



Department
for Work &
Pensions

Appraisal of HSE's approach to negotiating and implementing European legislation

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Period: January to March 2014

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Executive Summary

The Minister for Disabled People (the Minister) asked the Department for Work and Pensions (DWP) for an appraisal of the Health and Safety Executive's (HSE's) approach to negotiating and implementing EU legislation. I was asked to undertake the appraisal as a DWP official independent of both HSE and of the Sponsorship function within the Department. I carried out the appraisal between January and March 2014, taking account of a number of significant earlier reviews and inviting contributions from those external business stakeholders most likely to be engaged in recent EU proposals and legislation.

I found that HSE takes an evidence, risk-based and proportionate approach. It is respected for its technical expertise and is spoken of well by business representatives. It is conscious of potential burdens on business and complies with well regulated governance processes. There are particular challenges in maintaining a strategic overview of the HSE's role in EU legislation because it takes years to move from proposals to implementation.

HSE makes intelligent use of the UK Government's 'Guiding Principles for EU Legislation' and 'Transposition Guidance: How to Implement European Directives Effectively' to achieve the most appropriate results for Great Britain and during the course of this appraisal its internal guidance to officials engaged in European Union work has been better integrated with cross government guidance. HSE has used a small amount of goldplating when transposing European legislation which has been approved by the relevant regulatory committees and is seen as justified by the business representatives who gave evidence. HSE has proposed simplifying and repealing some EU legislation as part of the EU review of the occupational safety and health acquis. The UK's position is unlikely to attract support in the EU without a comprehensive and integrated influencing strategy designed to grow alliances over a number of presidencies. My recommendations include more regular briefing of the Minister and redoubled efforts from HSE senior staff and policy leads to build comprehensive alliances in across EU Member States to support the simplification and repeal of EU legislation which does not deliver the intended benefits.

Business interests and the business growth agenda are well understood and taken into account by HSE. Its impact assessments are well respected and used effectively. There are two areas where good work would be even better if HSE: could find ways of maintaining business engagement throughout the negotiating process; and, could show the costs to small businesses separately in its impact assessments.

A third area is the legislation that regulates the use of chemicals, which is being extended to those keeping smaller quantities between 2013 and 2018. The Department for the Environment, Food and Rural Affairs (DEFRA) has lead policy responsibility on the legislation ('REACH'), and HSE has responsibilities in the areas of enforcement. HSE, DEFRA and the trade associations should work together to ensure that small businesses, are informed of their responsibilities so they can comply with the EU Regulation at a proportionate cost.

HSE is working on the implementation of three key pieces of EU Legislation between now and summer 2016. These are:

- Electromagnetic Fields (July 2016);
- Seveso III (May 2015); and
- Offshore Oil and Gas Drilling (July 2105).

HSE has negotiated very effectively on the latter two pieces above to ensure they are compatible with the UK's existing regimes and they have strategies in place to minimise potential difficulties. The Electromagnetic Fields legislation is not seen by business or HSE as necessary or based on sound science. The HSE's effective negotiations have created more scope for flexibility through derogations, which it expects to use to the full. Refusing to implement the Directive would be unlawful and risk infraction proceedings, and significant fines, on the UK Government.

I am very grateful to all the individuals and organisations who gave evidence to enable me to undertake this appraisal, and for the open way HSE officials responded to my questioning. Special thanks go to Stuart Bristow and Robin Foster.

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Background

Terms of Reference

1. In January 2014 the Minister commissioned an appraisal of HSE's approach to negotiating and implementing EU Legislation. The following terms of reference were agreed:
 - A. Provide a short overview of HSE's current negotiating position with the EU and identify if any previous implementation of EU legislation had been 'goldplated' by HSE.
 - B. Consider whether the current approach to negotiations on potential new legislative proposals, formal proposals for new legislation and the implementation of consequential regulations and directives follows relevant government guidance.
 - C. Provide assurance as to whether the interests of business and the UK growth agenda are properly represented during negotiations at official level.
 - D. Produce a forward look of the EU legislation HSE is preparing to implement over the next 18 months, and consider whether it can be minimised taking into account the Guiding Principles for EU Legislation and what the consequences would be of refusing to implement or minimising the transposition of the Directives.

Context

2. This appraisal is set in the context of a number of other significant reviews. Its scope is to focus on HSE's role as a policy analyst, negotiator and implementer of European legislation. The intention is that it should draw on, and take account of, the other reviews rather than duplicate them. Key documents taken into account are listed in Annex A. It is worth noting that in regard to HSE's role in Europe:

Lord Young of Graffham's "Common Sense, Common Safety" report for the Prime Minister recommended that "the UK should take the lead in cooperating with other member states to ensure that EU health and safety rules for low risk businesses are not overly prescriptive, are proportionate and do not attempt to achieve the elimination of all risk".

Professor Löfstedt's "Reclaiming Health and Safety for all" recommended that the government works more closely with the Commission and others, particularly during the planned review of EU health and safety legislation in 2013, to ensure that both new and existing EU health and safety legislation is risk-based and evidence-based.

Martin Temple's HSE Triennial Review report recommended that the HSE Board should regularly take an overview of how and to what effect HSE resources are deployed in Europe and provide a steer on priorities. HSE should, if possible, publish this information, including assessments of the impact on health and safety outcomes as well as the costs to business.

Approach

3. Given the timescales for the appraisal, the main source of new evidence was interviews with senior staff at HSE, a selection of external stakeholders, officials in other Government departments and UKRep (the UK Permanent Representation to the European Union). Annex B lists those who were interviewed as part of this appraisal.

Findings, conclusions and recommendations

A. A short overview of HSE's current negotiating position with the EU and a view on whether previous implementation of EU legislation had been 'goldplated' by HSE.

4. The UK has been legislating on health and safety at work since the early 19th century. The Health and Safety at Work Act 1974 brought together the key pieces of legislation and established HSE. The main body of EU health and safety legislation was laid down in the 1990s and overlaps with the pre-existing UK legislation. Since then the flow of legislation has reduced significantly. From around the mid-1990s, successive UK governments have strengthened the focus on minimising potential and actual regulatory burdens on business.
5. Responsibility for regulating and enforcing health and safety in GB is shared between a number of Government departments, agencies and Local Authorities. HSE's role as a negotiator of EU health and safety legislation mainly relates to the worker protection field, where proposals emanate from DG Employment, Social Affairs and Inclusion ('DG EMPL'). It is also responsible for EU legislation relating to the:
 - placing on the market and use of biocidal products (single market and directly-acting regulation);
 - classification, labelling and packaging of dangerous substances ('CLP') (single market and directly-acting legislation);
 - import and export of dangerous chemicals under the 'prior informed consent' (PIC) procedure (directly-acting regulation) ;
 - civil use of explosives; and
 - control of industrial major accident hazards ('Seveso').
6. HSE supports:
 - Department for the Environment, Food and Rural Affairs (DEFRA) in negotiating legislation under the REACH regulation that controls harmful chemicals and on plant protection products ('pesticides'). This is single market legislation which has effect in Member States through directly-acting EU regulations HSE is also responsible for aspects of the subsequent operation and enforcement of the regimes.
 - Department for Business, Innovation and Skills (BIS) on product safety and standards and market surveillance (also single market legislation) and general employment law where this relates to health and safety law (such as pregnant workers).

- Department of Energy and Climate Change (DECC) , which is responsible for negotiating EU legislation relating to the safety of offshore oil and gas activities and on radiological protection, some of which is implemented by health and safety law and enforced by HSE.
 - Department for Transport (DfT) in relation to the type-approval of tractors (also single market legislation).
7. There was clear evidence during the appraisal that HSE works closely with other Government departments. Its expertise and technical knowledge was highly respected by all who gave evidence. For example, HSE worked closely with the Foreign and Commonwealth Office (FCO) and Cabinet Office when the UK intervened in a recent case in the Court of Justice of the European Union (CJEU) brought by the European Commission against the Council and the European Parliament. The case concerned the use of delegated and implementing acts under the Lisbon Treaty, and was in the context of the European Biocidal Products Regulation, on which HSE leads for the Government. If the Commission had succeeded in its case it would have been able to use delegated acts to widely adopt subsidiary EU legislation. Under a delegated act, the Commission only has to consult member states before adopting its proposal. However, the Court agreed with the key arguments put by the UK, whereby there is some flexibility under the Treaty for the EU legislature to choose either delegated or implementing acts. Where implementing acts are used, the Commission has to secure a qualified majority of member states to adopt its proposal, providing a greater level of member state control. The outcome of the case applies widely across EU legislation and many policy areas.
8. The need to balance risks to health and safety while minimising burdens on business has been reflected in the way the HSE negotiates and implements EU legislation. The process for the HSE negotiating pre-proposal and post-proposal directives and regulations on health and safety is well set out and requires ministerial agreement to the UK's voting position. Wider cross-Government agreement and detailed impact assessments (scrutinised by the Regulatory Policy Committee (RPC) before approval of HSE's approach by the Reducing Regulation Committee (RRC)) are required before the implementation of EU directives. Inside the HSE there are well established governance processes which ensure senior staff and external industry stakeholders are sighted on proposals.
9. However, the process of developing EU proposals can take many years and Ministers' views are sought only at key stages of the process. It is unlikely, therefore, that a single Minister will have oversight of HSE's negotiating position throughout the development of any one piece of EU legislation. Conversely, proposals to legislate can emanate from beyond DG EMPL, for example from social partners; as such neither the HSE nor Ministers may be sighted until fairly

late on in the process (see below the example of the social partners' agreement on the prevention of health risks in the hairdressing sector).

Recommendation 1: The Minister should be briefed on all relevant pre-proposal and formal proposals emanating from the EU relevant to HSE, and receive a short, regular update on the current position which highlights any developing or contentious issues. In addition, he should also receive a copy of the six-monthly round-up which is sent to the Foreign and Commonwealth Office.

10. There are a few examples of HSE having to implement EU legislation which, in its view and that of others, brings no additional benefit to health and safety in GB while it does put additional burdens on business. The Artificial Optical Radiation Directive 2006/25/EC is an example of this, where HSE worked to reduce the scope of the Directive at the pre- and formal proposal stages and has used the approaches in the Guiding Principles and intelligent transposition to meet the legal obligation to implement the EU Directive, though at a level that has the least negative impact on business.

Goldplating

11. HSE's duties are set down in the Health and Safety at Work etc Act 1974.

12. A list of EU Legislation for which the HSE is responsible and transposed since 2010 through Statutory Instruments is at Annex C.

13. As the Löfstedt and other reviews report, there is little evidence of unjustified goldplating by HSE. EU directives often overlap with existing UK legislation. In the process of developing the regulations to implement EU derived legislation, HSE consults with stakeholders and there is generally a process of integrating the EU requirements with the existing approach in GB to make them coherent. On some occasions, the higher standards in existing UK legislation have been kept because these are considered to be more proportionate to the risk in GB, or because changing well-respected regimes would be a greater cost to business than the benefits to be gained by reducing the existing standard.

14. HSE's approach to asbestos is an example of where goldplating was considered against the government's policy and agreed by ministers as justified. The HSE requires those removing it to be licensed where the EU directive does not. While this requirement is higher than in Europe, the arrangements in GB pre-date the

European legislation, and no-one who gave evidence suggested it was inappropriate because asbestos was used extensively in buildings in the UK during the 19th and 20th Centuries and the health risk from asbestos is high. Some also argued such provisions protect British industry by making it more difficult for foreign businesses to gain a foothold in the UK. Others dealing with hazardous materials thought a strong and effective regulator benefited everyone. There was some general concern about whether HSE had sufficient resources to fulfil all of its enforcement duties, which were seen as potentially weeding out those companies who do not comply with pan-European standards.

Simplifying and Repealing EU Directives

15. The Government has approved a list of EU legislation that it would like to see simplified or repealed during the forthcoming review of the occupational safety and health (OSH) *acquis*. These are listed at Annex D. It is expected to be difficult to get support for the UK views, in part because DG EMPL and most Member States take a precautionary view of health and safety legislation, whereas the UK/HSE has a risk-based and proportionate approach. HSE's strategy is therefore also to work with parts of the Commission working on regulatory reform and small business.
16. HSE has developed some very effective tactics to influence other Member States. These include: early influencing, providing briefing with impact assessments which make it easier for other Member States to assess the potential effect in their own country; engaging business stakeholders who have bases in different European states and encouraging them to lobby in the those states, and sending HSE policy officials to work within the EU.
17. If the UK is to be successful in obtaining such wide-ranging simplification and repeal of OSH legislation, it will need to develop a comprehensive strategy to influence the European Commission, MEPs and key Member States at the highest level. During this appraisal a number of stakeholders expressed the view that HSE would benefit from more senior representation in the EU to garner more strategic support from opposite numbers in Member States.

Recommendation 2: As part of its comprehensive strategy to influence the Commission's review of the OSH *acquis*, HSE's senior staff and international leads should redouble their effort to build their strategic relationships in the EU institutions and with opposite numbers in Member States, and work with DWP to ensure opportunities for Ministerial interaction with EU counterparts, MEPs and international business leaders are exploited to create influential alliances.

B. Does HSE's current approach to negotiations on potential new legislative proposals, formal proposals for new legislation and the implementation of consequential regulations and directives follow relevant government guidance?

18. During the appraisal representatives from a wide range of trade associations, other Government departments, cabinet committees and UKRep, as well as senior staff and policy leads within HSE, gave evidence. There was a remarkable consistency between what HSE said it did and the feedback received from external stakeholders about their experience of working with HSE. All agreed that HSE consistently challenged the need for more EU legislation, and looked for a risk-based and proportionate, evidence-based approach. With regard to implementing EU legislation, the HSE has a rigorous project management approach, which includes working closely with the industries impacted by the legislation. In short, there was clear evidence that HSE worked to the spirit and mostly to the letter of the Government's guidance.
19. As mentioned above, there were occasions when a small amount of goldplating was seen to be beneficial to GB business or where "copy out" of EU directives would not bring about the best result for the GB. On these occasions HSE was seen as using an intelligent approach to the use of the Guiding Principles and Transposition guidance. The approach was endorsed by business stakeholders and by the representative of the Better Regulation Executive (BRE). HSE's proposals and actions were seen as transparent and clearly justified in papers for RPC and RRC. The evidence from RRC relating to impact assessments show HSE as one of the best agencies or departments.

Recommendation 3: Where HSE proposes to goldplate, not use copy out, or not to use any derogations to the full extent, it should show the estimated costs and benefits of the relevant proposals in its advice to DWP Ministers.

20. The internal HSE website guidance links to the Guiding Principles and the Transposition guidance on Implementing EU Legislation and underlines their importance, but did not fully integrate them with the step-by-step guidance for staff on dealing with the EU. From talking to HSE staff responsible for the EU health and safety dossiers, it was clear that they fully understood the Guiding Principles and consistently, and often successfully, challenged the Commission at the pre-proposal stage (in alliance with other Member States) to prevent it bringing forward formal proposals.
21. Examples of HSE's successes include: the European Commission's announcement that it will not propose legislation on ergonomics in the workplace

during its current mandate or propose legislation to implement the social partner agreement on the protection of occupational safety and health in hairdressing.

Recommendation 4: As part of this appraisal the HSE guidance on working in the EU has been revised to better integrate the Guiding Principles and other relevant government guidance throughout.

C. Are the interests of business and the UK growth agenda properly represented during negotiations at official level?

22. The evidence brought forward during this appraisal strongly suggests that the HSE has been most effective in challenging the need for legislation early in the pre-proposal stage. It works to support UKRep and gain intelligence from their direct association with the Commission. It works proactively and collaboratively with business and industry to collect information and produce analysis on the impact and potential costs of proposals. HSE's early impact analysis briefing has helped other Member States to understand the consequences for their businesses and helped UKRep gain support for the UK's position. On occasion, HSE's analysis has been shared with industries which cross the borders of Member States and that has allowed leaders of industry in other Member States to lobby their governments and gain support for the UK position. HSE's actions have played a significant part in preventing both the proposed ergonomics directive and the social partner agreement on the hairdressing sector from finding their way into legislation at this time. The Better Regulation Executive is using these two examples as effective role models for other Government departments.

23. After an initiative gains momentum within the European Commission it is significantly more difficult to prevent its passage to a formal proposal and eventually legislation. Despite early intervention to prevent a formal proposal by HSE, qualified majority voting (QMV), and, often, the demands of the European Parliament, mean that, on some occasions, unwanted proposals or, more often, proposals that still contain unhelpful parts, are passed.

Conclusion 1: There was clear evidence that the HSE takes a resilient approach, and brings considerable professional expertise to bear in challenging unjustified or ill-formed legislative proposals. HSE is most able to influence the EU when it works with industry to analyse potential new proposals very early in the process and produces briefing and early impact assessments which can be shared with others Member States. Its expertise is respected across the EU and commands respect. However, how other Member States vote is sometimes determined by the politics of the EU which

cannot be changed by evidence-based briefing but could possibly be influenced by creating more effective strategic alliances (see Recommendation 2 above).

Even Better If...

24. Three areas for potential improvement arose in the context of business. As part of its communication and stakeholder management strategy, HSE has a Small Business Trade Association Forum which meets at six-monthly intervals. This comprises around 60 trade bodies. While small and medium enterprises (SMEs) are more difficult to engage than larger businesses, HSE is seen generally as making good efforts to do so. However, there was a plea from the EEF and the Federation of Small Businesses (FSB), (which are not associated with social partner organisations and therefore not proactively engaged through the tripartite approach), for even closer working throughout the process.

Recommendation 5: Given the need for HSE to mobilise all potential supporters to influence Member States to support its proposals for simplification and repeal of ineffective OSH legislation, it should carefully consider how these organisations can be better engaged throughout the process.

25. When developing impact assessments for pre-proposal and formal proposals, HSE's analysts describe and assess the cost to small businesses (and sometimes involve small businesses in helping them to do so). HSE is seen as having a good model for producing impact assessments but, in general, does not provide separate estimates of the cost to small business.

Recommendation 6: From now on, it would be more transparent for impact assessments to show the costs to small businesses separately and it would make it easier to assess the accumulated costs.

26. FSB's manifesto for the European Election 2014 called for proportionate regulation and identifies Registration, Evaluation, Authorisation & Restriction of CHemicals (REACH) as creating disproportionate burdens on small business. DEFRA is the lead Department for REACH. It is supported by HSE's technical expertise. REACH legislation is implemented by means of a directly-acting EU regulation. It seeks to regulate the manufacture, importation and downstream use of hazardous chemicals. The approach adopted requires the businesses wanting to manufacture or import substances to submit dossiers with data ('no data, no market') and in certain circumstances to undertake a chemical safety

assessment. These dossiers are expensive to develop, potentially in excess of £1.5million, and all suppliers of the same substance are encouraged to work together to share data and costs. Equitable cost sharing can be achieved by letters of access issued by data owners. Registration fees are payable to the European Chemicals Agency. Fees for registration depend on the tonnage of substance marketed or imported, and vary from €1,714 (one to ten tonnes) to €33,201 (over 1,000 tonnes). Reduced fees are charged for joint submissions.

27. Registration under REACH of substances manufactured or imported in quantities over 1,000 tonnes and over 100 tonnes per manufacturer/importer per year have already been completed. By 2018 REACH will regulate other substances manufactured or imported in quantities greater than one tonne per manufacturer/importer per year. There is concern that this legislation could squeeze smaller businesses out of the market. There did not appear to be plans to help bring small businesses together to register jointly and reduce their costs.

28. A recent issue under the EU Biocides Regulation (528/2012) illustrates the potential problem. It adopts the same approach as REACH in that it requires the business or industry to provide data on biocidal active substances and safe use of their products. Copper biocides are used, amongst other reasons, in some types of Legionella control. There are a small number of companies across Europe supplying copper metal as a biocide. While there is evidence the companies knew they had to produce a dossier to keep on using copper metal for this purpose, none of them took the lead in forming a taskforce to share the cost of producing a dossier or actually produced one themselves. It therefore became illegal across the EU to use copper metal biocides in February 2012. Two of the companies in the UK supplying this substance then complained to the HSE and Ministers.

29. The HSE has been thanked by the Copper Biocides Industry Group for facilitating two 'essential use derogations', which will allow the continued use of copper metal biocides while a dossier is developed by a pan-European taskforce of suppliers of such biocides. However, since February 2012 the companies concerned have seen their sales fall.

Conclusion 2: I was not convinced that enough is being done through the combined efforts of trade associations, DEFRA and HSE to ensure that a similar situation will not occur in the third and final stage of REACH substance registration between now and 2018.

Recommendation 7: By November 2014, HSE to explore with colleagues in DEFRA and trade associations how best to ensure that small businesses are informed of their responsibilities so they can comply with the EU Regulation at a proportionate cost.

D. Produce a forward look of the EU legislation HSE is preparing to implement over the next 18 months, and consider whether it can be minimised taking into account the Guiding Principles for EU Legislation and what the consequences would be of refusing to implement or minimising the transposition of the Directives.

30. There are three EU Directives to be implemented between now and summer 2016. HSE are already working with business on the implications of implementing these directives, and with lawyers, on how best they can be transposed using the minimum of goldplating and intelligent copy out. The three Directives are:

- Electromagnetic Fields;
- Seveso III; and
- Offshore Safety.

Electromagnetic Fields Directive (2013/35/EU)

31. This Directive sets a legal framework that must be implemented in domestic legislation by 1 July 2016. The Directive sets specific exposure limits and mitigating actions on those exposed to electromagnetic fields in the workplace. It is not seen by HSE as being based on sound science and it illustrates a hazard-rather than risk-based approach. HSE believes existing general duties and guidance offer sufficient protection. For these reasons, it is generally disliked by business representatives who gave evidence for this appraisal. During the protracted process of negotiating this Directive, HSE successfully negotiated significant derogations but was unable to prevent the Directive entirely.

32. New legislation is needed to transpose the exposure limits and mitigating actions set out in the Directive because nothing in UK legislation does so. However, HSE is working with business and other stakeholders to ensure the lightest touch transposition. It proposes to use the derogation to the maximum, implement the legislation at the latest possible date and minimise the requirements on industry. In addition to internal governance arrangements, the HSE has recently set up a Working Group that is made up of external stakeholders that will feed into the process of implementing the Directive.

33. Non-transposition of Directives leads automatically to the European Commission or other Member States bringing infraction proceedings against the UK in the Court of Justice of the European Union (CJEU) under the European Treaties' enforcement procedures, and lawyers don't believe there would be a credible defence to offer should the Electromagnetic Fields Directive not be transposed.

34. The CJEU could ultimately order the UK to pay a fine which could take the form of a lump sum of a minimum of €9.6m or a penalty calculated on a daily rate. Although there is no formal mechanism in the Treaty for enforcing payment of a fine, in practice the fine would be deducted from money that would otherwise be paid to the UK from European funds. The Treasury's policy is that this should be deducted from the budget of the department in default.
35. An individual could also bring a claim for compensation in the domestic courts against the Government for failing to implement the directive. This might happen where an employee sues their employer, where either the Government is the employer or is joined by the parties to the case. A judgement by a UK court against the Government is enforceable like any other domestic judgement.

Seveso III (2012/18/EU)

36. This Directive introduces new requirements compared to the existing Seveso II Directive, which is largely implemented by the Control of Major Accident Hazards Regulations 1999 (COMAH 1999). Lawyers and HSE are working with a cross-Government team on a replacement set of regulations, COMAH 2015 which will closely resemble the existing regime with the addition of the new requirements of Seveso III. The new requirements to be implemented by COMAH 2015 relate to public information, changes of scope (to determine which sites fall into scope by using the European regulation on classification, labelling and packaging of substances and mixtures (CLP)), notification, "domino sites" (sites where the hazard profile of a site and its proximity to other sites could trigger or exacerbate a major accident) and emergency plans. These are due to come into force in May 2015.
37. The Minister received a submission on 3 March 2014 describing the HSE's proposed approach which includes a small amount of goldplating (and explains the reasoning for the proposals). While there are some sensitivities around the provision of public information, generally this Directive is seen as necessary as it brings the Seveso requirements into line with CLP, without which there would no longer be effective major hazards legislation to control and mitigate the risks from these sites. The potential burdens are seen as proportionate as they seek to control major hazards involving dangerous substances. Refusal to implement the legislation would almost certainly bring about fast-track infraction proceedings whereby the Government (and significantly the Department) would be expected to bear the cost of the fines. Moreover, such an action would undermine the UK's negotiating position in the EU. Further discussions in the EU will be needed to resolve the unpredictable, and sometimes inappropriate, effect of the link to CLP and REACH which can bring new substances and sites into scope, in some incidences without major hazard potential.

Offshore Oil and Gas Drilling Operations (2013/30/EU)

38. DECC and HSE are working jointly on transposing this Directive. It requires the UK to do what it does currently under its safety case, environmental protection, emergency response and licensing regimes, but it introduces new provisions. These include: the creation of an offshore competent authority, integrating environmental protection into the existing safety case regime and operational notifications; increasing the scrutiny of activities of operators by independent verifiers; requiring the creation of a corporate major accident prevention policy and the production of a safety and environmental management system; and requiring reporting of international major accidents in which UK-registered companies have been involved. The shape of this Directive is the product of successful negotiation on the part of HSE, which effectively persuaded the Commission to issue a Directive rather than a directly-acting and inflexible regulation, and then ensured the Directive's requirements reflect the existing regime in the UK. The Directive is due to be implemented in July 2015 and HSE, DECC and lawyers are working on developing detailed proposals in consultation with the industry which will be submitted to Ministers with any proposed goldplating and possible derogations highlighted. Again, refusing to implement the legislation risks infraction proceedings and fines but would also undermine the UK's position in future negotiations.

On-going developments within existing EU Regulations on the supply of chemicals - Classification, Labelling and Packaging (CLP) / REACH/ Prior Informed Consent (PIC)

39. The REACH, CLP, biocides and PIC regimes are all directly-acting EU Regulations so there is no question of not implementing the legislation. All have built-in mechanisms to amend the detail in the light of scientific and technical progress. This leads to a steady stream of regulatory change, usually in the form of Commission Regulations or Commission Decisions. These are agreed and adopted in what used to be called 'comitology' prior to the coming into force of the Lisbon Treaty.

40. Examples of what is agreed in these processes include:

REACH

- Restrictions on specific substances (typically three or four a year)
- Decisions to list substances for which application needs to be made for authorisation to continue marketing and use after a 'sunset' date (one or two changes to the list of substances for authorisation a year, each with six to 10 substances)

- Decisions on methods to be used for testing chemicals (typically one set of additions per year)
- Other changes to the technical annexes of REACH, e.g. on the data to be provided for registration or on what should be included in safety data sheets for chemicals supplied for professional / industrial use (infrequent).

CLP

- Additions or amendments to the list of substances with harmonised classifications, i.e. agreed hazardous properties (typically one or two per year, each with around 20 substances)
- Adjustments to the criteria to characterise hazardous properties and to the 'rules' for communicating hazards on labels using pictograms, signal words, and hazard and precautionary statements (once every two years, in line with updates to the Globally Harmonised System agreed at UN level)

Biocides

- Approval of active substances for use in biocidal products (typically 30-40 decisions, done in five batches through the year)
- Decisions not to approve active substances, usually because industry has decided not to support them (perhaps two a year each with maybe 10 - 15 substances in each)
- Decisions on mutual recognition of product authorisations (perhaps four a year)
- Decisions about essential or emergency use (rare - typically less than one a year, except for the recent case of copper)

PIC

- Decisions to add to the lists of substances that are banned or severely restricted in the EU and have to be notified before export outside the EU, or in some cases which require prior informed consent from the importing country before export (one or two decisions a year, each with five -10 substances)

41. DEFRA has the policy lead on REACH. In all other cases above HSE has the policy lead. The formal procedures and timescales are the same in all cases. The Commission distributes its proposals to Member States three weeks before the vote. Decision-making is usually by QMV.

42. In the cases where HSE leads, the process and timescale means it is a challenge to assess the proposal, consult with UK stakeholders and interested parties, do a rough impact estimate, and prepare the Ministerial submission seeking agreement to the UK voting lines, giving the Minister a reasonable time to come to a view. In almost every case, under the present arrangements the submission seeking agreement to the voting lines will be the first time the Minister will be aware that a vote is to be held. This is because the work is routine and highly technical, usually strongly science-driven, with little or no scope (formally at least) for political consideration or intervention. Most of the business is routine and non-contentious, though in some cases it is non-

contentious because HSE worked hard to get satisfactory outcomes in extensive behind-the-scenes meetings and other activities that precede formal decision-making.

Conclusion 3: there is no scope for refusing to implement directly-acting legislation, as by its very definition, it acts directly without any further intervention by Member States. Briefing on what HSE officials expect to become a proposal in the following six months, including proposals for directly-acting EU legislation, should be included in the Ministerial briefing at Recommendation 1, and negotiating lines agreed where issues are contentious.

Annex A: Key documents

The following key documents were taken into account in this appraisal:

A guide to health and safety regulation in Great Britain (HSE)

<http://www.hse.gov.uk/pubns/hse49.pdf>

Balance of Competences Call for Evidence

<https://www.gov.uk/government/consultations/review-of-uk-and-eu-balance-of-competences-call-for-evidence-on-social-and-employment-policy>

Common Sense, Common Safety (Lord Young of Graffham, 2010)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60905/402906_CommonSense_acc.pdf

Implementation of EU Legislation (Lord Davidson QC, 2006)

http://webarchive.nationalarchives.gov.uk/http://www.hm-treasury.gov.uk/d/davidson_review281106.pdf

Good Health and Safety, Good for Everyone (DWP, 2011)

<https://www.gov.uk/government/publications/good-health-and-safety-good-for-everyone>

Reclaiming health and safety for all (Professor R Löfstedt, 2011)

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

Triennial Review of HSE

<https://www.gov.uk/government/publications/triennial-review-report-health-and-safety-executive-2014>

UK Report on the practical implementation of European health and safety at work directives during 2007 -2012

Annex B: Contributors to the Appraisal

Better Regulation Executive

Chemical Business Association

Chemical Industry Association

Confederation of British Industry

Copper Biocides Industry Group

EEF – The Manufacturers' Organisation

Federation of Small Businesses

Health and Safety Executive

National Federation of Demolition Contractors

National Hairdressers' Federation

Reducing Regulation Committee

Tarn Pure

Trades Union Congress

Treasury Solicitors

UKRep

Annex C: EU Legislation since 2010 for which HSE is responsible

Transposed EU Directives:

Year	SI No	Title	Purpose
2013	645	Health and Safety (Sharp Instruments in Healthcare) Regulations 2013	The control of risks to healthcare workers of injury and infection from needles, scalpels and other medical sharps. They implement Directive 2010/32/EU on prevention of sharps injuries in the hospital and healthcare sector. A health and safety at work directive implementing a social partner agreement.
2013	449	Identification and Traceability of Explosives Regulations 2013	These Regulations revoked and replaced the previous Identification and Traceability of Explosives Regulations 2010 and 2012.
2012	638	Identification and Traceability of Explosives (Amendment) Regulations 2012	These regulations amend the date for setting up a system for the identification and traceability of explosives for civil uses until 5 April 2013. Revoked by 2013 Regulations.
2010	1140	Control of Artificial Optical Radiation at Work Regulations 2010	These regulations impose duties on employers to protect employees and others who may be exposed to risk from artificial optical radiation (i.e. hazardous sources of bright light such as lasers). Signed and came into force under the previous government. They transpose Directive 2006/25/EC on artificial optical radiation. A health and safety at work directive.

2010	1004	Identification and Traceability of Explosives Regulations 2010	These regulations set up a system for the identification and traceability of explosives for civil uses. They transpose Directive 2008/43/EC, which is a piece of single market legislation with security of explosives aspects. Signed under the previous government but came into force under the current government.
2010	745	Biocidal Products (Amendment) Regulations 2010	These regulations amend the Biocidal Products Regulations 2001 to keep national law in line with evolving EU single market requirements for biocidal products. Signed and came into force under the previous government.

Legislation to support directly-acting EU Regulations:

Year	SI No	Title	Purpose
2013	1507	Biocidal Products (Fees and Charges) Regulations 2013	Came into force on 1 st September 2013. These Regulations allow HSE to continue to recover from industry its costs for biocides work from 1 September 2013, when EU Biocides Regulation applied, revoking and replacing existing requirements. HSE will review biocides fees by April 2014 and will then (in 2014) incorporate Biocides Fees Regulations into the Health and Safety (Fees) Regulations.
2013	1506	Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013	Domestic administrative arrangements to establish the national competent authorities and enforcement arrangements to support EU Biocides, CLP and PIC Regulations

Legislation to resolve infraction issues:

Year	SI No	Title	Purpose
2012	632	Control of Asbestos Regulations 2012	These regulations place duties on those best placed to eliminate or reduce exposure to asbestos fibre from work activities and to protect public health. These regulations revoked and replaced in their entirety the Control of Asbestos Regulations 2006 and included some additional requirements, in order to comply with a reasoned opinion from the EC on Directive 2003/18/EC amending the Asbestos Worker Protection Directive and avoid further infraction proceedings against the UK.
2010	2840	Genetically Modified Organisms (Contained Use) (Amendment) Regulations 2010	Made to comply with an EC reasoned opinion that UK had failed to properly transpose Directive 98/81/EC amending the Genetically Modified Micro-organisms (Contained Use) Directive.

Annex D: UK suggestions for streamlining OSH acquis Directives

Flexibility for member states to determine written risk assessment requirements for small, low risk business - A key reform identified by the Prime Minister's EU Business Taskforce in October 2013 and which the Government has put forward to the Commission for consideration. It builds on EU-level better regulation work led by HSE to focus on the proportionality of these requirements. It would require amendment of 89/391/EEC (see below).

Ensuring more transparency in European Social Dialogue and the use of impact assessments by the social partners - given recent experience with the 'Hairdressers' Agreement', where the UK has influenced some other Member States to oppose what would be a very burdensome Directive, and an earlier agreement on 'Sharps in healthcare', now enacted as Directive 2010/32/EU.

Repealing the Artificial Optical Radiation Directive, 2006/25/EC - the Directive has a weak scientific basis and any risks can be adequately managed under the general provisions of the Management of Health and Safety at Work Regulations 1999 (implementing 89/391/EEC).

Repealing the requirements in the **Display Screen Equipment Directive, 90/270/EEC** for costs to be met for **eye and eyesight tests** for certain workers. This perpetuates the misconception that the use of computers carries the risk of permanent damage to eyes or eyesight.

Excluding private householders from the duties on construction project clients' in the **Temporary or Mobile Construction Sites Directive 92/57/EEC** and amending the Directive to provide flexibility for member states to determine the proportionality of the Directive's requirements in their application to lower-risk projects.

Adapting the **Safety Signs Directive 92/58/EEC** so that signs are required only where there are significant hazards. Member States should be given the flexibility to determine when this would apply.

Modifying the **Chemical Agents Directive 98/24/EC** to provide Member States with the flexibility to determine in what circumstances duty holders should provide information on their emergency arrangements for hazardous chemicals to external accident and emergency services, given that this obligation already exists in relation to major hazard sites under the Seveso Directive.

Removing the **duplication** between the **Health and Safety Framework Directive 89/391/EEC** and its 'daughter' directives on risk assessment, consultation and

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participation of employees, information, training and instruction of employees, health surveillance and protective and preventative services requirements.