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HEALTH AND SAFETY COMMISSION

BECOMING A MODERN REGULATOR

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Issue

1. A strategic discussion on the role of a modern regulator in the 21st Century and an immediate response to announcements in the budget speech on better regulation.

Timing

2. This discussion will inform our thinking on how and when to take this issue forward. There are no specific proposals at this stage.

Recommendation

3. The Commission:
 - has a wide-ranging strategic discussion to inform the development of more structured proposals in due course;
 - gives a steer on our approach to the Hampton review on the scope for promoting more efficient approaches to regulatory inspection and enforcement.

Background

4. The strategy sets out a vision for health and safety – a world in which health and safety is a cornerstone of a civilised society. We have said this means that, in ten years time, the regulators will no longer be the principal drivers for improvement. This is a natural and logical extension of our vision. If corporate social responsibility and sensible health and safety become the accepted norms, the moral and business cases are well understood, and employees play a greater role, the role of the regulator would naturally change and develop. We are describing what a system might look like as it reaches maturity and able routinely to respond to new and emerging issues.

5. There has been a great deal of debate about better regulation led by the Government's Better Regulation Task Force (BRTF), but far less about better regulators – the purpose of the business of regulation and the way it achieves its objectives in a changing world. The budget speech signalled a change in approach. The government announced:
 - departments' regulatory performance will be taken into account in the 2004 spending review;
 - regulatory proposals likely to impose major new burdens on business will be cleared by the Panel for Regulatory Accountability chaired by the Prime Minister;
 - UK pressure for EU regulatory reform;
 - Philip Hampton, former finance director of Lloyds TSB, BT and British Gas, to consider with business, regulators and BRTF, the scope for promoting more efficient approaches to regulatory inspection and enforcement while continuing to deliver excellent regulatory outcomes;
 - a new industry/cross-government forum on policy and regulatory development for the construction, chemicals and retail sectors to allow industry to express its views on emerging policy and regulatory proposals.
6. From this, a debate must follow about how the pursuit of our vision might affect the way we work and what this might mean in practice, how regulators work individually and collectively, and the opportunities for synergy and common approaches among them.
7. This paper opens this debate. It invites the Commission to think about the look and feel of a modern regulator in a mature system by posing some questions. This is not a paper about the detailed mechanics of the way we work or, for example, the balance of reactive and proactive work. Nor is it a paper about the value of independent regulation - that is a given. It is more about the way we do things, identifying the parameters of our overall approach, the over-arching frameworks in which we operate and the areas we need to explore in more detail if we are to remain relevant and successful.

Argument

8. The regulatory framework in the UK has grown up over centuries in a piecemeal fashion. It has been shaped in response to, among other things, incidents, public demands and expectations, societal pressure, international agreements and the EU. It should be no surprise, therefore, that each of its constituent parts is different. They have emerged from different government stables at different times. Each reflects the emphasis and approach of the era in which they were made. The overall regulatory architecture, therefore, lacks a coherent and consistent style.
9. The system is designed from the perspective of the regulators. They concentrate on their individual requirements and design processes to give them the greatest chance of being realised. And while this may be successful, there is a clear government push to consider the system from the perspective of the regulated. From a business or consumer perspective, the system looks very different. Each regime has its nuances and peculiarities and the agencies charged with their enforcement have their own style and processes, and undoubtedly they vary in their approach. The canvass is inconsistent and overcrowded.

10. Fear of enforcement may concentrate businesses' minds on what they need to do to comply with the law and please the regulator rather than on what makes them a successful and well-managed enterprise. The two should be the same thing but the compartmentalisation of good management practice into different regulatory domains with different statutes and different regulators is unhelpful. It promotes narrow compliance with the law and does not capture their hearts and minds.
11. In recent years, there has been deregulatory pressure from within government to reduce burdens on business, be clearer about the benefits of regulation, and more sympathetic to business needs. HSE has responded positively to the debate so far by:
 - conducting its own review of regulation;
 - being the first government regulator to adopt the enforcement concordat;
 - reflecting the principles of good regulation in the Commission's enforcement policy statement.
12. In addition, regulatory impact assessments, interventions based on risk, and a strong focus on consultation have always been part of our landscape. We are well regarded by BRTF which welcomed the general approach set out in the strategy. The budget speech quoted our strategy as an indication of a regulator making good progress.
13. Notwithstanding the measures announced by the Chancellor to boost the government's better regulation agenda, there was already increasing pressure to take the debate to its next level:
 - our new strategy signals our intention to take forward in a more purposeful way our commitment to working in partnership, helping people to understand the benefits of good health and safety management using other levers and through advice and support, and focussing our effort and the right interventions where we are best placed to make improvement;
 - the government's efficiency review led by Sir Peter Gershon is focussing on the role of regulators;
 - the BRTF continues to press the case for more imaginative and creative thinking on achieving the policy outcomes of regulation through routes other than "classic regulation";
 - other regulators including the Environment Agency, Audit Commission and Ofsted are debating publicly their approach;
 - the major political parties have all made clear that the bureaucracy of regulation will be an issue they will pursue as we move towards an election.

What questions should we be asking?

14. A disinterested party looking at the regulatory system as a whole might question whether regulation is guided by some overarching principles. What, if any answers exist to the following questions?
 - in what circumstances is it right for the state to intervene?
 - what intervention should it make?
 - how should it make it?

Should we attempt to answer these questions and determine how well the health and safety system measures up to the answers?

15. **Should there be a greater brigading of the regulatory functions?** Over 40 independent regulators have been established since 1973 and about 10 more are in the pipeline. Over 100 exist in total. Greater brigading would harmonise approaches, reduce burdens on business and avoid duplication and might be a logical step forward. The 'one stop shop' argument has been discussed at length but the enormity of the task and the differing needs and wishes of stakeholders have been barriers to genuine progress. While this is probably not achievable, some rationalisation of the existing regulators might be - but would it result in genuine benefits?
16. **Should the approaches of regulators be harmonised?** In the absence of more brigading, is there merit in a greater consistency of approach and an overall vision and objective for the government's regulators? Stakeholders make the point that, even regulators' non-regulatory interventions result in burdens for business. They feel bombarded by a stream of information and consultation from a plethora of regulators; none having regard to the actions and activities of the other.
17. Working more closely together could have a number of themes:
- common and coordinated approaches;
 - joint approaches to communications – in particular promoting the benefits of sensible regulation sensibly applied;
 - better exchange of information;
 - shared IT and client information e.g. access to planning and building control information to direct construction activity;
 - single access portal to regulatory information and guidance;
 - national account managers;
 - common policies and procedures on charging;
 - common understanding of what works leading to common intervention strategies;
 - sharing of best practice;
 - common approach to naming and shaming of poor performing companies;
 - common approaches to risk management.
18. **Should there be closer working between existing regulators? If so, how?** We have arrangements for cooperation with other regulators and many of these are expressed as MOUs. Many of these reflect demarcation arrangements but it is arguable that much more could be achieved through more genuine closer working. Examples exist of regulators joining up to deal collectively with certain issues, for example, the fashion trade, but such initiatives are the exception rather than the rule. There is limited joint agenda setting and cross regulator planning but work is in hand in HSE to explore ways in which we can be more effective collectively in certain sectors.
19. In working with local authorities we are making strenuous efforts to improve the partnership arrangements but principally through the focus of health and safety. The LGA makes clear in its evidence to the Select Committee that regulatory services in a typical unitary authority are subject to direction, advice, policy change and scrutiny from at least ten different government departments and agencies. They naturally plead for a

more joined up and consistent approach. In addition then to more collective working, could there be a more joined up approach to interaction with major stakeholders?

20. Should inspectors on the ground have responsibility for more than one regulatory area? Much is made of the vices of inspectors which limits their activities on the ground. Should health and safety inspectors be able to take action for other offences and other regulators the same? What might those areas be?

21. What might HSE do to lead the debate? Should we explore the limits of the regulator-regulated relationship? The relationship is based on a mechanism to ensure compliance with a standard set out in legislation rather than a joint enterprise to improve health and safety standards. A number of questions flow from such an examination:

- is compliance with the law a limited ambition and enforcement a tool that will become increasingly redundant?
- is the regulator/regulated relationship a barrier to joint problem solving? We have signalled in our strategy that we will not turn automatically to new legislation to deal with new problems. Does this mean that we could look to rely on negotiated agreements rather than inflexible standards expressed in regulations?
- how far can we push the agenda of earned autonomy and should there be penalties for breaking the deal rather than breaking the law and what role might other forms of accreditation play?
- should we reopen and push the debate about alternative penalties and restorative justice?

22. What role does the Commission want play in taking this debate forward and how might it play it.

Possible further action

23. Work is in hand to select two or three significant sectors to consider the how the regulator seems from the perspective of the regulated. Further work might include:

- leading a debate with other regulators and the public on a more collective approach;
- examining critically the different types of regulator and the opportunities for synergy. At first glance they might be categorised as those that ensure levels of service such as the 'Of' community e.g. Ofsted, Ofwat etc.; those that ensure fairness and a level playing field, for example, the Financial Services Authority and the Competition Commission; those that maintain professional standards, for example, the Human Fertilisation and Embryology Authority and the Architects Registration Board; those that ensure standards of delivery, for example, the Audit Commission and the Commission for Healthcare, Audit and Inspection, and those which deal with public and environmental protection, for example, the Environment Agency, Food Standards Agency and HSE;
- an analysis of the joint competent authority approach in respect of COMAH and any lessons learned;
- more work with other government departments who work closely with local authorities;
- feasibility studies to take forward the opportunities raised in paragraph 17 above.

Consultation

24. Policy Group, FOD, OPD, and PEFD have been consulted.

Presentation

25. The Commission is invited to have wide and free ranging discussion and this paper provides the prompts for such a discussion. Nothing in this paper should be taken as HSC or HSE policy at this stage.

Costs and benefits, financial/resource implications for HSE, environmental and other implications.

26. None at this stage