

# **Triennial Review Report:**

## **Health and Safety Executive**

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

## **Summary of Evidence**

**9 January 2014**



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# **DWP's Triennial Review of HSE: Responses to the Call for Evidence**

## **Methodology:**

This report summarises the responses received by the DWP Triennial Review team to the Call for Evidence and from comments provided to Martin Temple from meetings he held to canvass views from some key stakeholders.

The Call for Evidence was live from the 14 June – 26 July 2013. A copy is available from the Gov.uk website<sup>1</sup>.

An email alert was sent to stakeholders to draw their attention to the Call for Evidence. Seventy-five responses were received to the Call for Evidence (a few responses that were received late are included). Martin Temple also met or spoke to representatives of over 60 Organisations. There was some overlap between those that responded and those he met. The organisations are listed in Annex A.

Martin Temple also met with:

- the HSE Board,
- the Chair and the Chief Executive of HSE and other HSE members of staff,
- Health and Safety Laboratory.

Their views are not included in this summary.

Most respondents provided their answers against the specific questions asked in the call for evidence document. Some responses were not laid out that way, or provided answers to one question that was also very relevant to another. Where this was the case the substance of the response has been considered against the most relevant question(s).

This report provides an overview of the evidence received and considered by Martin Temple and the Triennial Review team. Some information received was not wholly within the scope of this review and that detail has not been included in this summary. The factual accuracy of responses has not been checked. The comments made are those of the respondents to the review and therefore they do not necessarily reflect the views of Martin Temple or of DWP, the sponsor department for the review.

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<sup>1</sup>The Call for Evidence: <https://www.gov.uk/government/consultations/triennial-review-of-the-health-and-safety-executive>

## **Question A: Do the functions that HSE performs remain necessary and if so do they need to be done by the HSE?**

The overwhelming majority of responses stated that:

- The regulatory framework established by the Health and Safety at Work etc Act 1974 remained relevant and was still necessary.
- Within this framework, the statutory functions of HSE remain vital (as set out in Annex D of the Call for Evidence<sup>2</sup>).
- HSE functions well as it is and/or that no other organisation is equipped to deliver this service.

Many referred to UK work-related injury and ill health rates as demonstrating the continued need for HSE with some providing topic or sector-specific statistics to support their view (Figures for these rates were provided in Annex E – ‘Background to the HSE’ of the Call for Evidence<sup>3</sup>). Some who made this comment recognised that the UK performs well in relation to workplace fatalities and injuries, but they that believed removal of HSE would lead to a rise in these figures. Others pointed to the ongoing toll of work-related ill-health as the issue that now needs to be tackled.

Many responses focussed on the two functions of HSE to “Propose and set necessary standards for health and safety performance, including submitting proposals to the Secretary of State for health and safety regulation” and “Secure compliance with these standards, including making appropriate arrangements for enforcement”. Comments included that:

- Companies that are good at health and safety rely on HSE to ensure that they are not undercut by those who would cut corners to save money.
- Businesses may be effectively managing health and safety, but they need a nationally recognised authoritative body to assist in implementation.
- The insurance industry relies on proper regulation and supervision of a robust health and safety regime.

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<sup>2</sup> See Call for Evidence document at footnote 1 above.

<sup>3</sup> See Call for Evidence document at footnote 1 above.

- The threat of inspections and prosecutions for breaches of health and safety legislation by HSE are necessary to ensure that workplace health and safety standards remain high.
- People, including workers and the public must be assured that they are protected from work-related risks.

Answering the question about whether these functions do need to be done by HSE; respondents referred to HSE as fulfilling the role well because they are:

- An inspection and enforcement body separate from government.
- A robust, expert and competent organisation able to maintain safety standards (some of these comments were sector specific – eg offshore).
- A single organisation able to have a holistic overview of matters relating to health and safety.

A specific comment made was that HSE needs to be independent of government departments because in some sectors policy decisions can have an impact on safety.

Two respondents commented that any changes to HSE would involve a cost to business of implementing the changes, and urged that any changes should be evidence-based and justified in terms of their impact on health and safety performance.

A small number of respondents commented that HSE's functions should be expanded to include road traffic collisions where one or more of the parties is/are at work. One referred to the ongoing changes arising from the Francis review and sought more clarity about what this would mean for HSE's functions.

Some respondents' view was that HSE functions could be divested. Specific examples given were:

- Several believed HSE functions of research and development, and/or communication of safety information and guidance could be performed by a private body (this issue is dealt with in more detail below).
- Several called for HSE to work in partnership with the private and voluntary sectors to increase their effectiveness and save costs (but did not specify).

- One respondent's view was that the functions are absolutely necessary, but should be performed by the police.
- Two respondents called for a new UK National Asbestos Agency, separate from HSE, to regulate the management of asbestos in public buildings.

## **Q1. Do HSE's business aims and objectives (as set out in Annex D<sup>4</sup>) do the right things to deliver its statutory functions? Has it got the right balance?**

No single view dominated the answers to this question. Substantial minorities fell into groups that made comments along the following lines:

- a) HSE's aims and objectives and the balance of those are about right.
- b) That the recent focus on high hazard sectors, and poor performers, gives confidence that HSE's priorities are the right ones.
- c) Many respondents commented on the importance of HSE's role in the provision of health and safety advice and guidance. A number mentioned specific examples of existing HSE good practice, many involving partnership working with the relevant industry and/or trade union representatives. One commented that HSE's communication was not very strategic and wanted to see more done in this area.
- d) Broadly supportive, with some concern at a time when resource is necessarily limited, that either HSE has insufficient resource to fulfil all the functions adequately or that the balance is skewed toward dealing with reactive work, rather than proactive work to prevent accidents and ill health.
- e) Would like to see more work done on prevention of work-related disease/ill-health. One comment said that in their view the allocation of high/low risk sectors did not seem to take sufficient account of work-related health risks. Some of these respondents said HSE needs to find a different approach for tackling ill health. One respondent pointed to the apparent decline of HSE's Employment Medical Advisory Service as an indication that HSE is not giving this area of work sufficient priority.
- f) Would like to see HSE involved in more inspection and enforcement.
- g) A general concern that 'political interference', particularly in relation to decisions about which industries should be considered high or low risk, had damaged HSE's ability to carry out their functions.

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<sup>4</sup> See Call for Evidence document at footnote 1 above.



A few respondents commented that HSE's initiatives post the Lord Young and Professor Löfstedt reviews to simplify and rationalise legislation and guidance are a good thing, making it clearer for businesses, and others affected by work activities, what needs to be done to comply with health and safety legislation. However, a similar number commented that the effort being put into this legislative change diverts resource from essential compliance and advisory work.

A significant number of comments raised concern over the introduction of the Fee for Intervention regime (FFI) and that this is having a negative effect on the relationship between HSE Inspectors and the businesses they inspect. In particular, the perception is that HSE Inspectors will no longer fulfil the function of providing advice to the businesses they inspect.

FFI and/or the policy of targeting HSE inspections on high hazard sectors (of which a list has been published); was raised as a cause of a perceived withdrawal from HSE's advice functions. These comments were explained more fully by some:

- That they anticipated and welcomed that HSE Inspectors will focus on the enforcement action against the smaller number of very poor performers.
- That there are a large number of companies, however, who may be willing to improve, but need help, or who will coast. HSE's role in advising and challenging such companies is vital.
- That this is potentially storing up problems for the future as the health and safety performance of these companies will slip back.
- HSE will then be involved in chasing around after accidents and incidents that should have been prevented. In the longer term, this is more expensive for businesses and for HSE/society.

A smaller number of respondents commented that HSE spends too much time dealing with issues of 'public safety' and should focus on occupational health and safety issues.

Finally, one respondent commented that they did not think HSE was sufficiently engaged on the risks that may arise from emerging technologies and new industries.

## **Q2. How well do you think the HSE fulfils each of its functions at present?**

The overwhelming majority of comments were positive. However, some were qualified by a concern about resources:

- Do very well and are held in high regard in the UK and internationally.
- They do well, given the current financial constraints.
- They have done well, but concerned that standards are slipping, due to lack of resources.
- That they do well, but do not have sufficient resources to do all that is required.
- One respondent concluded that the lack of resources (and changes in HSE's approach) meant "HSE is presently unable to provide a credible threat of enforcement and therefore is undermining any prospects for securing compliance".

Positive comments were:

- HSE are good at proactive engagement with small businesses. The HSE approach of working cooperatively is the best way to get there.
- Representatives of sectors credited HSE's constructive approach as being a significant factor in strengthening health and safety in their sector. This included the offshore and construction sectors.
- A construction sector respondent said that HSE has an excellent track record of working with businesses and trade unions to counter the effect of over-prescriptive, disproportionate or inappropriate H&S requirements that are driven by the supply chain seeking to transfer liability down the chain (rather than reduce real risk).

While making generally positive comments, some respondents raised specific concerns, that HSE may have room for improvement in recognising the needs of businesses (within the context of government as a whole seeking to support growth) and could be more innovative about engaging with business.

A majority of respondents praised HSE's guidance and advice. Specific comments were:

- HSE's guidance demystifies health and safety for SMEs.
- HSE's web-based advice and tools have improved greatly, important to supporting businesses to comply (eg COSHH assessment generator and example risk assessments for low-risk businesses).
- HSE advice and guidance to schools counterbalances the overly precautionary approach often thrust upon them from elsewhere.
- HSE provides helpful and prompt advice for those who need to comply with the EU 1907/2006 Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation (REACH).

However, some cited individual examples where they felt HSE no longer provided the guidance that they used to do:

- The list of occupational exposure standards for chemicals (EH40) is no longer annually updated.
- It is regrettable that HSE decided not to lead on the development of new radiation protection guidance.
- Proactive campaigns, such as the Hidden Killer (aimed at asbestos) have fallen into limbo.

One recommended the use of more joint awareness raising campaigns with voluntary and private sector partners (as a way of being more effective and more cost-efficient).

One respondent raised a caution that the quoted high traffic rates on HSE's website is not necessarily positive, if people do not find the information for which they were looking.

One respondent commented that HSE adds requirements in Approved Codes of Practice (ACOPs) and guides which are not essential and add costs to business with little recognisable benefit (no examples cited).

There were specific criticisms of HSE's inspection and enforcement. A good number of respondents raised a concern that the time taken to complete investigations was excessive. This comment arose from:

- Those speaking on behalf of the injured or bereaved.
- Businesses who had been investigated (whether or not this had led to a prosecution), who felt they had been in limbo until a decision was made.
- Businesses where high profile incidents had occurred in their sector and they wanted to hear the lessons learned, to put in place any necessary improvements in their own control systems.

Some businesses raised questions about the consistency between HSE Inspectors approach around the issuing of Notices. However, these comments were few and usually in the context of a generally positive remark about the experience of being inspected by HSE.

Concerns were also raised over the transparency of the charging regimes, not about the time spent or how the bill was calculated, but why they were inspected in the first place or why the Inspector chose to look at certain issues. A number commented that while they were aware of the appeal process for charging they did not feel it was sufficiently independent to be worth making a complaint.

Two respondents from law partnerships criticised HSE's investigations and the quality of their evidential review process. One of these commented that they believed this aspect of HSE's work would be better performed by an independent and separately accountable body conforming to independent professional standards.

Comments from organisations with a well established health and safety management system were concerned that HSE is withdrawing from interaction with them:

- That there is a reluctance to provide advice and/or provide positive feedback as HSE Inspectors focus on sites where they can take enforcement action.
- That they would like to see HSE take a lighter touch with companies that can demonstrate that they have an appropriate number of H&S professional safety specialists on their sites.
- That they support primary authority schemes available for national companies inspected by LAs and the bespoke inspection plans available to sites with major hazard risks. They would like HSE to offer something similar for national companies that do not have major hazard risks.

- One commented that they liked the ‘account manager’ approach used by other regulators and would welcome HSE adopting this.

One response commented that HSE might learn from the Marine Management Organisation (MMO)<sup>5</sup> which has a good model for a regulator.

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<sup>5</sup> The MMO is an NDPB set up in 2009 to replace the Marine and Fisheries Agency and incorporating functions previously carried out by DECC and Dept for Transport.

**Q3. Is there a need for a body to carry out each of these areas of work?  
If so is HSE the right body to do this work, in the light of what it is doing now?**

Every response said that there is a need for a body to carry out each of these areas of work. All but one response said that HSE is the right body to do this work. The only alternative offered was that HSE should be integrated into BIS.

Comments that gave reasons for their support of HSE continuing as an NDPB included:

- There is an overlap between the different areas of HSE's work. HSE is the body that drafts the legislation, works with industry to debate what this means in practice and set the relevant standard, advises on how it can be effectively complied with, and monitors and where necessary enforces compliance. All these functions rely on sound technical expertise. What they learn from interaction with business feeds into identifying research needs informs the policy about any changes to legislation.
- That HSE must be within government to have the necessary authority to act as a regulator.

Many responses stressed that the independence of HSE is very important or absolutely essential. This is independence from:

- Firstly, and most importantly, from those they regulate or to whom they grant licences, consents or other permissions.
- Other parts of government where there may be conflicts of interest with policy developments that would effect health and safety (eg offshore, emerging technologies, health).
- Various parties in business/industry who have an interest in the setting of health and safety standards. This includes the employer and employee representatives, but also other parties in the supply chain or other third parties. For example, the suppliers of safety equipment or services will be keen that a standard requires that their product or service is in the standard and may try to cut out other reasonable forms of risk control. Respondents provided examples from industries where HSE

has provided the independent, robust technical evidence to set a level to which all parties could sign up.

- General ‘political interference’.

Some respondents said that the recent Government reforms of health and safety had led to changes that meant they no longer felt HSE is independent.

One respondent commented that with Office of Rail Regulation (responsibility for rail safety) [and the Maritime and Coastguard Agency (maritime safety)] sitting outside of HSE and Office for Nuclear Regulation due to split in 2014, that it is important that HSE retains its role as a single, central body to coordinate the wider health and safety framework.

#### **Q4. HSE's functions include policy development, including negotiating on behalf of the UK Government on European Legislation – are they the right people to do this?**

All but three respondents supported HSE's role in policy development and negotiation in Europe on behalf of the UK. The only alternative offered was that HSE could act as technical advisers to lead negotiators in European negotiations, with the lead coming from the relevant government department.

Comments in support of HSE role in policy development and European negotiation included:

- A range of respondents from both industry and trade union commented that they felt they had good links with HSE, and/or that they had had the access they needed when relevant policy was being developed. They said HSE consult with all parties and seek to reach the right balance where there are disagreements about where the standard should be set. HSE has the technical and practical knowledge gained from implementing and enforcing on the issues, so it is right that they also lead on developing the policy.
- One comment said that HSE's role in transposing EU legislation compared favourably with other departments that just 'top and tail' a Directive. They cited the then DTi implementation of the Working Time Directive as an example of a much less satisfactory approach.
- HSE is respected and has authority in Europe and other international forum based on their technical expertise; with beneficial outcomes to the agreements made. They deal with the point where science and policy meet – based on facts and evidence and in proportion to the risk.
- Several respondents gave examples of where, in their view, HSE intervention in European negotiations had produced more proportionate, sensible EU legislation. These included proposals for electro-magnetic fields, artificial optical radiation, musculo-skeletal diseases and asbestos legislation.



However, a number of respondents, while overall in support of HSE's role in European negotiations, made the following critical comments:

- HSE interventions at European level should be more evidence-based, related to the benefits to workers. The current government's 'deregulatory' approach is politicising HSE's role in European negotiations.
- HSE should play a more robust role in Europe, specifically to promote a risk-based approach to regulations. There is a tendency in Europe to an over-precautionary approach based on hazard alone, which is recipe for disproportionate and expensive law for marginal benefit.
- Concern that HSE has reduced its engagement in Europe (some stating this is due to lack of resources). Examples cited were setting standards for personal protective equipment (PPE) and chemical exposure levels (OELs). This results in UK interests not being adequately represented and the potential for the UK proportionate approach being replaced by absolute regulations. The EU Registration, Evaluation and Authorisation of Chemicals Regulation (REACH) was cited as an example of the dangers of non-proportionate EU legislation.
- A few respondents commented that HSE needs to be better at working with all parts of the UK government. In Europe, examples cited were Seveso III (major hazard sites) and Indicative Occupational Exposure Limit values.
- Another said HSE's ability to negotiate in Europe is limited as they do not have an automatic place on the EU's Advisory Committee on Safety and Health at Work (ACSH) working parties and that they have to work through other government representatives or employer/worker representatives.
- One respondent specifically commented that the move of HSE's legal support team from an in-house service to a service-contract with Treasury Solicitors had reduced HSE involvement in drafting Directives and undermined their ability to translate Directives into domestic law.
- A few respondents said they had a 'nit picking' concerns re issues of gold-plating (one citing that this is in the ACOPs rather than in the UK legislation).

Finally one respondent said, as the EU is currently reviewing all its health and safety legislation, it is not a good time to tamper with HSE's involvement as the UK's influence would not then be as effective.

**Q5. HSE also carries out research, technical development, provides advice, carries out investigations and enforces health and safety legislation. Are any of these functions no longer required?**

There was overwhelming support for the need for all of these functions. Many respondents added that either/or:

- The roles are interlinked and therefore HSE should continue to do all of them.
- That they are concerned HSE is not adequately resourced to deliver them all.

However, while not disputing the need for any of the functions, three respondents gave a counterview that they are interlinked, saying that HSE faces a conflict of interest, or that there is insufficient separation between HSE's roles. Examples cited were:

- Between HSE's role in approval of safety cases for high hazard sites and investigation of major hazard incidents (example given of the 2005 Buncefield explosion).
- Between HSE's general role in providing advice and securing compliance at specific sites.

One such respondent suggested that HSE's enforcement should be conducted by an independent body with objective assessment performing to and accountable to professional standards and duties to the Court and to those to whom this conduct impacts.

Some commented here on the importance of guidance and HSE's role as an independent arbiter of the standards that should be set.

Others re-emphasised the importance of inspection and investigations (ensuring compliance). Two respondents commented positively on HSE's reports into high profile incidents, remarking they provide an expert, impartial, scientific viewpoint and that a commercial organisation would not be capable of providing such an authoritative response.

There were a range of comments in this section on HSE's statutory functions regarding the carrying out of research, publication of results and encouraging research by others and the role of HSL. Examples given of the importance of research were:

- In determining if ill-health effects are substantiated; rather than rushing to ill-informed legislative change that could harm the UK economy.
- In predicting future trends in risks and ill-health effects.
- Of identifying risks when old technologies are put to new uses or a more diverse (including older) workforce are exposed to existing hazards.
- On emerging energy and green technologies (including shale gas) and novel technologies (nano or biological).

Some expressed concern that reductions in HSE's budget meant these issues are not being addressed.

A good number thought HSE should commission more research rather than conduct it – recognising it does this already to some extent. But some felt they should solely do the oversight role to identify the research gaps and then invite private and public sector bids to complete the work.

One respondent had a concern that some third party research papers had been poorly targeted and overly-specific, without offering insightful conclusions. The respondent did not specify which research papers.

## **Q6. Are there parts of HSE's work that could be better done elsewhere in the public, private or not-for-profit sectors?**

The majority of respondents answered 'No'. One supported this view by citing the value of HSE's existing strong reputation as a health and safety regulator; that companies know who they are and understand the repercussions of failure to comply. If outsourced others would not have the same deterrent effect. Many referred to reasons given in answers to previous questions.

However some qualified their answer with the following comments:

- Support for HSE working in partnership, bringing the credibility of HSE affiliation and input to work done at industry level by universities, professional bodies, trade associations, unions, major clients, insurance, standard setters and the specialist media.
- That there may be opportunities to outsource or share back office type activities.
- That HSE and LAs could make use of independent bodies to verify or certify H&S management systems and provide intelligence to inform their enforcement priorities.
- That HSE should use independent expert witnesses, answerable to the Court, not rely on their own specialists.

One respondent commented that the devolved nations may take their health policies into a different approach to occupational health. This may mean that HSE would no longer be the appropriate body to deliver aspects of its functions in Scotland and/or Wales.

A range of respondents argued that health and safety regulatory responsibilities were not appropriate for delivery by the private sector, with a smaller number also ruling out a not-for-profit body. They argued that a private regulator would not carry out the function as well as HSE because:

- Regulators with a business interest could be tempted to save money by cutting corners.
- Experience of commercial models of regulation, such as independent certification, client-based assurance etc, is that the service provider needs to develop a

commercial basis for the transaction. This tends to lead to over-complication of processes, more bureaucracy and they are generally more burdensome.

- Conflicts of interest will arise preventing them from maintaining the necessary independence and impartiality to make enforcement decisions.
- This would increase the inconsistencies in enforcement as private sector providers will not invest in training and professional development as HSE does.
- HSE provides a single authoritative point for information on health and safety (through its website). If devolved to local authorities or private or not for profit providers this would be disjointed.
- Privatisation would accelerate the breakdown in the relationship between the Inspector and the business that has been introduced by the HSE's fee for intervention regime.

And respondents argued that there would not necessarily be cost savings or a viable commercial model because:

- Costs will be driven up as the salaries will have to be higher to attract equivalent quality of staff, experience and know-how. As private sector is profit motivated they may not be able to recruit and retain adequate staff.
- A not-for-profit organisation (such as IOSH) is funded by its members' fees. If they had to provide guidance for everyone there would be no incentive to be a member so it is not financially viable.

Several commented on whether HSL should remain a public body:

- Many gave support to the idea of wider commercial role for HSL, but not full privatisation.
- Others supported the view that HSL should remain as a public-body, without further comment.
- One called for greater transparency of HSL costs, stating they are invariably higher than similarly qualified competitors. HSE should refrain from using HSL as default provider for relevant data, technical expertise or scientific analysis.

Several respondents pointed to the detrimental effect of the rapid privatisation or break up of laboratories, such as the forensic science service, and cautioned HSL going down the same route.

A good number of respondents argued that HSE should not be involved in, or that there should be a separate regulator for areas where the key risks are to the public (referred to as 'societal risk' or 'non-occupational' risk by some). However, this was not about major hazard risks, rather those activities where the public are in their own homes or receivers of services. Specific comments were:

- HSE should review if domestic gas safety is best dealt with by them.
- Would like to see the Adventure Activity Licensing Authority (AALA) taken out of HSE. Some commented they would also like to see the scheme extended (once it is outside of HSE).
- In the public leisure, recreation and play sector risk is inherent and beneficial to the activities and therefore should fall outside of the HSWAct.
- Fairgrounds should not be inspected by HSE.
- Several expressed concern about a perceived growing agenda for regulation on these risks; and that HSE's role in protecting those at work might be swamped.

One commented that HSE's contract with a private company to deliver Infoline had not been a good service. Another commented that mismanagement of Work Capability Assessments is an example of the dangers of privatisation.

## **Q7. HSE currently regulates health and safety jointly with Local Authorities – is this division of responsibilities between the HSE and Local Authorities correct?**

The majority view was that the current split is 'a pragmatic compromise' or 'about right'. Some questioned whether all premises inspected by LAs were really 'low risk'. However, many who said this thought unpicking the current arrangements to try and correct this would not be worthwhile.

A good number of respondents said they thought ideally HSE should be the regulator for all premises. Of these, some recognised that this would involve HSE taking on responsibility for inspection of 1.5 times more premises than it currently inspects. This would require an increase in resources and transfer of existing LA inspectors (with some retraining required), and that this would risk swamping the organisation. One respondent said LAs should take on responsibility for enforcing at domestic premises (currently HSE's).

We received comments that supported the recently issued National LA Enforcement Code<sup>6</sup> and others that raised concern it would limit a local authority's ability to be flexible in relation to local issues, and/or to innovate and create their own schemes and campaigns.

Many respondents who thought the split was about right also say that HSE's control of what LAs do in this area should be further strengthened. The reasons for this vary, but respondents' concerns included the following:

- LA officials (not necessarily H&S regulators) provide the sort of advice that hits the headlines as 'conkers bonkers' stories.
- LA inspection approach is less consistent than HSE's.
- In times of a very restricted LA budgets H&S is vulnerable to being proportionally cut back more than publicly visible services.
- H&S is an issue that does not receive sufficient profile with the political leaders of LAs (and that they did not understand the issues)<sup>7</sup>.

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<sup>6</sup> National LA Enforcement Code available from HSE's website: <http://www.hse.gov.uk/lau/publications/la-enforcement-code.htm>.

<sup>7</sup> Royal Environmental Health Institute in Scotland survey found 92% of EHOs felt elected members in their authority did not understand the role of the EHO.



- The professional leadership of H&S for EHOs is not as strong as it is for HSE Inspectors and that they have limited access to specialist support.
- HSE campaigns, including access to promotional materials, should be rolled out to LAs.
- LAs don't share information (on emerging hazards, good practice etc).
- Opportunities to benchmark the LAs performance are limited.

A number of respondents commented that the view that LA inspectors are not as consistent as HSE are not well-informed. They said the examples of non-risk based decisions from LA officials are from those who provide advice to the public (who have had the appropriate training) or who take decisions on public nuisance, licensing or planning issues and use H&S as an excuse, or catch-all reason, for their decision.

**Q8. Are there functions carried out by other bodies that you consider would be better done by HSE?**

The overwhelming response was no. Many also said that where HSE works closely with other Regulators there is already or does need to be good communications and up to date memoranda of understanding. In particular, respondents gave examples where communication needs to be effective and fast:

- Where safety critical information is available following an incident (and should not be delayed by legal processes).
- Where workers are most at risk of exploitation (eg where employees are migrants who depend on their employer for their visa or/and where employer also provides their accommodation).
- With EA/SEPA on REACH.

Some individual respondents from sectors who deal with two regulators gave a view on this:

- Several respondents from the Chemical Process sector (Control of Major Accident Hazard (COMAH) sites) commented. Most generally supported the joint competent authority working together as a good example (HSE and EA/SEPA). They commented that the expertise required to be the regulator for safety issues was different than that required for environmental issues and therefore even if it was one agency it would always be a split responsibility. Therefore, they did not see any benefit to moving responsibility from one body into a single regulator, but argued strongly for the approach to be as similar as possible and for inspections to be co-ordinated.
- Two respondents from the offshore sector suggested SEPA's responsibility for regulating the keeping and use of radioactive sources and disposal of radioactive waste should be transferred to HSE. One suggested that DECC's responsibility for environmental risk assessments could be moved to HSE. Otherwise, they made reference to the EU Directive 2013/30/EU on safety of offshore oil and gas operations requirement that a single competent authority should be established and proposed that HSE should take the lead.

- A respondent from the university/high hazard laboratory sector said there is an overlap between what HSE and the Counter-Terrorism Security Advisers do and they would prefer one body, or for HSE to take the lead.

A few responses stated that if HSE is to take on functions from others it must also be provided with sufficient resources to fulfil them.

Some other comments received against this question dealt with the application of the legislation rather than any transfer of functions and have not been included.

**Q9. Are there any lessons to be learnt from other countries about how best to deliver the work that HSE does and how similar bodies in those countries manage their work? Are there any constraints on applying such models in Great Britain?**

There were no suggestions for other models for delivery of the functions currently done by HSE. A significant number of respondents commented that the UK model is seen as one of the world's best and that countries such as Singapore and Qatar are actively seeking to replicate its approach to major hazard regulation.

A number of respondents commented that there is a greater link between the prevention regimes and the accident/ill-health compensation schemes in Germany and in Italy. One of these respondents commented that the compensation scheme in Germany<sup>8</sup> is not as adversarial as it is in the UK, which removes much of the uncertainty and the legal costs involved in the UK's civil compensation scheme.

Many respondents commented that in general they were not in favour of the US model as it is fragmented between State bodies and Federal bodies. They provided examples where following an incident it had been difficult to establish who should investigate and evidence collected by one body was not shared with another. They also commented that the US system tends to lead to prescriptive standards, which do not complement each other or allow for the individual circumstances of businesses. The enforcement approach focuses on tracking compliance rather than on proportionate risk prevention.

However, a few respondents did mention the OSHA Voluntary Protection Programs (VPP)<sup>9</sup> which recognise employers who have implemented effective H&S management systems and maintain accident rates below their sector average. Participants are evaluated before they enter a VPP and re-evaluated every few years, but are exempt from programmed inspections. A team of OSHA safety and health experts carry out the evaluations and administer the scheme.

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<sup>8</sup> The advice/guidance, inspection and enforcement functions carried out by HSE in the UK are split between the Berufsgenossenschaften (accident insurance carriers) and the government labour inspectorate. Technical officers from the Berufsgenossenschaften carry out the majority of compliance visits and they have powers to fine companies found to be in breach of the standards.

<sup>9</sup> OSHA is the Federal body responsible for setting and enforcing standards and provides training, outreach, education and assistance. In some states these responsibilities are delivered by a state H&S body under an OSHA approved program. There is a separate Mine Safety body. NIOSH is the federal body that conducts research and makes recommendations to prevent worker injuries and ill health, they also support State programs to improve health and safety, including the provision of technical support, training programs and grants, and by funding research in Universities.

A number of other respondents provided examples from other countries of legal requirements on employers, or positive examples of how employers and employees work together, or how safety representatives work. While positive examples, these were not relevant to how HSE itself delivers its work and so are not included here.

**Q10. Would another delivery model offer a more efficient and effective way of delivering HSE's functions? Some alternative delivery options are outlined at Annex C<sup>10</sup>, but you do not need to restrict your suggestions to the options listed.**

The overwhelming view was that HSE should remain as an executive NDPB.

Many comments addressed the importance of HSE's independence from central government:

- The NDPB model gives an appropriate level of political and market independence.
- HSE must be a trusted body, separate from Government, to give impartial advice to Ministers and must have the confidence of employers and workers.
- It is essential that HSE is distinct from Whitehall. On the 25<sup>th</sup> Anniversary of the Piper Alpha disaster the lessons learnt must not be forgotten about the importance of separation between the safety regulator and those who fund or otherwise support/promote other interests (see also answer to Q3).

One respondent considered that one of HSE's strengths is that the hazard profile of its work is massively varied. Lessons learned from one sector are applied, where appropriate to another. This is how HSE developed the generic approaches to risk assessment (reduce risk as low as is reasonably practicable) and proportionate principles. They concluded that it would not be possible to manage this regulatory model by moving HSE's policy functions into a department, and procuring external parties to deliver the others.

Suggestions for alternative delivery models were:

- One respondent suggested that general H&S policy should remain with HSE, LAs should take on enforcement for all but major hazard sites who should be covered by Office for the Nuclear Regulation (ONR), Office for Rail Regulator (ORR) and equivalent new regulators for offshore and COMAH sites.
- Another made a narrower suggestion that offshore safety regulation should be split from HSE as ONR will be (proposal within the Energy Bill, currently being considered in Parliament).

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<sup>10</sup> See Call for Evidence document at footnote 1 above.

- Three expressed support for total or partial delivery by a private or not for profit organisation. One suggested that some functions (and resources) could be allocated to trade associations, but did not specify who or in what form.
- One suggested a delivery model akin to the Marine Management Organisation may be more efficient. Going on to say that current Civil Service terms, conditions and resourcing rules could be too much of a constraint on recruiting Inspectors, if the organisation has already been downsized below the critical mass to develop sufficient internal talent.

**Question B: If you consider that an NDPB is the right way to deliver HSE's functions, are the current control and governance arrangements the right ones?**

Many respondents chose not to give a reply to this question. Of those that did, the majority said they did think the current control and governance arrangements are the right ones.

However, about half of these went on to comment that they had concerns over the current level of political control and influence over HSE. In their view, recent announcements around the Health and Safety reform agenda had blurred the separation between the Ministers and HSE, to the detriment of perceptions of HSE's impartiality and independence.

A number of comments addressed the make-up of the HSE Board or the appointments process:

- A number commented that they were concerned “that appointments to the HSE Board are now made on the basis of an individual meeting (unknown) Ministerial criteria, rather than having the support of the bodies they are meant to represent”.
- A couple of respondents suggested the person in the ‘public interest’ seat should represent victims and their families.
- One respondent suggested that a number of Board positions should be allocated to specialists in HSE's priority areas, including occupational hygiene.
- Another that the insurance industry should be represented on HSE's Board.

Two respondents said they would like to see an additional H&S stakeholder council, with members drawn from a broad range of stakeholders, to act as a sounding board to inform and guide HSE officials, ministers and other political representatives.



A few comments spoke to the type or effectiveness of scrutiny of HSE's work:

- That there appears to be limited involvement of the Board in scrutinising HSE's financial performance and that the key relationship concerning financial management is between HSE and DWP. And the respondent said they would like to see greater clarity on this.
- The health and safety performance of the UK, and efficiency of HSE appears ultimately to be judged around incident statistics. Leading measures (KPIs) should be used, those that demonstrate that risk has been controlled.
- There should be independent oversight and scrutiny of individual aspects of HSE's work, eg production of ACOPs, FFI decisions and prosecution decisions (by CPS) and competence of Inspectors (by UKAS).

## Annex A: List of Stakeholders Consulted

	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)	✓

	Organisations that responded to the Call for Evidence	Met with Martin Temple
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)	✓
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	

	<b>Organisations that responded to the Call for Evidence</b>	<b>Met with Martin Temple</b>
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	

	<b>Organisations that responded to the Call for Evidence</b>	<b>Met with Martin Temple</b>
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.		

	<b>Organisations/Individuals that met with Martin Temple who did not provide a written response</b>
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
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
34.	Vehicle Builders and Repairs Association
35.	Veolia
36.	Zurich plc