



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)**

Annexes A - J

Martin Temple

9 January 2014

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Annex A

Annex A: Background to the Triennial Review

This is the first DWP Triennial Review of HSE. HSE is a relatively large NDPB in terms of its budget and number of employees, with broad public interaction. Therefore, the Minister for Employment judged that this first review should be led by someone entirely independent of HSE and DWP, and that an independent Challenge Group should be appointed.

Terms of Reference for the Triennial Review of HSE

The Triennial Review of HSE will examine:

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

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.

Legislation is currently before Parliament to establish the Office for the Nuclear Regulator (ONR) as a separate public corporation. The review will not therefore look specifically at the functions of the ONR which, once established, will be subject to separate review arrangements.

Timing

The Review began on 25 April 2013 and is expected to publish its conclusions within six to eight months of that date.

Annex A

Methodology

Martin Temple, Chair of EEF - the Manufacturers' Organisation, has led the Triennial Review of the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions (DWP). DWP provided a small Triennial Review Team, including one person independent of the DWP's Health and Safety Sponsorship Team. A Written Ministerial Statement announced the Review on 25 April 2013¹.

A Challenge Group was established to provide robust external challenge and scrutiny to the Review. The membership, role, terms of reference and activity of the Challenge Group can be found in Annex A.

The formal Call for Evidence ran from the 14 June to the 26 July 2013. A copy is available from the Gov.uk website². Seventy five responses were received to the Call for Evidence. Martin Temple also met or spoke to over sixty individuals or representatives of organisations, some of whom also responded to the written call for evidence. The organisations who responded are listed in Annex B. A summary of the responses to the call for evidence is available with the Call for Evidence document on the Gov.uk website.

In addition, Martin Temple met with:

- HSE Chair and Board
- HSE Chief Executive and other HSE members of staff
- Health and Safety Laboratory
- DECC Oil and Gas, Environment and Decommissioning Unit
- Office of Rail Regulator
- Care Quality Commission.

¹ http://www.parliament.uk/documents/commons-vote-office/April_2013/25-04-13/15.WP-HSETriennialReview.pdf

² The Call for Evidence is available at: <https://www.gov.uk/Government/consultations/triennial-review-of-the-health-and-safety-executive>.

Annex A

Conduct of the Review:

The review will be carried out in accordance with Cabinet Office Guidance “Guidance on Reviews of Non Departmental Public Bodies”, June 2011³. This guidance states that reviews should be:

- **Proportionate:** Reviews must not be overly bureaucratic and should be appropriate for the size and the nature of the NDPB in question
- **Timely:** Reviews should be completed quickly – the first stage ideally within three months – to minimise disruption to the NDPB’s business and reduce uncertainty about it’s future
- **Challenging:** Reviews should be robust and rigorous. They should evidence the continuing need for individual functions and examine and evaluate as wide a range as possible of delivery options
- **Inclusive:** Reviews should be open and inclusive. Individual NDPBs must be engaged in reviews. Key users and stakeholders should have the opportunity to contribute to reviews. Parliament must be informed about the commencement and conclusions of reviews
- **Transparent:** All reviews should be announced and all reports of reviews should be published
- **Value for Money:** Reviews should be conducted in a way that represents value for money for the taxpayer.

Governance of the Review

The Review is conducted on behalf of the Secretary of State for Work and Pensions and will be undertaken in accordance with the Cabinet Office guidance on reviews of non-departmental public bodies.

The Review will be led by an independent reviewer, appointed by the Secretary of State. The reviewer will be supported by DWP officials.

An independent Challenge Group will rigorously and robustly challenge the scope, assumptions, methodology and conclusions of the Review.

³ Cabinet Office Guidance on Reviews of Non-Departmental Public Bodies (June 2011) available from the gov.uk website: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/230191/Cabinet-Office-Guidance-on-Reviews-of-Non-Departmental-Public-Bodies.pdf

Annex A

The Challenge Group

The Challenge Group members

Willy Roe CBE	Non-Executive member: DWP Board (Chair)
Neil Carberry	Director for Employment and Skills: Confederation of British Industry
Paula McDonald CBE	Deputy Director: Public Bodies Reform, Cabinet Office
Hugh Robertson	Senior Policy Officer: Trades Union Congress
Daniel Goodwin	Executive Director: Local Government Association

Role of the Challenge Group

The role of the Challenge Group is to rigorously and robustly challenge the assumptions and conclusions of the Review.

The Challenge Group will also ensure that the six principles for the appropriate conduct of triennial reviews, as set out in Cabinet Office Guidance, are followed. This states that triennial reviews should be proportionate, timely, challenging, inclusive, transparent and offer value for money.

Members are appointed in their personal capacity and not to represent any interest group. Members of the Challenge Group are independent of the HSE and its sponsorship chain within the Department, although representatives of the sponsor team and of HSE may attend as observers, or to provide evidence to the Challenge Group.

Annex B: List of Stakeholders Consulted

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Organisations that responded to the Call for Evidence	Met with Martin Temple
1. All-party Parliamentary Group on Occupational Safety	
2. ARCO Ltd	
3. Asbestos in Schools (AiS)	
4. Association of School and College Leaders (ASCL)	
5. Association of British Insurers (ABI)	✓
6. Association of Personal Injury Lawyers (APIL)	
7. BAM Nuttall Ltd	
8. Berrymans Lace Mawer Solicitors	
9. British Occupational Hygiene Society (BOHS)	✓
10. British Ceramic Confederation	
11. British Coatings Federation	
12. British Institute of Radiology	
13. British Plastics Federation	
14. British Safety Council (BSC)	✓
15. British Safety Industry Federation	
16. Confederation of British Industry (CBI)	✓
17. Chartered Institute of Environmental Health (CIEH)	✓
18. Chemical Industries Association (CIA)	✓
19. Chief Fire Officers' Association	
20. CWU NW Safety Forum	
21. DWF LLP	
22. EEF (The manufacturers' association)	✓
23. Electrical Contractors' Association	
24. Energy Networks Association (ENA)	
25. Environmental Services Association (ESA)	
26. Forum of Private Business (FPB)	
27. Gas Industry Safety Group (GISG)	
28. GMB	✓
29. Greenstreet Berman Ltd	
30. Hazards Campaign & Families Against Corporate Killers	✓
31. Health and Safety Technology and Management Ltd	
32. Higher Education Occupational Physicians/Practitioners (HEOPS)	
33. Hereford and Worcester Fire and Rescue Service	
34. HSE Trade Unions (FDA, PCS, Prospect)	✓
35. Institute of Civil Engineers (ICE)	✓

Annex B: List of Stakeholders Consulted

Organisations that responded to the Call for Evidence	Met with Martin Temple
36. Institute of Employment Rights (IER)	
37. Institute of Engineering and Technology (IET)	✓
38. Institution of Chemical Engineers (ICHEME)	✓
39. Institution of Occupational Safety and Health (IOSH)	✓
40. Joint Union Asbestos Committee (JUAC)	
41. Kennedys LLP	
42. Local Government Association (LGA)	✓
43. NASUWT	
44. National Union of Teachers (NUT)	
45. National Farmers Union (NFU)	✓
46. Office of Rail Regulation (ORR)	✓
47. Oil & Gas UK	✓
48. PCS	✓
49. Public Health England - Centre for Radiation, Chemical and Environmental Hazards	
50. Play Safety Forum	
51. Police Federation of England and Wales	
52. Prospect	✓
53. Retail Motor Industry Federation	
54. RoSPA	✓
55. Safety Assessment Federation	
56. Shropshire Fire	
57. Society of Radiographers	
58. Scottish TUC	
59. Transport Salaried Staff Association (TSSA)	
60. TUC	✓
61. UCATT	✓
62. UCEA (Universities and Colleges Employers Association)	
63. UK Contractors Group (UKCG)	
64. UK Petroleum Industry Association (UKPIA)	✓
65. UNISON	✓
66. UNITE	✓
67. University and College Union (UCU)	
68. USDAW	✓
69. USHA (University Safety and Health Association)	
70. Weightmans Llp	

Five individual responses were also received.

Annex B: List of Stakeholders Consulted

Annex B: List of Stakeholders Consulted

	Organisations/Individuals that met with Martin Temple who did not provide a written response
1.	ABB
2.	BAE
3.	Barnsley and Rotherham Chamber of Commerce
4.	British Chambers of Commerce
5.	BP
6.	Carillion
7.	Caterpillar
8.	British Retail Consortium
9.	British Sugar
10.	Chemical Business Association
11.	Christchurch and East Dorset Councils
12.	DECC (Offshore Environment and Decommissioning Unit)
13.	Federation of Small Business
14.	Glass and Glazing Federation
15.	Hazards Forum
16.	Institution of Engineering and Technology
17.	Institute of Directors
18.	Jaguar Land-Rover
19.	JCB
20.	Oliver Letwin, Minister of State Cabinet Office
21.	Professor Ragnar Löfstedt
22.	Mars UK
23.	Lord McKenzie of Luton
24.	Patheon
25.	Rolls-Royce
26.	RoSPA Scotland
27.	Royal Borough of Kensington and Chelsea
28.	Scottish Government (Public Health & Wellbeing Directorate)
29.	Sheffield Teaching Hospitals NHS Foundation Trust
30.	Siemens
31.	Step Change for Safety
32.	Toyota
33.	Vehicle Builders and Repairs Association
34.	Veolia
35.	Zurich plc

Annex C: Background to HSE

The Health and Safety Executive (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.**

In addition to regulation of work-related health and safety, HSE is responsible for the regulation⁴ of:

- activities involving genetically modified organisms (GMOs) in contained use (HSE took on regulatory responsibility from Dept for Education and Science in 1983), the regulation of the deliberate release of GMOs is the responsibility of DEFRA and the devolved governments
- domestic gas safety (from Dept for Energy) in 1984
- use of pesticides in 1986
- offshore oil and gas safety (from Dept for Energy) in 1991 (following Lord Cullen's enquiry into the Piper Alpha disaster in 1988)
- the enforcement of the maximum working week and night work aspects of the Working Time Regulations in 1988 (shared with ACAS and other regulators)

The Hampton Review recommendations resulted in four regulators being moved into HSE:

- Adventure Activities Licensing Authority in 2007
- The security activities of the Office for Civil Nuclear Security (OCNS) and UK Safeguards Office (UKSO) in 2007
- Pesticides Safety Directorate (from Defra) in 2008
- The inspection of licensed facilities and enforcement of Specified Animal Pathogens licenses on behalf of Defra in 2008 (following the foot and mouth outbreak of 2007).

⁴ Rail safety was transferred to HSE from Dept for Transport in 1990 and transferred out of HSE in 2006 to the new Office of the Rail Regulator, as part of a wider restructuring of the regulation of that industry.

Annex C: Background to HSE

HSE's structure

Two of HSE's Directorates are managed as non-statutory, in-house agencies – the Office for Nuclear Regulation (ONR) and the Health and Safety Laboratory (HSL). More detail on this relationship is given in Annex C.

HSE is organised into Directorates:

- Field Operations Directorate (FOD) Inspectors and other support staff cover many employment sectors including construction, agriculture, general manufacturing, engineering, food and drink, quarries, entertainment and fairgrounds, education, health services, local and central Government and domestic gas safety
- Hazardous Installations Directorate (HID) covers major hazard industries: industries where failures in safety can present potentially catastrophic consequences for the workforce, neighbouring communities and the environment as well as disrupt activities which are key to the economy. HID's regulatory activities in these industry sectors cover offshore oil and gas, onshore chemicals and petro-chemicals, pipelines carrying hazardous substances, mines, explosives and biological agents. HID staff include Inspectors, specialists, land use planning assessors and policy advisers
- Operational Strategy Directorate (OpSD) provides the strategy direction for all HSE and specific industry sector groups that work in partnership with a range of external bodies to deliver guidance and other tools to assist businesses
- Cross-Cutting Interventions Directorate provides much of the policy analysis and delivery functions for HSE. They include staff who negotiate in Europe on proposals for health and safety legislation on behalf of the UK, who develop proposals to take action on the government's health and safety reform agenda (including for example simplifying and improving HSE's guidance and consolidating legislation), they also monitor and respond to emerging risks and new technology and provide advice to the Minister on appropriate options
- Science, Engineering, Analysis and Chemicals Regulation Directorate mostly provides support to all the other Directorates. Its specialist staff includes economists, analysts, statisticians, occupational hygienists, occupational health doctors, occupational health nurses. They also manage the procurement of HSE's

Annex C: Background to HSE

research work and CRD regulate the assessment and authorisation of chemicals on behalf of Defra

- Planning, Finance and Procurement Directorate and Human Resources and Communications Directorate and Legal Advisers Office provide the organisational support necessary to keep HSE running and ensure that it complies with statutory requirements and government-wide policies and procedures for spending public money, accountability etc. The legal team run prosecutions, provide other legal advice to operational staff and monitor the performance of solicitor agents and counsel acting for HSE in prosecutions.

Annex C: Background to HSE

HSE Staffing

HSE employs 2,947 (2,746 Full Time Equivalents) staff (as at March 2013 excluding ONR). HSE continues to implement a general recruitment freeze. In February 2011, HSE ran a voluntary exit scheme to reduce mainly administrative/support roles. This reduced staffing by 200 (175 full-time equivalents)⁵. Since April 2011, HSE's total staff has decreased by 6.4%. The breakdown of staff by occupational group is⁶:

Occupational group	31 March 2013	31 March 2012	1 April 2011
Frontline staff (of which are frontline inspectors)*	1322 (1241)	1381 (1302)	1422 (1316)
Inspectors working in functions other than frontline	126	130	134
Other professional or specialist staff	1268	1282	1315
Other staff	459	462	497
Contingent labour**	8	33	32
Total	3183	3288	3400

* Frontline comprises operational and other health and safety inspectors fulfilling frontline roles, inspectors of construction (for 2011 only – fixed term appointments) and visiting officers who support inspectors.

** Temporary staff not on HSE's payroll, including agency workers, specialist contractors, interim managers etc.

HSE has experienced challenges sustaining its staff in certain specialist roles required to deliver priority operational work. For example in 2012, 29% of its 34 process safety

⁵ HSE Annual Report 2010/11

⁶ HSE Annual Report 2012/13

Annex C: Background to HSE

engineers were over 60 (eligible to take retirement). In some disciplines, HSE continues to face strong market competition for scarce skills. They have introduced arrangements to make better use of limited specialist resource, for example, reorganising to move them closer to their operational delivery customers and reducing the number of managers, where possible. HSE has also received permission to increase salaries and/or recruit in specific roles where, despite such changes, these pressures reached a critical point.

HSE Funding

HSE's expected expenditure for 2013/14 (excluding ONR and including capital expenditure) is £276.3m (this includes £114m in income from sources other than government grant-in-aid).

HSE receives annual funding (known as grant-in-aid) from its sponsor department, DWP, at a level set by the appropriate Spending Round. In 2010, HSE was required to make a minimum of 35 per cent savings in its grant-in-aid over four years⁷. At that time government funding represented two thirds of HSE's income. In 2013, the Spending Round set a further reduction for DWP for the year 2015/16 of 9.5% of its budget.

HSE's income comes from:

- Fees and charges (see below)
- Health and Safety Laboratory (HSL) external customers
- Recovery of prosecution costs awarded by the Court (any fine imposed goes to the Treasury and does not come to HSE)
- Sale of publications
- EU income
- Other sales/income.

Fees and charges levied on businesses and other government departments is by far the greatest part of HSE's income: in 2012/13 this was £95,642,000. Fees and charges are collected for:

⁷ In line with the rest of DWP.

Annex C: Background to HSE

- Licensing and regulation of nuclear installations
- Regulation of the offshore sector
- Pesticide and biocide evaluations and delivery of related services on behalf of Defra and Department of Health
- Regulation of the onshore major hazard sector
- Civil nuclear security
- Generic Design Assessment for new nuclear reactors
- Fee for intervention
- Other fees and charges.

HSE Strategy, Business Plan and Annual Report and Accounts

The 2009 HSE strategy 'The Health and Safety of Great Britain – Be part of the solution' recognised the many strengths of the UK health and safety system, but that aspects of Great Britain's health and safety performance had apparently stalled, and sought to find ways of beginning again the process of improvement. This was the beginning of work by the HSE Board to refocus the organisation, and the wider public perceptions of health and safety, on a more proportionate and risk based approach. At the launch of the strategy HSE invited all those involved in the health and safety system to demonstrate their commitment by developing their own delivery plans linked to the strategy themes:

- Investigations and securing justice
- The need for strong leadership
- Building competence
- Involving the workforce
- Creating healthier, safer workplaces
- Customising support for SMEs
- Avoiding catastrophe.

Annex C: Background to HSE

A One Year On report highlighted some of the many examples of activities and initiatives taken by individual businesses and partner organizations that were prompted by the strategy.

In 2012 HSE published its Business Plan for 2012-2015. This set out the key priority activities that HSE planned to deliver its part of the strategy, under the four broad aims:

- Lead others to improve health and safety in the workplace
- Provide an effective regulatory framework
- Secure compliance with the law
- Reduce the likelihood of low-frequency, high-impact catastrophic incidents

It sets out specific goals for the three year period that by 2015, if HSE has played its part successfully, it will have:

- drawn the distinction between real health and safety and bureaucracy and ‘over interpretation’
- made it even easier for people to understand and do what is required
- devoted a greater proportion of effort where risks are highest and where we can have greatest impact
- continued to hold to account those who expose their employees and others to unnecessary risk.

As an NDPB, HSE is accountable to Parliament, both in its own right and through the Work and Pensions Minister. Changes to health and safety legislation are made by the Minister and are subject to the usual Parliamentary processes.

HSE reports on progress against the priority activities set out in the Business Plan in its Annual Report, published along with the Accounts⁸. This document is laid in Parliament in accordance with the requirements of the Health and Safety at Work etc Act 1974,

⁸ Available from HSE's website: <http://www.hse.gov.uk/aboutus/strategiesandplans/businessplans/index.htm>

⁹ Available from HSE's website: <http://www.hse.gov.uk/aboutus/reports/>

Annex C: Background to HSE

Schedule 2 paragraph 10 and prepared in line with the Treasury's Financial Reporting Manual (FRoM) (as updated)¹⁰.

There are regular Parliamentary Questions concerning matters within HSE's remit and there have been occasional adjournment debates to consider specific health and safety questions. In addition, the Work and Pensions Select Committee can consider the work of HSE as whole or specific aspects of its remit, where it feels it is appropriate to do so.

The Committee's last general enquiry into the work of HSE was in 2007, with a follow up report in 2008¹¹. Other Parliamentary Committees can also call HSE or the Minister to account for its activities where relevant. For example, HSE's work in Europe is subject to scrutiny by the relevant European Union Committees.

¹⁰ Available from gov.uk: <https://www.gov.uk/government/publications/government-financial-reporting-manual>

¹¹ *The role of the Health and Safety Commission and Health and Safety Executive in Regulating Workplace Health and Safety*. The Report was published in the 2007/8 session, in April 2008 with a Government response in October 2008, a Follow-Up report was published in the 2008/9 session in July 2009 with a Government Response in October 2009. Copies of the WPSC Reports are available from the Parliament website: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/publications/previous-sessions/>

Annex D: HSE Relationships with In-House Agencies

From 1995 the Health and Safety Laboratory (HSL) has been an agency of HSE. HSL was itself formed from several laboratories and parts of HSE's internal technical support function. This review includes the activities of HSL.

From 2011 the HSE's Nuclear Directorate has been an agency of HSE; it also took on the Radioactive Materials Transport Team (from Dept of Transport) at this time. This is in preparation for its intended move to become an independent statutory corporation (the Energy Bill is currently being considered by Parliament). Due to the review carried out prior to this proposed change, and its current position, Office for Nuclear Regulation (ONR) is not included in this review.

General Principles

The in-house agencies have been established for different purposes and currently have different governance structures and financial reporting arrangements. The HSE Board is fully accountable for both agencies and ensures there are robust arrangements which promote high performance and safeguard regularity and propriety.

Framework Agreements

The wider governance arrangements between HSE and its agencies are set out in framework agreements which define how the relationship between HSE and ONR, and HSE and HSL, will operate. The framework agreements reflect the:

- purpose and responsibilities of the in-house agency
- legal framework (if any) of the in-house agency
- environment within which the agency operates.

The framework documents are reviewed as a minimum at least once every three years.

Annex D: HSE Relationships with In-House Agencies

Relationship with HSL

HSL has been established as an in-house agency to reflect that it operates on a quasi-commercial basis seeking to break even, taking one year with another. HSL has also been asked to increase the proportion of work it carries out for customers other than HSE.

Accounting Officer and management arrangements

HSE's Accounting Officer has formally designated the Chief Executive of HSL as HSL's Accounting Officer. HSE however remains ultimately accountable to DWP and Parliament for HSL's use of resources and performance. The Chief Executive of HSL reports to the Chief Executive of HSE.

HSE/HSL Partnership Board and Audit Committee

The Partnership Board comprises the Accounting Officers of both HSE and HSL, HSL's Non-Executive Board members and other HSE/L senior officials. It is chaired by the Chief Executive of HSE.

The Partnership Board meets twice per annum to:

- consider and agree HSL's corporate strategy, associated plans and corporate governance arrangements
- review HSL's performance against its plan
- consider whether any further action is required
- consider any emerging risks and their control.

The HSL Audit Committee reports to each HSE Audit Committee meeting.

Operational and Financial Performance

HSL is accountable to HSE for its operational and financial performance. The Chief Executive of HSL reports to the HSE Board on HSL's work and performance through HSE's Chief Executive at least annually. The financial performance of HSL is reported in the HSE performance report which is considered by the HSE Board on a quarterly basis.

HSE requires HSL to publish an annual report of its activities together with its accounts after the end of each financial year. The annual report and accounts are audited by the National Audit Office.

Annex D: HSE Relationships with In-House Agencies

Relationship with ONR

In order to prepare for the creation of a new independent statutory regulator outside of the HSE to regulate the nuclear power industry, on 1 April 2011, the ONR was established as an agency within the wider HSE, having regard to the Cabinet Office guidance: *Executive Agencies: A Guide for Departments* (October 2006)¹².

Accounting Officer and management arrangements

HSE's Chief Executive is the Accounting Officer for ONR. The Chief Nuclear Inspector reports to the ONR Board on regulatory matters and ONR's Business Head reports on business performance.

ONR Board and relationship to HSE Board

An ONR Board has been appointed to ensure that ONR fulfils its work. The Interim Chair of the ONR Board is appointed by the Chair of HSE with the approval of the Secretary of State for Work and Pensions. The HSE Board fulfils its oversight of ONR through representation on the ONR Board. A member of HSE's Board, appointed by the Chair of HSE, and the HSE Deputy Chief Executive are non-executive members of the ONR Board. The Interim Chair of the ONR Board is an ex-officio member of the HSE Board. The ONR Audit Committee reports to each HSE Audit Committee meeting.

Operational and Financial Performance

ONR is accountable to HSE for its operational and financial performance. The Interim Chair of the ONR Board reports to each HSE Board meeting on ONR's operational and financial performance. ONR's financial information is included in HSE's accounts and audited, by National Audit Office, as part of the HSE audit process. ONR's comprehensive expenditure and income is separately disclosed in the segmental analysis note.

¹² Available from the gov.uk website:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80076/exec_agencies_guidance_oct06_0.pdf

Annex E – The HSE Board

The Role of the HSE Board

The HSE Board's responsibilities and powers are defined by the 1974 Act (as amended) and it submits proposals of particulars of what it proposes to do to the Secretary of State who has the power to approve the proposals. It must also give effect to any directions given to it by the Secretary of State. The HSE Board's functions involve:

- a) proposing and setting necessary health and safety standards, on which the HSE Board is advised by the Chief Executive of the Health and Safety Executive (the Chief Executive) or other sources
- b) through the Chief Executive, securing compliance with those standards and undertaking other forms of activity designed to stimulate or support necessary action on the part of people and organisations that create potential harm.

The HSE Board's statutory duties include:

- submitting proposals for regulations to Ministers after consultation with appropriate government departments and other bodies
- arranging for the provision of information and advice to Ministers among others
- arranging for the operation of an information and advisory service
- arranging for research to be carried out, the publication of the results and the provision of training and information in connection with these purposes
- encouraging research and the provision of training and information by others
- allocating appropriate resources to the HSE to allow it to perform its functions.

The HSE Board's powers of action include:

- a) approving and issuing codes of practice, with the consent of the relevant Secretary of State and subject to consultation with appropriate government departments and other bodies. These are known as "Approved Codes of Practice" (ACoPs);

Annex E – The HSE Board

- b) investigating and reporting on accidents or other matters and (subject to regulations), holding inquiries to be held into such matters; and directing others to do so
- c) making Agency Agreements and Memorandums of Understanding with government departments or others for them to perform functions on HSE's behalf; and with any Minister, Department or other public authority for HSE to perform functions on their behalf (subject to those functions being appropriate to the HSE Board's responsibilities in the opinion of the Secretary of State)
- d) giving guidance to Local Authorities on enforcement
- e) appointing committees, groups and panels. Members of these should be appointed in accordance with an agreed membership and Terms of Reference and in conformity with the principles set out in the Code of Practice issued by the Commission for Public Appointments. The HSE Board has endorsed the principles of openness, accountability and provision of information, and has extended those principles to any committees, groups and panels it establishes
- f) providing any services, facilities or information required by a government Department or public authority even though they are not required for the general purposes of Part I of the 1974 Act.

The HSE Board is prevented from being involved in enforcement decisions in any particular case.

Current Members

The HSE Board is comprised entirely of non-executive Directors, up to 11 members, plus the Chair. The members of the Board are appointed by the Secretary of State, in accordance the stipulations of the Health and Safety at Work etc Act 1974, Schedule 2, and the Commissioner for Public Appointments' Code of Practice¹³. The Act sets out that some Board members should be appointed after the Secretary of State has consulted with

¹³ The Code sets out the regulatory framework for public appointments processes within the Commissioner's remit. The Code is based on three core principles – merit, openness and fairness – and sets out the essential requirements for meeting those principles. The latest version of the Code is April 2012; similar Codes have applied since the creation of the Commissioner in 2002.
<http://publicappointmentscommissioner.independent.gov.uk/the-code-of-practice/>

Annex E – The HSE Board

organisations representing employers, employees, Local Authorities or other interested parties.

The current members of the Health and Safety Executive Board are (the bodies consulted in relation to specific appointments are indicated in brackets):

- Judith Hackitt (Chair)
- David Gartside (Employers)
- John Morgan (Employers)
- Frances Outram (Employers)
- Jonathan Baume (Employees)
- Paul Kenny (Employees)
- Sarah Veale (Employees)
- Isobel Garner (Local Authorities)
- George Brechin (Consumers)
- Richard Taylor (H&S professional bodies)
- Nick Baldwin (sits on the Board in respect of issues effecting the Office for Nuclear Regulation)

The HSE Board develops and communicates the HSE strategy for improving the health and safety performance of Great Britain and is responsible for the delivery of the strategy.

The HSE Board members should:

- clearly state what the role of HSE is in the delivery of improvements and what is expected of stakeholders (inc duty holders)
- formally scrutinise and challenge performance of HSE against strategic priorities, reflecting issues of accountability and including involvement in audit and remuneration committees
- engage with stakeholders to communicate HSE vision and secure commitment to delivering the aim of the strategy

Annex E – The HSE Board

- reflect the interests of broader stakeholder organisations and the devolved administrations.

HSE Chief Executive and Accounting Officer

The HSE Chief Executive is appointed by the HSE Board, following approval from the Secretary of State. The Chief Executive is constitutionally the focal point for the work performed by the staff of the Executive. He is also formally appointed as the Chief Accounting Officer, responsible for the propriety and regularity of the public finances of HSE, including the annual government grant, any money raised through charges and fees and how that income is spent. The Accounting Officer is responsible for preparing an annual report, which is subject to scrutiny and approval of the HSE Board.

Annex F – Examples of HSE Advisory Committees and other stakeholder groups

Annex F – Examples of HSE Advisory Committees and Other Stakeholder Groups

HSE Industry Advisory Committees

Paper and Board Industry Advisory Committee (PABIAC)

<http://www.hse.gov.uk/paper/whatis.htm>

Construction Industry Advisory Committee (CONIAC)

<http://www.hse.gov.uk/aboutus/meetings/iacs/coniac/>

Advisory Committee on Toxic Substances (ACTS)

<http://www.hse.gov.uk/aboutus/meetings/iacs/acts/>

Agricultural Industry Advisory Committee (AIAC)

<http://www.hse.gov.uk/aboutus/meetings/iacs/aiac/>

Stakeholder groups/industry forums

Asbestos Liaison Group

<http://www.hse.gov.uk/aboutus/meetings/committees/alg/index.htm>

Chemical and Downstream Oil Industries group (CDOIF)

<http://www.hse.gov.uk/aboutus/meetings/committees/cif/index.htm>

Offshore Industry Advisory Committee

<http://www.hse.gov.uk/aboutus/meetings/iacs/oiac/index.htm>

Cement, Ceramics, Concrete, Heavy Clay, Refractories and Glass Manufacturing Industries Joint Health and Safety Committee (C3HARGE)

Motor Vehicle Repair Safety Forum

Printing Industry Advisory Committee (PIAC)

Quarries National Joint Advisory Committee

Textiles Industry Advisory Committee (TEXIAC)

Tyre and Rubber Industries Safety Action Group (TRISAG)

Annex F – Examples of HSE Advisory Committees and other stakeholder groups

Wood Safety Group

Mining Industry Safety Leadership Group <http://www.hse.gov.uk/mining/mislg/>

Castings Health and Safety Advisory Committee (CHASAC)

<http://www.hse.gov.uk/aboutus/meetings/iacs/chasac/index.htm>

Expert Committees

HSE is joint secretariat of the Advisory Committee on Dangerous Pathogens (ACDP), an Expert Committee of the Department of Health (previously an NDPB)

<https://www.gov.uk/government/policy-advisory-groups/advisory-committee-on-dangerous-pathogens>

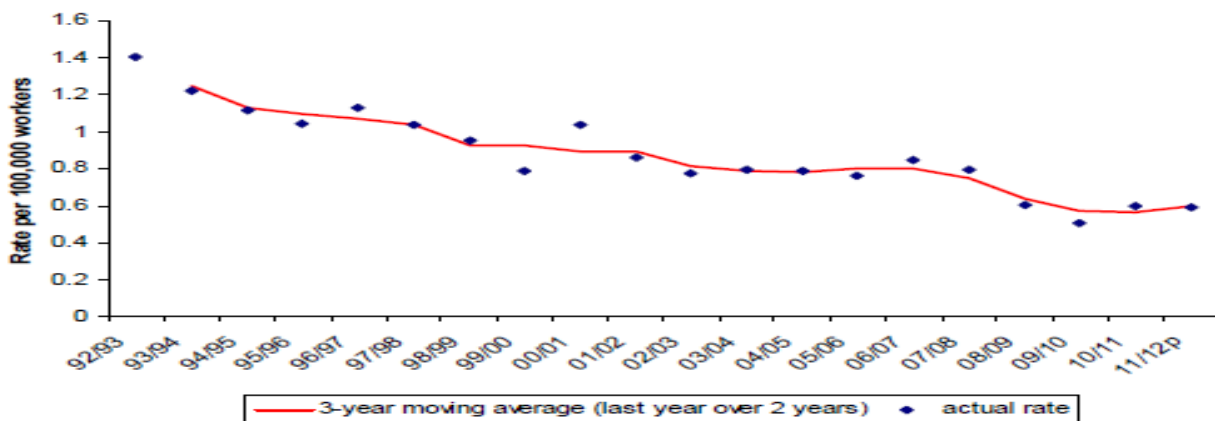
HSE provides the Secretariat for the Scientific Advisory Committee on Genetically Modified Organisms (Contained Use)

<http://www.hse.gov.uk/aboutus/meetings/committees/sacgmcu/index.htm>

Annex G – Work-related fatality, accident and ill health statistics

The table below show the trend in the rate of fatal injury over the last 20 years using a three year moving average. This shows that over the 20 year time period there has been a downward trend in the rate of fatal injury.

Worker Fatality Rate:



The GB rate in 2011/12 of 0.6 fatalities per 100,000 workers is lower in figures available than the 4 peer EU larger economies; Germany, France, Spain, Italy, as well as wider comparators – USA, Canada and Australia¹⁴. See Table below.

Fatal injuries to 'workers' - international estimates*

*Subject to definitions for individual countries. Data may be subject to change.

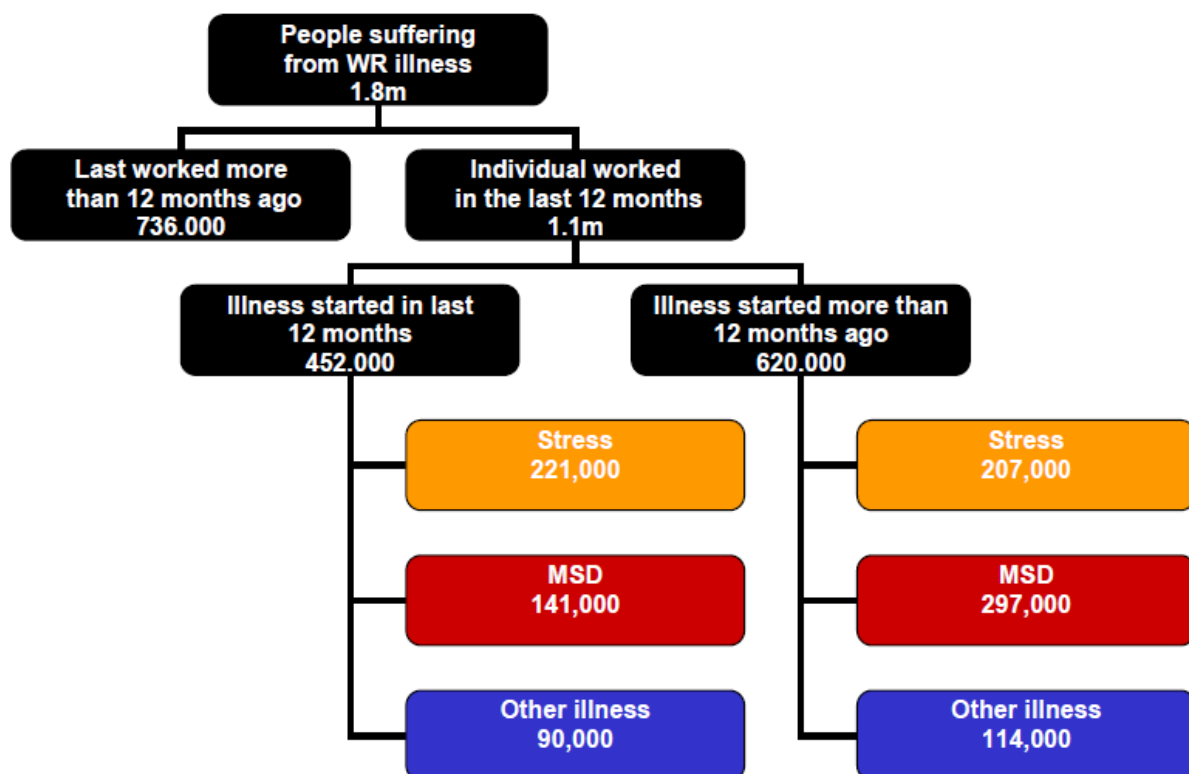
Country	Latest figures			Five-year average (preceding five-year period to 'latest figures')	
	Year	No.	Rate per 100 000	No.	Rate per 100 000
Great Britain	2011/12	173	0.6	196	0.7
France	2009	290	2.1	321	2.4
Germany	2009	213	0.7	395	2.0
Italy	2009	276	1.7	405	2.6
Spain	2009	222	2.0	353	3.0
USA	2011	4609	3.5	5190	3.7
Canada	2008	1036	7.2	1004	7.5
Australia	2009/10	216	1.9	282	2.7

¹⁴ Source: RIDDOR (UK); Eurostat (EU); Bureau of Labour Statistics (USA); Safe Work (Australia); Human Resources & Skill Development (Canada)

Annex G – Work-related fatality, accident and ill health statistics

In 2011/12, an estimated 1.8 million people¹⁵ suffered from an illness they believed was caused or made worse by work (includes people over the normal retirement age). Approximately 40% of these are people who have not worked for over 12 months and the majority of those are over normal retirement age (60 for women and 65 for men). Of the 1.1 million sufferers who have worked in the past 12 months, an estimated 452,000 have a new ill health condition which started in the last year. The remainder have conditions which have lasted for more than 12 months and are predominantly cases of Musculoskeletal Disorder (MSD). Data shows that around three-quarters of the new cases of work-related ill health that arise each year are due to stress or MSD.

This is broken down as follows:

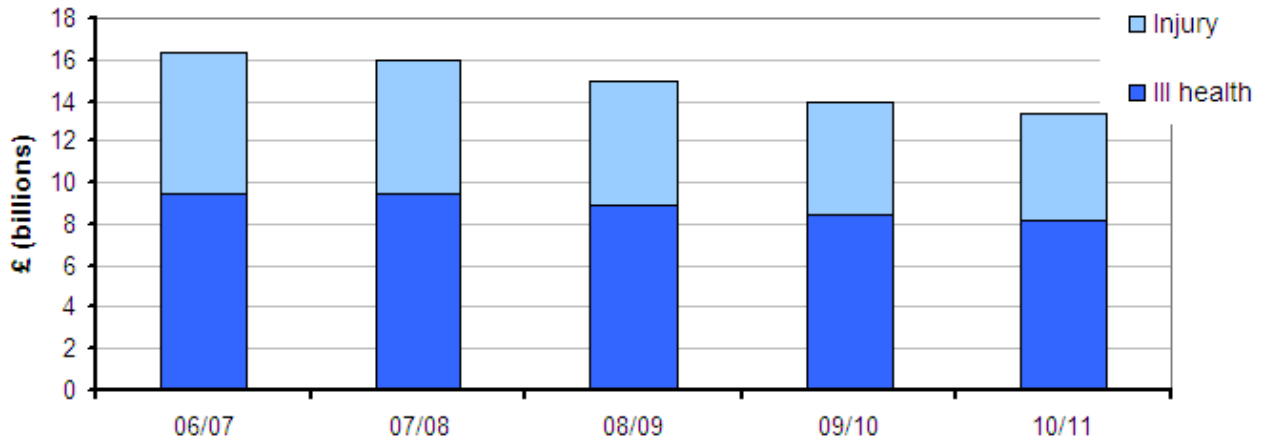


¹⁵ Source: Labour Force Survey

Annex G – Work-related fatality, accident and ill health statistics

Workplace injuries and ill health (excluding cancer) cost society an estimated £13.4 billion in 2010/11 (compared with £13.9 billion for 2009/10).

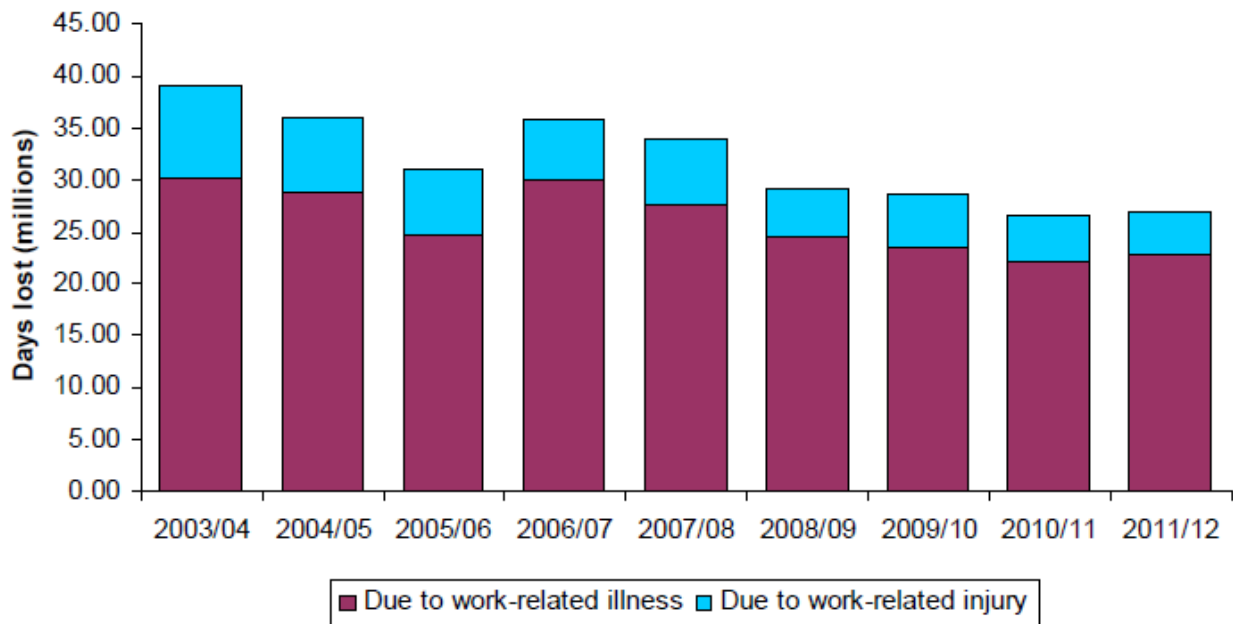
Cost to society of workplace injury and ill health:



The estimate of £13.4 billion relates to 2010/11 and estimates have fallen in each of the last four years, reflecting the general downward trend in injuries and cases of ill health. See table below.

Working days lost due to work-related injury and ill health:

Note: average sample variability of +/-9% on the total



While it is more difficult to make direct comparisons for non-fatal work-related accidents, overall UK accident rates compare favourably both to the larger peer countries and to

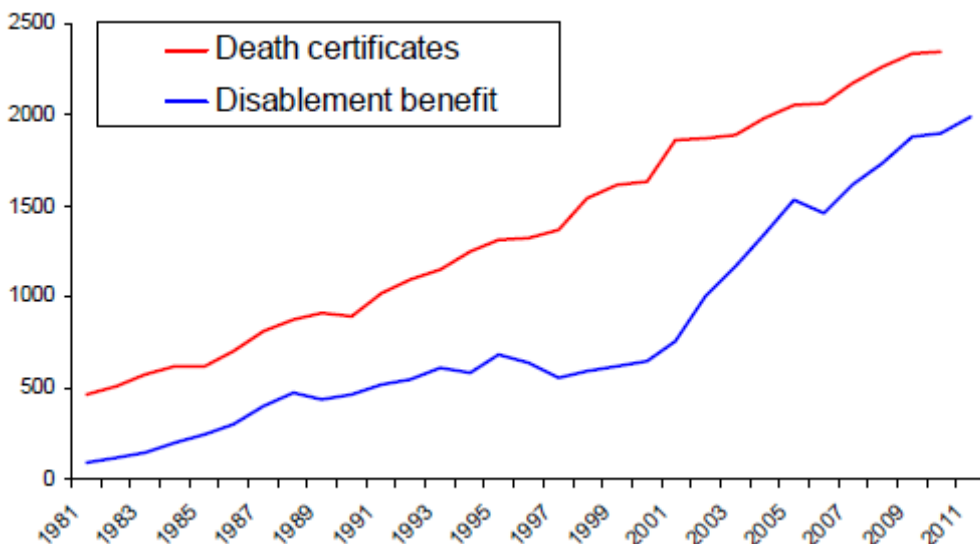
Annex G – Work-related fatality, accident and ill health statistics

those countries with similar reporting mechanisms. Directly comparable data for GB work-related ill health is not collected regularly, a Eurostat-supported survey in 2007, found that in comparison with the EU-27, EU-15 and the peer countries (Germany, Italy and Spain), the UK has the lowest self-reported rate of work-related ill health.

HSE estimate that there are at least 12,000 deaths each year as a result of work-related exposures in the past (long-latency diseases): 8,000 cancer deaths and 4,000 deaths from chronic obstructive pulmonary disease (COPD). The epidemiological evidence is not sufficiently robust to produce an estimate of other conditions for which a proportion of cases are likely to be caused or made worse by work: these include cardiovascular, neurological and reproductive disease.

Mesothelioma (caused by exposure to asbestos) is the only mainly occupational cancer we are able to track specifically year on year. Total deaths are continuing to rise every year and are not expected to peak until around 2016. Deaths at ages below 50 have been falling since the early 1990s, reflecting reductions in usage since the 1960s and subsequent bans on all usage. It is widely reported that the UK has one of the highest worldwide rates of asbestos-related diseases, corresponding with its relatively high use of asbestos materials over many decades prior to the 1960s.

Deaths from Mesothelioma and claims for disablement benefit for mesothelioma:



Annex H - HSE advice on Land Use Planning

HSE has been involved in land use planning (LUP) for, and around, major hazard installations since 1972. This was given further significance and momentum following an explosion at a chemical factory in Flixborough in 1974 which killed 28 workers and led to significant off site damage to buildings. Following Flixborough the GB strategy for preventing and mitigating the consequences of major hazard incidents has been to:

1. identify where they are
2. apply a prevention and control regime of technical and organisational measures to minimise risk
3. because risk cannot be reduced to zero, apply mitigation measures to limit the consequences of events when they do go wrong. Mitigation has two elements: emergency planning on and off site; and land use planning to control where installations are located and minimise at risk populations near installations.

Land use planning is a matter for local authorities (LAs) operating within a policy framework set by the Department for Communities and Local Government, Scottish and Welsh Governments. The LA must balance the economic, social and other benefits of development against any increased risk to the public. HSE is a statutory consultee¹⁶ to LAs on:

- a) the granting of consents for installations to store certain quantities of hazardous substances (for which they will advise on appropriate consultation zones around the installation)
- b) new developments in a zone around an existing hazardous installation (for which they will provide advice on whether the new development will increase the population at risk to such an extent that it is not advisable to proceed.

HSE's role is to advise and work with LAs so that they can make decisions which are fully informed by the risks to public safety.

¹⁶ The information in this section largely summarises the fuller information provided on HSE's website: <http://www.hse.gov.uk/landuseplanning/index.htm>

Annex H - HSE advice on Land Use Planning

In the case of advice for new developments near existing hazardous installations the LA can obtain HSE's advice using an HSE automated tool (known as PADHI+: Planning Advice for Developments near Hazardous Installations). The LA provides information on the type of proposed development and its location. Based on the proximity of the proposed development to the major hazard site or major hazard pipeline and the type of development (e.g. workplace, housing, shops, school, etc.), its size and intensity, the software generates an "advise against" or "do not advise against" response. HSE will review cases that the local authority wishes to consider further.

Local planning authorities seldom go against HSE advice, but when they do HSE will make sure that they understand the risks and possible consequences should a major accident occur. In cases where HSE has serious concerns, it will consider taking the matter further by writing to the Secretary of State to request that the case be "called in" or in Scotland the case is referred to the Scottish Minister. In the last 30 years, HSE has only requested that five planning applications in England and Wales be called-in.

Annex I – HSE’s Relationship with Local Authorities as co-regulators

HSE has overall responsibility for enforcement of health and safety legislation¹⁷, but Regulations¹⁸ allocate local authorities (LAs) to be the enforcing authority at any premises where the main work activity is listed in the Annex to the Regulations. The principle has always been that the list of activities enforced by LAs includes those that are generally considered to be lower risk than those enforced by HSE. The split largely reflects the activities that were, prior to 1974, regulated by LAs under the Offices, Shops and Railway Premises Acts as opposed to those regulated by the Factories Acts (or other ‘industrial’ safety legislation, such as Mines). Because the allocation was decided on this basis, retail activities are usually local authority enforced, where risks to the public are an issue.

HSE and Local Government representatives have published a joint statement of commitment to set out their aims for partnership working as co-regulators. A national liaison group and a practitioner forum¹⁹ provide routes for development of joint approaches and communication of good practice.

The National Local Authority Enforcement Code²⁰ published in May 2013 provides a principle based framework that recognises the respective roles of business and the regulator in the management of risk, concentrating on four objectives:

- clarifying the roles and responsibilities of business, regulator and professional bodies
- outlining the risk-based approach to regulation that LAs should adopt
- setting out the need for training and competence of LA H&S regulators
- explaining the arrangements for collection/publication of LA data and peer review to give assurance on meeting the requirements of the Code.

¹⁷ Section 18 of the Health and Safety at Work etc Act 1974

¹⁸ The Health and Safety (Enforcing Authority) Regulations 1998 (as amended). Equivalent Regulations have existed from 1975.

¹⁹ The HSE/LA Enforcement Liaison Committee (HELA) and the Health and Safety Practitioner Forum

<http://www.hse.gov.uk/lau/national-committees.htm>

²⁰ Available from HSE’s website <http://www.hse.gov.uk/lau/la-enforcement-code.htm>

Annex I – HSE’s Relationship with Local Authorities as co-regulators

Along with the Code, is a list of a list of activities and sectors suitable for targeting inspections and supplementary guidance. The Code commits HSE to providing support for LAs:

- specialist health and safety support and advice to LAs
- specific sector strategies with associated national planning priorities to inform LA regulatory interventions
- a list of those high risk sectors/activities appropriate to be targeted for proactive inspection by LAs
- support for Primary Authorities and their inspection plans
- support LA peer review of their enforcement decisions, intervention plans and professional competence
- monitor and publish LA intervention data for benchmarking purposes via the LAE1 return.

As well as the national arrangements, HSE in the regions and nations has links with the relevant LAs, often facilitated with a local liaison group. These groups have grown up to reflect the local structures and health and safety priorities. Some are just HSE and the relevant LAs, while others include a wider group of local public bodies and voluntary groups interested in health and safety. These local groups provide opportunities for HSE to gain an insight into wider local public health priorities, and where appropriate contribute their expertise on proportionate risk management to support local public health initiatives. For example:

- in Scotland, a well-established local partnership, the Scottish Occupational Road Safety Alliance²¹, has produced guidance for local businesses on Driving Risks at Work. HSE is not a co-regulator. However, HSE has worked with the local group to ensure the guidance accurately reflects what is required by health and safety legislation, where relevant.

²¹ More information on ScORSA is available on their website: <http://www.scorsa.org.uk/index.htm>

Annex I – HSE’s Relationship with Local Authorities as co-regulators

- Local Authorities of Dorset, Bournemouth and Poole are working together in the WorkWell Dorset partnership, with HSE²². Enforcement officers are authorised by all parties to work across the boundaries set by the enforcement regulations, as well as geographical boundaries. This authorisation is called a flexible warrant. Any flexibly warranted officer can take action, in an area where they have been authorised to do so. HSE has provided relevant training to Local Authority staff as part of this initiative. Flexible warrants between HSE and LAs were set up as defined projects with a limited life span. There were many such schemes set up across the country, most have now come to a natural end.

²² More information on the Dorset, Bournemouth and Poole partnership is available at: <http://www.dorsetforyou.com/healthandsafetyatwork>

Annex J – Other Regulators

Environment Agency

The Environment Agency (EA) itself, with Natural England (NE), has recently been subject to a Triennial Review. The report, published July 2013²³ concluded that:

- *EA and NE should be retained as two separate Non-Departmental Public Bodies (NDPBs) but with further ongoing reform of their functions and ways of working*
- *EA and NE will need to work closely together to deliver their environmental outcomes in a climate of fiscal constraint. Defra will put in place the necessary measures to support them in this and to hold the leadership of the two bodies to account.*

The EA is responsible for protecting and improving the environment of England and Wales. Under the Environmental Permitting Regulations 2010, the Environment Agency also has responsibility for:

- managing water resources
- protecting communities from the risk of flooding
- issuing permits for certain industrial, farming, waste management, surface water and groundwater discharge activities
- issuing permits for radioactive substances and mining waste activities.

In Scotland, the Scottish Environment Protection Agency carries out similar functions.

HSE's work to ensure health and safety of work activities often aligns closely with or could overlap with the EA. For example, were a major accident to occur at a chemical process site, workers and/or members of the public might be injured or killed; equally the loss of containment of hazardous chemicals might spread into the local environment causing harm to animal and plant life, polluting water or land. Therefore, both agencies seek to ensure the company has controls, firstly to prevent the accident occurring, and secondly to limit the consequences of an accident. Usually HSE leads the former, while for the second

²³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209382/triennial-rev-ea-ne.pdf

Annex J – Other Regulators

part there are different issues to consider and the different agencies bring their specific expertise to bear.

HSE has strong working relationships with EA. The EA and HSE have a Memorandum of Understanding (MOU) in place that sets out the day to day arrangements for managing the broad range of operations that fall under their regulatory control.

HSE and EA, as the Control of Major Accident Hazards (COMAH) competent authority, have been subject to a BIS-led Focus on Enforcement Review (FoE) in the chemicals industry, published in February 2013²⁴. FoE reviews examine the impact of regulatory delivery and enforcement in particular sectors of the economy.

Each review seeks to identify areas of good practice, as well as those elements of the approach to regulatory enforcement that affected companies, and other stakeholders, feel could be improved.

In response, to the FoE review the COMAH Competent Authority (CA) has proposed further and significant improvements to arrangements for regulating onshore major hazards that aim to reduce unnecessary burdens on business whilst securing the protection of people and the environment from major accidents²⁵. Key activities to address the findings include:

- to reduce inspection burdens by integrating COMAH regulation and the Environmental Permitting Regime (EPR) at COMAH sites
- to increase transparency and consistency in the cost recovery regime
- to set out clear performance standards and review appeals mechanisms
- to provide site level account managers as a single interface with the two main regulators
- to review the methodology for linking site level performance to planned inspections.

The HSE is the UK competent authority and the EA the enforcing authority for REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) Regulations. I found

²⁴ The report of the findings is available from the BIS website: <http://discuss.bis.gov.uk/focusonenforcement/files/2013/02/bis-13-557-review-of-enforcement-in-chemicals-industry-comah.pdf>

²⁵ A summary of the action programme is available on the BIS website: <http://discuss.bis.gov.uk/focusonenforcement/review-findings/chemicals-comah-review-regulatory-reform-package-announced-summary/>

Annex J – Other Regulators

strong evidence that HSE and the EA have worked together in the mutual delivery of major packages of regulation in England and Wales. The Environment Agency works in partnership to assess environmental hazards and risks from the manufacture, use and disposal of industrial and consumer chemicals, and waste materials. This includes those chemicals used in the process of hydraulic fracturing.

I found that this is a dynamic relationship which continues to develop into new areas. For example, shale gas operations are likely to require environmental permits from the EA under the Environmental Permitting Regulations 2010 (EPR). Shale gas wells must be designed, built and operated to standards set in the regulations governed by HSE. Both organisations must be satisfied that wells are designed, constructed and operated to standards that protect people and the environment. EA and HSE have agreed a set of processes to jointly inspect the next series of hydraulic fracturing operations in England and Wales.²⁶ These are welcome developments to ensure resources and expertise is best used and minimise the burden to business.

Office of the Rail Regulator (ORR)

ORR took over responsibility for regulating health and safety on the railway from the Health and Safety Executive (HSE) on 1st April 2006. This was one of the changes set out in The Railways Act 2005 that required amendments to the legislation.

However, during the time that they were part of HSE they radically changed their approach to regulation. HSE introduced a permissioning regime for track and train operators, moving the responsibility to the operators for setting out the relevant risks and committing them to how they would control them. It is exactly this preventive approach that was envisioned by Lord Robens – that those who create the risk must take responsibility for them.

ORR enforces health and safety legislation on the railways where it has enforcement responsibilities under the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (EARR). Those activities or premises not allocated to ORR for enforcement under EARR are subject to enforcement by either HSE or LAs.

²⁶ http://www.groundwateruk.org/downloads/EA_HSE_regulation.pdf

Annex J – Other Regulators

Since the transfer of responsibilities, a Memorandum of Understanding²⁷ has been in place between the HSE and ORR to ensure effective coordination and cooperation in relation to the regulation of health and safety on railways. The EARR have also been amended (in 2008) to improve clarity in the division of enforcement responsibilities, particularly around construction work.

ORR is required as part of its statutory duties to work closely with the HSE on any safety implications that may follow from the exercise of their functions. In starting afresh, there would be a clear case for a single regulator. There are clear overlaps between HSE and ORR's respective roles, particularly in the field of construction and major projects like Crossrail and Kings Cross or where there has been an accident. For example, ORR is responsible for safety in operational areas, including platforms and concourses. HSE is responsible for safety in new build work until the point it connects to the network.

I found that ORR and HSE have a positive working relationship. This relationship does though need to be carefully managed.

²⁷ <http://www.rail-reg.gov.uk/upload/pdf/279.pdf>

Annex J – Other Regulators

Offshore Regulators

Department of Energy and Climate Change's Offshore Oil and Gas Environment and Decommissioning Unit

The Department of Energy and Climate Change's Offshore Oil and Gas Environment and Decommissioning Unit (DECC OGED) is part of DECC's Energy Development Unit. It is responsible for the environmental policy and regulation of offshore oil and gas exploration and production, offshore gas unloading and storage and offshore carbon dioxide storage activities.

Their specific activities include:

- strategic environmental assessment of activities within the UK continental shelf prior to licensing
- environmental regulation, including environmental assessments, approvals and enforcement
- environmental emergency response plan approvals
- oil spill surveillance and pollution prevention
- legal obligations and financial security for decommissioning of offshore installations and pipelines
- approval and monitoring of decommissioning programmes.

Within OGED the Offshore Environment Unit consists of three teams, the Environmental Policy Team, the Environmental Management Team, and the Offshore Environmental Inspectorate Team. The Unit is responsible for regulating the economic exploitation of offshore energy resources to take full account of environmental and social objectives by:

- consulting with international bodies, other Government Departments and stakeholders on the development of policy and regulatory initiatives
- implementing domestic legislation, international agreements and agreed codes of practice to ensure that offshore oil and gas, gas storage and future CCS projects do not have a significant adverse impact on the environment or other users of the sea

Annex J – Other Regulators

- maintaining an appropriate and up-to-date understanding of the impact of offshore oil and gas, gas storage and CCS developments, and ensuring that this is reflected in the impact assessment process and environmental monitoring programmes
- inspecting offshore installations to ensure regulatory compliance
- providing a response (24/7) to offshore environmental incidents
- investigating and enforcing where there is evidence of regulatory non-compliance in line with the Department's Enforcement Policy.

HSE's Energy Division

HSE's Energy Division brings together offshore activities, onshore gas and pipelines and mining under a single management structure. The Offshore Inspectors cover oil and gas exploration and production activities. They operate a safety case regime, under which HSE review the safety of installations, inspect them, investigate accidents etc. A key focus of HSE's offshore work is the avoidance of major accidents, particularly those associated with inadvertent release of hydrocarbons where this may result in fire and explosion. A priority for action is the structural integrity of the infrastructure on offshore installations (e.g. maintaining pipe work to prevent leaks) and of the structures themselves. They are also responsible for reviewing the arrangements made by the installation operators for emergency escape and evacuation and the safety of individual workers (e.g. prevention of falls).

The Gas and Pipelines Inspectors cover all the risers onto installations and the sub sea pipeline system required to bring oil and gas from offshore installations for processing and storage on shore. These facilities are subject to the COMAH regime and the requirements for safety report. They also cover the onshore gas transmission and distribution system (from shore to the input to the gas meter) which are subject to the requirements of the Gas Safety (Management) Regulations and require a safety case to address that safe flow of gas in the network, gas quality and emergency arrangements in the event of a gas leak. In addition, they also oversee the safety of other onshore pipelines carrying dangerous substances such as ethylene, aviation fuel and gasoline. There are a number of new developments including importation of Liquefied Natural Gas (approx 50% of UK gas demand are expected to be met via this route from 2020), gas cavern storage, fracking

Annex J – Other Regulators

and Carbon Capture and Storage developments of particular interest at this time. The principle focus is on the potential major hazard risks from the COMAH facilities, gas networks and pipelines, particularly the risks to the public from fire and explosion, from gas releases, exposure to toxic substances from hazardous pipelines and risks to domestic customers if gas is not delivered to their homes at a safe pressure and of the correct quality.

Annex J – Other Regulators

Care Quality Commission

HSE's responsibilities as the national independent regulator for health and safety in the workplace include private or publicly owned health and social care settings in Britain. However, there are many other bodies responsible for regulating different aspects of these sectors, many of whom have more specific powers and legislation than HSE. As health and social care are devolved matters there are different regulators in England, Scotland and Wales.

HSE leads on employee health and safety but may also consider investigation of patient or service user deaths or serious injuries, where there is an indication that a breach of health and safety law was a probable cause or a significant contributory factor. However, other regulators, e.g. the Care Quality Commission (CQC), the General Medical Council (GMC) and the Nursing and Midwifery Council (NMC), often have much more specific powers and should be better placed to secure justice or necessary improvements in standards. In these circumstances HSE defers to these specialist regulators.

The CQC is the independent regulator of health and social care in England. This includes the care provided by the NHS, local authorities and voluntary organisations in registered settings. The CQC regulate:

- providers of healthcare services to people of all ages. Including hospitals, ambulance services, clinics, community services, mental health services and other registered locations, including dental and GP practices
- providers of social care service for adults in care homes (where nursing or personal care is provided). in the community and in people's own homes
- providers of services for people whose rights are restricted under the Mental Health Act.

CQC register and license care services under the Health and Social Care Act 2008 and associated regulations and monitor compliance by care providers. CQC have a wide range of enforcement powers that they can use if they find care services are not meeting essential standards.

HSE's policy towards healthcare is to seek to identify, investigate and where appropriate take enforcement action in the most serious of cases. In summary, HSE's policy is and

Annex J – Other Regulators

has been for a number of years that it will not investigate issues relating to poor clinical judgment (because the GMC or NMC can take action) or quality of care issues. HSE may, however, investigate where clear standards have not been met because of systemic management failure and where the consequence has been death (or such severe injury that death may have resulted).

Gangmasters Licensing Authority (GLA)

HSE works closely with the GLA. For example:

- GLA licence conditions include some health and safety conditions and HSE is a statutory consultee
- HSE can revoke licences where health and safety performance is poor (though poor health and safety conditions alone would generally be insufficient to tip a dutyholder over the 'points limit' for revocation)
- HSE has an ex officio seat on the GLA Board.

HSE and GLA exchange information about dutyholders, and conduct joint operations occasionally. A Memorandum of Understanding²⁸ dating from August 2010 covers their working arrangements.

Building Control

Stakeholders asked me to consider the relationship between HSE and Local Authority Building Control teams. Building Regulations set the standards that buildings must be constructed to, in terms of the safety, fire protection and stability of the building, but also aspects such as the accessibility, ventilation, noise, water/sewage and energy control. Building Control teams ensure that new buildings and changes to existing buildings are carried out in conformity with the standards in the Regulations. Building Control has to be notified of projects that fit certain criteria and the Building Control Inspectors will examine plans and/or visit sites at key stages to check the work complies. In England and Wales Building Control Officers (BCOs) come from both the local authority and private sector. In

²⁸ <http://www.hse.gov.uk/aboutus/howwework/framework/mou/mou-gla-hse.pdf>

Annex J – Other Regulators

Scotland, Building Standards Surveyors (BSSs) are currently only in local authorities, although legislation allows for both public and private sector involvement.

In Rita Donaghy's report from 2009²⁹, she accepted that more local oversight would be an important step towards improving safety standards in those smaller firms in the construction sector that are hard for HSE to influence. She recommended "*Extending the Building Regulations so that health and safety processes should be included when considering building control applications or building warrants*". The principle of better integration is clearly correct but there are real practical difficulties in delivering a truly integrated system. For example, many small construction jobs are not covered by Building Regulations or may be self-certified and therefore not subject to building control scrutiny. At the time of the Donaghy report there was limited stakeholder support for BCOs and BSSs to take on the role of health and safety enforcing officers. However, there was a high level of support for them to identify poor practice when they undertake site inspections and to help to raise awareness of construction site safety issues with their clients.

As a result HSE's Local Authority Construction Engagement (LACE) project, which has now come to an end, aimed to develop better integration between HSE and Building Control. On 17 September 2010, HSE and the Building Control Alliance signed an agreement for co-operation whereby building control professionals (both Local Authority and private sector Approved Inspectors) agreed to provide health and safety information to construction industry duty holders, or intelligence to HSE, where serious health and safety issues are identified in the course of their normal duties on site. The agreement has improved co-operation in some areas but success is acknowledged to be patchy. Follow-up work is underway to explore opportunities within the HSE/BCA agreement to strengthen and extend the sharing of information.

The proposal to extend Building Regulations remains impractical in my view. It would require significant legislative change over and above a current programme of changes, additional financial resources and the recognition of the differences between the building control regime, which is of a permissioning nature, and the health and safety system which is not. There are also significant differences between English and Scottish systems.

²⁹ One Death Too Many (2009) - <http://www.dwp.gov.uk/docs/one-death-is-too-many.pdf>