated procedures and that it is fit for purpose as HSE moves forward.

### The HSE Board

4.7 HSE has an entirely Non-Executive Board. The HSE Board currently has ten members, including the Chair (see Annex E), plus an ex-officio Office for Nuclear Regulation (ONR) Board representative. Its constitution is set out in the Health and Safety at Work etc Act 1974, and an internal Code of Practice sets out its working arrangements.

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<sup>51</sup> Details of the Government's health and safety reform is available on the gov.uk website:

<https://www.gov.uk/government/policies/improving-the-health-and-safety-system>

<sup>52</sup> For example, the *Revitalising Health and Safety Strategy*, launched by the then Deputy Prime Minister in June 2000.

<sup>53</sup> The DWP and HSE framework document is available from the HSE website:

<http://www.hse.gov.uk/aboutus/howwework/management/dwphse.pdf>

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- 4.8 While I found that the HSE Board was overall adequately fulfilling its role, it was not described by anyone as dynamic or an example of best practice. I gained an impression that the Board has not fully completed the transformation envisioned following the merger of the Health and Safety Commission and the then HSE in 2008<sup>54</sup>. The three intended benefits of the merger were to provide a more accountable structure, better decision making and a clearer public and regulatory presence. While they have achieved the last of these, I believe it has not fully delivered either clear lines of accountability or optimal decision making, particularly around decisions on resource management.
- 4.9 As an experienced Chair and member of a number of Boards, in both the public and private sector, I believe the purpose of any Board is to support and promote the organisation, to set its strategic direction, to hold it to account for delivery and rigorously challenge the executive's performance.
- 4.10 The recommendations I have made in the first part of this report provide an opportunity for the HSE Board to shape a new strategy for HSE. While the need to improve health and safety at work must remain the Board's priority, the challenges, tasks and rationale for HSE are now different to those faced by Lord Robens. There is a mature Health and Safety system and, as recognised by Professor Löfstedt's review of regulations, a broadly sound legislative framework in operation. Changes to the detail of the legislation are now primarily driven by Europe or Government reforms. Therefore, while its advisory role on health and safety policy remains vital, it should be at least as engaged in ensuring HSE is fit to deliver its mission and to do so in an efficient and effective way.

I recommend that in light of the other changes recommended in this report that the remit of the HSE Board should be reviewed and refreshed.

- 4.11 It was suggested to me that the Board is currently perhaps too reliant on the significant, personal strengths of its current Chair and as a result that other Board members did not each take on their share of the Board's responsibilities. The HSE Board would not be alone in struggling to find a good balance of the right people, prepared to fill the seats on a public body.

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<sup>54</sup> The reasons for the merger are set out in the Consultation Document available on HSE's website: <http://www.hse.gov.uk/consult/condocs/cd210.htm>

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- 4.12 If the HSE Board is to effectively play its part, the individual Board members must have the right mix of skills and competencies to deliver its remit. These include the necessary competencies/attributes common to all Boards, such as commitment to the organisation's mission, personal integrity, communication and teamworking skills and an ability to be strategic, analytical and/or challenging, as appropriate. Then HSE also has some specific competencies/attributes that some, but not necessarily all Board members will need to have, and these may change over time. For example, all Board members should have sufficient understanding of the scrutiny of annual reports/accounts to contribute, it is appropriate to require a few Board members to have a deeper understanding to ensure they can robustly interrogate and challenge financial information (including those who sit on the Audit sub-Committee).
- 4.13 It is my view that to deliver my recommendations the HSE Board will need to strengthen its skills/competencies amongst its members to include modern communication know-how, improved commercial acumen and delivering customer-focused services. There may be other skills/competencies gaps.
- 4.14 I fully support the need for HSE Board members who have experience of, direct contact with and preferably are currently active in, the relevant 'user interests', including employers, employees and local authorities, as envisioned by Robens<sup>55</sup>. I have in a mind that for the Board as a whole it should be possible to set out a matrix of required skills/competencies and required experience/background. For example, if the Board requires a person with the necessary skills to drive a modern digital strategy for the organisation, that person may equally come from an employer, worker, local authority or other background. What is essential is that the overall balance of the Board is right and is maintained. This will of course involve some analysis of the right skills balance and, over time, careful succession planning.

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<sup>55</sup> Lord Robens recommended that *"the 'user interests' in this field – that is to say the organisations of employers and workpeople, the professional bodies, the local authorities and so on – must be fully involved and able to play an effective part in the management of the new institution. ... Responsibility lies with those who have a voice in decisions. It is essential therefore that the principles of shared responsibility and shared commitment should be reflected in the management structure of the new institution"*.

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I recommend that a matrix of desirable skills/competencies and required experience/background for HSE Board members is drawn up by DWP to reflect the remit for HSE. I suggest the current Board is engaged in this process. Appointments on the basis of the new matrix should begin as soon as possible.

4.15 I received concerns about the appointment of HSE Board members. The argument made was that the Minister appoints Board members in an ‘open process’<sup>56</sup> and that, in their view, conflicts with a perceived statutory requirement that certain members are appointed to ‘represent’ workers’, employers’ or other specific interests (some referred to this as tripartism)<sup>57</sup>. I find it odd that there is a complaint about appointing Board members through an ‘open process’. I would expect support for public appointments on the basis of merit, by an open, fair process. In practice, DWP use consultation at an early stage of the appointment process to assist the Secretary of State to find a choice of candidates who have good links with the various stakeholders in the wider health and safety system, with a view to meeting the Robens’ principle of involving user interests.

4.16 I believe that this highlights a particular challenge for HSE. It’s right that its Board members should be drawn from the community with which it interacts. HSE’s authority as the lead body on health and safety at work is undoubtedly strengthened by Board members who have and maintain a trusted link between workers’ and employers’ interests. However, the Board members must not be there to lobby HSE on behalf of those other interests, or be seen to bring vested interests to their considerations.

4.17 I recognise the importance of tripartism in HSE’s activities. I found many examples of HSE involving relevant representatives of employers, employees and others at many levels of its work. For example, in HSE’s advisory committees (see Annex F), public consultations and formal/informal working groups. This engagement ensures agreed health and safety improvements are taken forward by the industries themselves. While it is essential that the HSE Board holds the executive to account for delivery of

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<sup>56</sup> The Board members are appointed by the Secretary of State for Work and Pensions, in accordance with principles of public appointments set out in the Code of Practice for Ministerial Appointments to Public Bodies. The principles are merit, fairness, and openness.

<sup>57</sup> It is a requirement of Schedule 2 of the Health and Safety at Work etc Act 1974 that seven Board members are appointed after consulting various interested stakeholders, specifically three for employers, three for employees and one for local authorities.

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this engagement, I did not find that a numerical requirement for Board representation is essential to achieve this.

I recommend that if it is not possible to achieve the appropriate balance of skills/competences and required experience/background of HSE Board members and retain the current statutorily specified number of Board members (appointed after the Minister has consulted with specific representative groups) that the number of specified Board members should be reduced.

# Recommendations

## Chapter 5: Full list of Recommendations

5.1 This Chapter lists the recommendations without further comment. The page references are to the sections of the body of the report that contain the relevant explanatory text.

### **Conclusion on the Stage One questions – pages 33 - 41**

5.2 I have concluded that the functions delivered by HSE remain necessary, and that a non-departmental public body, such as HSE, is the best model for delivering those functions. However, there are a number of areas in which HSE can improve delivery and explore options for further commercialisation or delivery through and in partnership with others.

### **Fee For Intervention – pages 58 - 62**

5.3 I recommend that HSE's planned review post October 2013 should include:

- stakeholder representation in the review team to provide assurance of the impartiality of the findings
- the views of stakeholders on how FFI is working
- if FFI is to be retained, whether the threshold for FFI has been set at the right level
- whether there is evidence that the anticipated incentives to comply have made a difference and improved health and safety performance
- whether there have been any detrimental impacts on the behaviour of HSE Inspectors and/or those inspected and/or on health and safety performance
- consideration of alternative sources of income, which should be tested against the same criteria.

5.4 I recommend that, unless the link between “fines” and funding can be removed or the benefits can be shown to outweigh the detrimental effects, and it is not possible to minimise those effects, FFI should be phased out.

## Chapter 5 – Full List of Recommendations

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5.5 I recommend that, as an urgent action, there should be at least one independent person involved at the first formal stage in FFI appeals for HSE to ensure that the appeal process is independent and impartial, and is seen to be so.

### Measuring Performance – pages 66 - 69

5.6 I recommend that HSE, the National Audit Office and the Cabinet Office Efficiency and Reform Group work out ways to measure cost effectiveness to enable better and more effective comparisons of performance to be drawn with other similar regulatory bodies in future Triennial Reviews. Preferably this information should be in the public domain in a format that is readily understandable to all.

5.7 I recommend that HSE considers how their activities that are not directly comparable to other public bodies can be measured for cost effectiveness. It would bring HSE much closer to being able to make transparent what it is that it provides that is of value to the wider public and the taxpayer.

5.8 I recommend that HSE develops and publishes performance indicators for its work to produce guidance. These should include measures that will fall out from robust project management processes, such as whether milestones for delivery are met. It should also seek to assess the impact of the guidance in the relevant audience, for example by surveys and feedback from users.

5.9 I recommend that HSE develops and publishes performance indicators for its enforcement activities that seek to address the quality of the service provided to those it interacts with. Where appropriate, this may be based on customer feedback. They should be readily understandable to a lay person.

5.10 I recommend that HSE continues to improve its performance on the length of time taken to complete its investigations. It should aim for 95% of non-fatal accident investigations to be completed within 12 months of the accident. In addition, there should be a suitable target for the completion of fatal investigations once HSE has assumed primacy. This should be set once the relevant data is available.

### Delivery of Professor Löfstedt's recommendations – pages 69 - 70

5.11 I recommend and support the necessary continuation of work to complete Löfstedt recommendations by tidying up and removing redundant legislation and, where appropriate, by consolidate and updating legislation. The majority of HSE's effort

## **Chapter 5 – Full List of Recommendations**

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should be to produce good, clear, helpful guidance and to do so in conjunction with all the parties who will be ‘users’ of that guidance.

### **Europe – pages 70 - 71**

5.12 I recommend that the HSE Board should regularly take an overview of how and to what effect HSE resources are deployed in Europe and provide a steer on priorities. HSE should, if possible, publish this information, including assessments of the impact on health and safety outcomes as well as the costs to business.

### **Work-Related Ill Health – pages 71 - 72**

5.13 I recommend that HSE continues to seek new and innovative ideas for interventions that maximise its impact on the continuing high levels of work-related ill health. This will include opportunities to use all forms of media, including social media, to reach the relevant audiences.

### **Communications – pages 72 - 73**

5.14 I recommend that HSE continues to build on its sector strategies and overall digital strategy to involve the relevant stakeholders in improving the effectiveness of its approaches. In particular, HSE needs to be an expert communicator, based on a good understanding of the audiences, what influences positive behaviour changes and using all the modern forms of media now available including Apps, Facebook and Twitter.

5.15 I recommend that the routes for raising a concern with HSE about health and safety at a specific workplace are made clearer on HSE’s website, ideally on the Home Page itself.

### **HSL – pages 77 - 79**

5.16 I recommend that HSL’s work to support HSE remains in HSL (as an agency of HSE) at this time.

5.17 I recommend that DWP work with HSE and HSL to complete a fuller analysis of HSL’s role to decide the best commercial delivery model going forward. The new high-level principles on the role and delivery model of public sector research establishments, recently issued by the Department for Business, Innovation and Skills (BIS) and the Cabinet Office, will provide a useful framework for an in-depth

## **Chapter 5 – Full List of Recommendations**

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review of which delivery model best serves the unique and distinctive role that HSL provides to Government.

5.18 I recommend that this review of HSL is commenced before the end of the current financial year to allow HSL to make the most of the opportunities that clearly exist in global markets to exploit the HSE/HSL brand, for the benefit of the taxpayer.

### **Land Use Planning – pages 80 - 81**

5.19 I support HSE's proposal to provide a fee paying service to developers and businesses in the chemical sector for early land use planning advice. I also support the proposal to move this advice work into HSL, as part of the above recommendation for HSL to increase its commercial activity. I recommend that it publishes its intention on how it will progress this proposal by April 2014.

### **Charging – pages 81 - 83**

5.20 I recommend that HSE investigates the provision of a fully chargeable inspection service for organisations with mature health and safety management systems who wish to engage the assistance of the regulator in maintaining and improving their health and safety performance.

### **Health and Wellbeing – pages 84 - 85**

5.21 Those who promote wellbeing in the workplace should not allow it to be confused with health and safety requirements. I recommend that HSE should ensure its own guidance sets out clearly what employers must do to control work-related health risks and be prepared to challenge others if they inadvertently misrepresent what the law requires to promote the wider wellbeing agenda.

### **Interface with Other Regulators – pages 86 - 87**

5.22 I recommend that opportunities for further convergence between regulators should be taken up where this makes operational sense and would reduce the burden to business. To this end, future Triennial Reviews of HSE should be aligned with reviews of similar regulatory bodies and should actively consider the opportunities for greater convergence.

5.23 I recommend that HSE continues to work with other regulators to ensure that the procedures for dealing with the interfaces between them and the associated

## Chapter 5 – Full List of Recommendations

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Memoranda of Understanding (MOU) are up to date, reflect best practice, and are user tested by external stakeholders.

### **Environment Agency – pages 87 - 88**

5.24 I recommend that HSE and the Environment Agency should continue to deliver the action programme identified by the Focus on Enforcement Review of the Chemical Industry. I believe this action programme contains some arrangements to address a single approach that could be useful in HSE's relationships with other regulators and therefore any lessons learned should be shared.

### **ORR – pages 88**

5.25 I recommend, to help avoid instances of uncertainty, particularly on large-scale rail infrastructure projects (e.g. High Speed 2), that HSE and ORR review their Memorandum of Understanding to ensure the arrangements are fit for purpose for early involvement of ORR in design issues and handover for such projects.

### **Local Authorities – pages 88 - 91**

5.26 I recommend that HSE should actively review LAs annual returns on their inspection and advisory activities. Where there is evidence of significant deviations from the norm they should explore the reasons with the outliers. HSE should draw the attention of the appropriate political leader of those LAs where its performance is significantly out of step of the potential risk this may pose.

5.27 I recommend that the National Local Authority Enforcement Code is reviewed in 2014 in the light of experience to identify areas for change and amendment.

5.28 I recommend that HSE's LA Liaison Groups should be strengthened and maintained and that HSE's role in those Groups should be to provide expert professional guidance, constructive challenge and leadership.

5.29 I recommend and value LAs working together and in partnership with HSE to ensure value for money. Ideally, there should be a senior champion and a single point of contact and single regulatory organisation in each LA or grouping of LAs. But what works well locally and local political accountability is just as important.

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### **DECC OGED – pages 91 - 94**

- 5.30 I recommend that in implementing the EU Directive 2013/30/EU requirement for a Competent Authority by 2015 that HSE and DECC should consider moving into HSE, where appropriate, environmental protection inspection functions currently carried out by DECC's Offshore Oil and Gas Environment Unit.
- 5.31 I recommend that in any case the DECC approach to regulating offshore environmental pollution risks needs to be brought significantly closer to HSE's preventative approach. I believe the structural change of bringing them within HSE would facilitate the necessary operational changes to address the concerns about consistency of approach raised by businesses in the sector.

### **CQC – pages 94 - 96**

- 5.32 I recommend that any additional work to be undertaken by HSE arising from the implementation of the Francis report must be properly resourced, so that there are not any negative impacts on HSE's existing commitments.
- 5.33 I recommend that the revision of the Liaison Agreement between HSE and CQC should include input from those who are regulated and those who represent patients to ensure it is clear to them how the interfaces between the regulators will work.
- 5.34 I recommend that HSE must also work with the various other parties involved in regulating social care to see how equivalent arrangements for improved co-ordination might be extended to that sector, including LAs.

### **GLA – pages 96**

- 5.35 I recommend that HSE and GLA review and refresh their Memorandum of Understanding.

### **Conclusion on the Stage Two question**

- 5.36 My initial conclusion is that HSE is satisfactorily achieving compliance against the Governance principles.

### **DWP Sponsorship of HSE – pages 98 - 99**

- 5.37 I recommend that HSE and DWP urgently review and revise as necessary the existing Framework Document to ensure that it reflects the current working

## Chapter 5 – Full List of Recommendations

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arrangements and updated procedures and that it is fit for purpose as HSE moves forward.

### **HSE Board – pages 99 - 103**

5.38 I recommend that in light of the other changes recommended in this report that the remit of the HSE Board should be reviewed and refreshed.

5.39 I recommend that a matrix of desirable skills/competencies and required experience/background for HSE Board members is drawn up by DWP to reflect the remit for HSE. I suggest the current Board is engaged in this process. Appointments on the basis of the new matrix should begin as soon as possible.

5.40 I recommend that if it is not possible to achieve the appropriate balance of skills/competences and required experience/background of HSE Board members and retain the current statutorily specified number of Board members (appointed after the Minister has consulted with specific representative groups) that the number of specified Board members should be reduced.