

Chapter 2

HSC/E strategy

March 1997

'Response to quinquennial review of HSC/E'

"The HSE is seriously underfunded and a major cash injection is required, not only to expand existing work such as preventative inspection but also to take on new tasks, developing partnerships with key intermediaries and doing more outreach work with smaller businesses (where risks remain unacceptably high and health and safety management standards are weak or non-existent)."

The above message was given by Roger Ribbings, RoSPA's Occupational Safety Adviser in the Society's response to the Department of Environment's Consultation on the Quinquennial Review of the HSC/E. The consultation document posed a series of specific questions: below is a summary of some of those questions - and RoSPA's responses.

- *On whether there is a continuing role for government in regulating workplace health and safety risks*

RoSPA: The government must continue to assume a decisive role in regulating work related risk. Although a number of factors promote action by employers on health and safety issues (reducing costs, avoiding common law damages, pressure from insurers, workers, the community etc) such action is, above all, law driven.

Very often action is only taken where there are specific requirements set down in regulations, codes or indicated in authoritative guidance. Given the central role of health and safety law in this respect, it is vital that the relevant legislative architecture is appropriate to current economic, social and technological needs and that compliance is effectively promoted and enforced.

Market mechanisms on their own cannot provide protection for employees and the public from work related risk. Given the substantial costs of occupational accidents and ill health to the UK economy, there are powerful economic reasons why government should intervene to reduce harm and loss. The British economy needs a strong and cohesive HSC/E - adequately empowered and resourced - so they can meet the many challenges they face.

- *On the feasibility of contracting out some of the HSE's current work*

RoSPA: There is no scope for contracting out the HSC/E's 'core functions' (such as workplace inspection, accident and compliance investigation and enforcement) to third parties - particularly given the need to ensure consistently high standards of professionalism, independence and accountability to Ministers.

In turn, the need for a high quality and cohesive approach dictates that other essential HSC/E functions (such as research, technical support and the provision of information and advice) should remain within the sphere of the HSC/E.

However, there is considerable scope for improved co-operation between HSC/E and other health and safety system players. For example, closer partnership is required to tackle the health and safety problems of small firms or to enhance the impact of and response to public consultation exercises.

- *On the advantages of transferring health and safety responsibilities either into or out of HSC/E or to or from local authorities to achieve a different balance*

RoSPA: There could be a strong case for transferring to HSC/E responsibility for regulation of the whole (or part of) air, marine, fire and product safety. HSC could also take a stronger development role in relation to home safety and safety education. Ministers should undertake a separate and appropriately rigorous public enquiry to examine such issues.

- *On the scope for improving working arrangements between various agencies concerned with health and safety*

RoSPA: There is a case for closer and more transparent working arrangements between HSC/E and other departments and agencies dealing with work related health and safety issues. Duty holders and those at risk need a clearer view on both the demarcation of responsibility and the enforcement approach in areas such as mainstream health and safety, environmental protection and food hygiene.

Without such relationships there is not only the possibility of blurring at the interface but important opportunities for improving prevention can be missed. A striking example of this concerns occupational road risk which is currently the subject of a major RoSPA campaign. Accidents involving 'at work' vehicle use account for over twice as many fatalities as from other work related accidents yet HSC takes the view that it is road traffic law and not occupational health and safety law which should take precedence.

Also, more effective use of HSE resources could be achieved by an expansion in central approaches to multi-site employers such as large retail chains. The use of appropriate health and safety audits would enable enforcers to review performance and agree standards and targets with major concerns. (Such an approach would have the effect of freeing up scarce HSE inspector resources).

Furthermore, significant improvements in effective communication with small businesses could be achieved by working with intermediaries and offering them the option of developing Acknowledged Safety Action Plans (see *Parting Shots, OS&H*, July '96).

- *On the possibility of passing on the costs of the regulatory system to those who create the risk*

RoSPA: Health and safety should continue to be funded by the general Exchequer. To attempt to fund the HSE by charging for inspection work would be unacceptable since this would be likely to introduce distortions into the way in which inspection priorities were determined and in inspectors' relationships with employers.

However, there are a number of economic instruments which should be introduced to support the 'business case for safety'. These include grants, soft loans or improved tax allowances for essential health and safety expenditures, better adjustments of insurance premia or financial penalties in contracts for failure to meet health and safety conditions.

Copies of the full text of RoSPA's response to the Review are available from Roger Bibbings, RoSPA Occupational Safety Adviser, Edgbaston Park, 353 Bristol Road, Birmingham B5 7ST. Please send an A4 sae.

May 1999

'The silent 'W''

Many people working in health and safety forget that the primary duty placed on employers by Section 2 of the *Health and Safety at Work (HSW) Act* (from which really all other major duties follow) is the requirement to ensure 'so far as is reasonably practicable', the health, safety and welfare at work of all their employees. It is perhaps quite telling that the abbreviation for our subject is H&S not HS&W. The 'W' is there but is silent - largely because it is assumed to be a rather Secondary part of the employer's duty, concerned, in the main, With basic workplace provisions such as toilets, washing facilities, drinking water, rest rooms, heating, lighting and so on.

What tends to be forgotten is that beyond the prevention of ill health caused through work, employers have wider duties to promote health and well being. Yet, the full meaning of this part of the HSW Act's general duties has never been fully elaborated - even in the form of guidance.

Increasingly in the EU there are signs that those responsible for policy on public health would like to place much greater emphasis on 'well being' at work. This includes, for example, not only physical aspects and basic amenities but what are called 'psycho-social' issues - such as racial and sexual harassment, the design and organisation of work, working relationships, life opportunities for staff etc.

At present in Britain, action to promote health at work (as opposed to just protecting from harm) is seen very much as a voluntary matter for employers. Programmes such as the Health Education Authority's 'Health at Work Awards' and initiatives such as 'Employee Assistance Programmes' are designed to enable employers to move beyond mainstream OH issues (viz COSHH, noise, manual handling, health surveillance etc) to help their employees address lifestyle issues such as diet, alcohol, drugs, exercise and so on. All this is commended to employers as being compatible with and in support of the achievement of 'bottom line' business objectives - reducing absenteeism and ensuring that staff are "happy, healthy and here".

Yet given the place accorded to 'welfare' in Section 2, to what extent can health promotion at work be regarded entirely as an optional extra? And to what extent is the employee's general health the concern of his or her employer?

Clearly where employees have physical and/or psychological health problems, then employers must ensure that these are understood and do not result in work related harm. Work needs to be suitably adapted to meet the safety and health needs of every individual (not just Mr. or Ms. 'Average') and health status needs to be taken into account when people are carrying out safety significant tasks. But when health problems are identified, how far should the employer be obliged to go to help those affected to overcome them? Certainly there is a good case for rehabilitation following injury but this is still very much a voluntary matter. Similarly, providing counselling for those with substance abuse problems is usually seen as a matter of 'good practice' - but given the full extent of the 'welfare' duty in Section 2, should it be?

The need for more effective action by employers to reduce stress at work has been promoted by HSE in recent years, with emphasis on risk assessment and the application of appropriate collective and/or individual control measures coupled with monitoring and review. At the same time, it is widely acknowledged that there are many sources of stress which are outside the employer's control, including employees' life experiences, family circumstances etc.

To what extent should duties to ensure 'welfare' require employers to address these issues - for example, by putting 'family and carer friendly' employment policies in place for those with young children and dependant relatives? Such things are currently promoted as good practice but how far and under what circumstances should they actually be required, and, if necessary enforced, under H, S and W law? Also, how far can employees be required to co-operate in this area (as they do on H&S matters)? Non-smoking workplaces, and programmes to deal with problems such as bullying are provisions to promote 'well being' with which employees could be reasonably expected to comply - but what about requirements for staff to take regular exercise or stick to a healthy diet? One could argue that, if employees wanted these things, employers should be obliged to make a 'reasonably practicable' response.

In the context of the Government's plans for public health as set out in the White Paper, *Our healthier nation*, there is a strong case for revisiting the whole duty of employers to ensure 'welfare', particularly since this remains one of the most under-developed parts of British employment legislation.

Should, for example, the current 'Workplace Programme' of the HEA continue to operate separately from the HSE's 'Good Health is Good Business' campaign? Or should it be fully integrated with HSE - particularly given the need to re-focus all available resources on OH issues? At the very least there is a need to work at breaking down the artificial barriers which have been erected by the professions between OS&H (seen as compliance with HSW Act regulations), OH (seen as the domain of occupational physicians and OH nurses), health education, and health and social services.

What needs to be clearly stated (and then explored in more detail to establish practicalities) is that the employer's duties to ensure health and well being do indeed go well beyond compliance with specific health protection requirements and the provision of certain basic workplace amenities. As well as ensuring the acceptability and comfort of the physical environment at work, they also relate to people's happiness - to the scope and content of their work, to hours and patterns of work, to working relationships as well as to opportunities for healthy diet, rest and exercise and to meeting the personal, social and psychological needs of the individual as well as opportunities for personal development.

Getting to grips with this sort of challenge will undoubtedly create anxiety in the minds of those who would prefer to maintain a minimalist interpretation of the extent of employers' legal duties of care. Yet all the issues mentioned here are arguably not only within scope of Section 2 but form part of the European and the UK Government's public health and industrial agendas.

November 1999

'Revitalising Health and Safety'

RoSPA welcomes the Deputy Prime Minister's decision to commission a strategic review of occupational safety and health. In its substantial input to this exercise, the Society naturally comments on the questions raised by the DETR's/HSC's discussion document *Revitalising health and safety*. But in doing so it has also drawn together a series of policy statements and submissions which it has been circulating to 'key players' and the main political parties since before the 1997 General Election.

In these submissions RoSPA's main aim has been to promote debate about what needs to be done to strengthen the 'health and safety system', seeking to emphasise both the scale of harm and loss due to accidents and health damage at work and the need to strengthen the whole 'system' now in place to control work related risks. However, this cannot be done without empowering other 'key players' alongside central bodies such as the HSC/E and enhancing all the factors which are currently 'driving' the system, including: regulation and enforcement; common law claims for damages; workforce and public expectations; and business self interest.

Obviously the improvement in the reduction in fatalities since the late seventies is to be welcomed - but while some of this has been due to accident reduction, some has also been due to significant changes in hazard exposure as employment opportunities have shifted from heavy industry to services. Fatal accidents are a crude indicator and thus there is a real need to develop more meaningful reactive and proactive measures of national OS&H performance which go beyond rates of fatal or indeed other kinds of physical injury.

Despite some of the 'health and safety system's' more obvious strengths including; the shift to goal setting legislation using risk assessment; HSE's professionalism; the involvement of employers and unions; and the growing importance of the health and safety professional, there are also many weaknesses. These include: significant under-resourcing of the HSC/E; widespread ignorance about hazards, risks and control measures; low penalties; lack of economic incentives (for example, no link between health and safety performance and insurance premia); lack of integration of health and safety into business development programmes (like ISO 9000 and IIP); and the large number of small firms and the major problems they face in responding effectively to new style legislation.

It is clear that, in the period ahead, there is going to be much less radically new legislation. The key to future progress will be in finding new ways to enhance the implementation of existing requirements in order to 'make health and safety happen'.

OS&H must be part of the wider public health and public policy agenda and not isolated as a specialist area - not least because of what it can bring to other policy areas concerned with prevention.

The broad aims of the Strategic Appraisal are very much welcomed, namely: generating new impetus, stimulating new approaches to improve reductions in levels of risk, harm and loss - especially in SMES, taking into account changing patterns of

work and employment and creating synergy with other Government programmes. Strategies developed so far for small firms and Occupational Health are very much to be welcomed but even greater impetus in these areas is now required, developing partnership working with key 'intermediaries' such as 'Business Links' and trade associations to raise awareness with 'hard-to-reach' audiences.

Other things badly needed include: minimum competence standards for managers; selective mandatory auditing of health and safety management systems; new kinds of economic incentives; new criminal corporate liabilities; more effective sentencing of offenders (for example, use of 'remedy orders' under the HSW Act); better coverage by companies of health and safety performance in their annual reports; action on under-recognised issues such as occupational road risk; a more explicit legal requirement for 'adequate and suitable' accident investigation; and a stronger focus on protection of the public.

Notwithstanding the need to enhance its enforcement impact, HSC/E needs now to widen its focus by developing a functional map of the health and safety system, identifying the role of key players within it, and promoting and developing those roles.

In part this is beginning to occur with the increased emphasis being given by HSC/E to information provision, awareness raising and working with and through 'intermediaries' including via the supply chain. In the coming period the HSC's strategic emphasis has got to be on 'making health and safety happen'. This means concentrating on key functions within the system but particularly: education; training; services; research; and outreach. This work needs to be given equal status alongside HSE's established research, policy and enforcement and existing promotional activities. This shift will not come about however unless HSE has the right structures in place, receives a significant further increase in resources and is held more widely accountable for OS&H regulation in its broadest sense. It will also require HSE to strengthen its relationships within the 'system' by developing 'partnership agreements' with 'key players'.

In the medium term there is a need to establish a new promotional division of HSE to take on a range of strategic tasks. These include revitalising safety and risk education, from the National Curriculum to MBAs in business schools. New programmes need to be set up to help develop the OS&H promoting role of key 'intermediaries' including banks, trades unions, trade associations, chambers and TECs and local RoSPA affiliated H&S groups. In the context of the Government's wider plans for public health, the HSC/E will need to develop a co-ordinated strategy for health and safety services.

Similarly, HSE will need to extend its current strategy for encouraging the development of OS&H training and this in turn will require stronger emphasis on identifying standards of health and safety competence.

That emphasis on strategic leadership of OS&H in organisations also requires a re-examination of the OS&H role of board level directors and a stronger focus on measurement of health and safety management performance. It will also mean

ensuring that compliance with minimum standards of health and safety management are part of all procurement processes as well as part of management standards.

January 2000

'Incentivising OS&H'

Better jobs for better people, a millennial challenge is the title of TUC's response to the HSC/DETR's consultation exercise on 'Revitalising Health and Safety'. It contains many interesting ideas, many of which support similar suggestions which RoSPA has been making since before the last General election.

An interesting suggestion in the TUC's document is the idea of linking prevention and compensation by redirecting resources from compensation, treatment and rehabilitation to promoting better risk management.

The TUC's central idea is to make it much cheaper for employers to prevent than to damage and to redirect some of the funds currently spent on dealing with consequences (e.g. Employer's Liability insurance) to funding preventive work. They envisage HSC/E sole broker for EL, linking premia to risk and standards of proactive risk management. HSC would reinsure in the market but accumulate a surplus or 'safety dividend' to fund preventive and OS&H development work.

This is a fine objective and it has precedents such as the Australian 'Worksafe' scheme but there are many barriers to be overcome. One of these is that in fact, even more resources are needed for both prevention and treatment/rehabilitation. A straight tax on existing resources collected to fund compensation is probably not the answer. A further problem is that, the TUC case which could be seen as a tax on dealing with the consequences of prevention failure; only seeks to tax a small fraction of those costs (i.e. the insured ones) whereas HSE work has shown that the uninsured costs of accidents are typically 8 - 36 times greater.

The key question here is why not simply rely on HSC/E's 'self sustaining business case (BC) for OS&H'? One reason is SMEs don't measure accident and ill health costs. (Many don't even acknowledge that they have such problems in the first place!) Another is that although harm rates may be higher, the interval between events is likely to be quite long. Yet another is that business skills to understand the BC may be missing. Firms are being asked to spend on prevention in the short term without being convinced of longer term safety dividend. Within companies - and more significantly within supplier/client relationships - such benefits don't always accrue to safety spenders. In practice, the BC is not a basis for business decision making, although undoubtedly more could be achieved if accountants were more on board with it.

A further problem in assessing the balance of preventive cost versus safety benefit is that, apart from clearly visible safety spending like OS&H staffing and budgets, training/auditing or PPE, it is difficult to disaggregate a lot of risk control costs from normal operational costs.

The TUC's preferred solution is essentially incentivisation using risk and risk management performance related criteria to set insurance premia. But another approach could be to allow for tax breaks against preventive investment; or preferred status for high OS&H performers in the supply chain by making minimum OS&H management standards part of prequalification etc. Other incentives could include

NHS recharging of employers for treatment and rehabilitation costs; higher fines; or imposing taxes on accidents.

A fundamental problem with all these sorts of approaches is that, in practice the rewards tend to go to those firms that are already engaged, and not those who are the key, priority group. Indeed the 'already engaged' are already motivated by existing 'drivers'. By penalising the 'unengaged', less corporate resources are available to them for preventive investment.

Where the TUC is absolutely correct is in identifying why the current insurance market does not incentivise higher standards of proactive risk management: the predominantly actuarial (as opposed to risk management audit) approach adopted by insurers; claims experience not necessarily reflecting accident experience; competition in the insurance market; selling baskets of cover; wider insurance investment strategy and so on. The simple notion that better standards of proactive risk management will be rewarded by substantially lower premia just does not work well enough in practice to energise OS&H as a commercial priority.

If HSC/E were to be granted a monopoly broker/re-insurer role for EL, there would still be numerous practical and administrative problems to be overcome, particularly the problem of measuring OS&H management performance. Relying on single reactive indicators of output such as Lost Time Injury (LTI) frequency, is not enough because it doesn't relate to management of major hazards, doesn't cover health (twice as big a problem as accidents), is bedevilled by problems of small numbers and it doesn't measure 'management'. The TUC's idea of performance rating would only work if it were underpinned by a requirement for all businesses to be subject to competent independent auditing, using some sort of certification scheme against an OS&H management standard. However, UK industry bodies on the whole are still heavily opposed to OS&H management systems certification and you cannot have performance related taxation if you cannot measure the bit of performance which is really important.

However, the idea of creating a fund by taxing poor performers for the costs of 'clearing up the mess' is still attractive. But the scheme would need to be seen to be as much carrot as stick. Thus, while a poor audit score might lead to a premium hike for a particular business, it should at the same time be made clear to that firm that it could access new resources for prevention from the fund. Such resources, viewed as a rebate, might even be greater than the cost of the premium increase.

The real challenge lies in how to tax the uninsured costs. But this takes us into deep company law territory. There could be arguments for compulsory separate accounting for accident ill health costs as a key element in audited accounts but doubtless this would lead to pressures to minimise rather than maximise some important post accident costs, such as investigation.

What is now required is a clear national audit on lines suggested by the TUC of the costs, both to business and the Exchequer, of poor OS&H performance versus the costs of current preventive effort. If prevention is truly cheaper than cure then it ought to be possible to devise a fiscal strategy in which only a small part of the savings

made from better prevention can be diverted to help energise a self sustaining cycle of improved risk management.

February 2000**'HSE's challenge'**

The House of Commons Environment, Transport and Regional Affairs Committee (to which RoSPA and other key players in OS&H have recently submitted written and oral evidence) have been conducting an inquiry into the Health and Safety Executive. On 23rd November they took oral evidence from HSC/E representatives and the Minister of State at the DETR responsible for health and safety, Michael Meacher.

Stimulated in part by the lobbying of David Bergman (of the Centre for Corporate Accountability - see Jan *OS&H* news pages) there were some fairly piercing questions from MPs on the Committee about HSE's approach to investigation. In particular it was alleged that they had failed to investigate a sufficient number of serious injury accidents. The tone of the questioning seemed to reflect a climate of criticism visible in other quarters which is blaming HSE in some sense for foiling to make enough progress to reduce accidents and ill health at work.

But to what extent are such criticisms justified? And to what extent are they based on a misunderstanding of HSE's regulatory role? Indeed, to what extent is there a clear understanding within HSC/E of what that role should now be, given the regulatory and risk management framework that has emerged after 25 years of the *Health and Safety at Work Act*? In short, is there any consensus on how HSE should act or indeed do we really know what HSE is for?

HSC/E's mission statement says that their purpose is "to ensure that risks to people's health and safety from work activities are properly controlled". But this in turn begs many questions. In particular how is an effective system of protection of people from the harmful influences of work to be established and maintained?

Many lay people - including MPs - see HSE as an organisation that formulates regulations and good practice guidance to deal with hazards and then inspects workplaces to see if employers are obeying the law and if they are not, uses its enforcement powers to get specific measures, such as guards or ventilation, put in place.

Under this rather elementary regulatory model, what is taken to keep us safe at work is the endless vigilance of inspectors in the field who tirelessly assess compliance with precautionary requirements and, where necessary, take action to get things brought up to scratch. And where people have been injured it is HSE who prosecutes to remind employers that health and safety law must be obeyed. But it is also acknowledged that this is not fully effective because the courts (particularly the lay magistracy) do not fully understand the issues involved and fail to support the process by imposing realistic penalties. If prevention is failing, it is either because inspectors are too few or they and the courts are not being tough enough.

By this perverse logic HSE and the rest of the regulatory system become bigger villains than the employers who disregard their duties to protect people.

But is workplace inspection really what is delivering effective protection for the majority of the working population on every day of the week? There are over 3.5 million businesses in the UK and over 20 million people at work. To deal with these populations there are less than 1,497 inspectors in HSE's Chemical and Hazardous and Installations and Field Operations Directorates (CHID and FOD) and only some 1,440 local authority inspectors.

Notwithstanding the fact that CHID and FOD seek to target inspection effort according to levels of (and numbers at) risk, the average interval between inspections is probably over 13 years and some workplaces will never receive a visit unless there is an accident or a complaint.

For the most part what has ensured that protective measures are in place in any given workplace is not simply the fact that professional advice (or enforcement action) has been received from an inspector but the fact that the organisation involved has developed the capacity to recognise what its problems are and has a clear understanding that it needs to apply the appropriate controls.

Although enforcement is an important influence here, there are many other 'drivers' stimulating and developing the capacity and will within organisations to manage health and safety. An inspector may visit on one day and require certain remedial action to be taken, but unless the employer concerned has some sort of management system to deal with health and safety matters, not only will the actions required by the inspector not be maintained but other hazards not addressed during the visit will remain a threat.

Thus, what is of fundamental importance is that, besides physical inspection, inspectors should address the policies, people and procedures an employer has in place to 'work' the health and safety problems of their business every day of the year, increasingly this is the focus of much of inspectors' work. But it means that HSE have to live something of a double life, acting as a development resource for business by giving advice (which otherwise could only be obtained at significant cost from consultants) while at the same time using their enforcement powers wherever this is deemed necessary in the public interest.

And they are also increasingly having to deliver their messages through a whole range of 'intermediaries'.

In fact it is a testimony to HSE's skill and general approach that they are able to work so well within this somewhat schizophrenic model, although inevitably it leads on occasions to the less well informed accusing HSE of collaboration with employers.

Thus in the modern world of health and safety, political representatives need to develop a much more sophisticated appreciation of these challenges both at a strategic as well as an operational level. Strategically the challenge is about actually 'making it happen'. Thus operationally the question to be answered is, 'in order to maximise protection from work related harm, given finite resources, where should the right balance lie between the development and enforcement aspects of HSE's role'? Simply knocking HSE (always a soft target at the best of times) for not carrying out enough investigations or taking enough prosecutions simply will not do!

As Mr Meacher quite correctly emphasised to the Commons Committee: yes, offenders must be caught, punished and exposed (in future HSE are to 'name and shame' in a special annual report) - but it is far better to prevent an accident than to let it happen so that you can prosecute the employer once it has occurred.

The real challenge before HSE, and the one with which Parliament too must engage, is how they can exercise a truly powerful influence for prevention. In practice this means finding ways of stimulating and energising all parts of the 'British health and safety system' so that businesses large and small can develop and maintain their capacity to recognise hazards, assess risks and implement controls - rather than waiting to be told what to do on the odd occasion an inspector visits.

Sept 2000

‘The game’s afoot... and it’s all to play for!’

RoSPA welcomes the Government's plans to 'revitalise' occupational safety and health (OS&H). The package sets out an ambitious programme for putting new energy back into health and safety at work, building on what has been achieved so far. Its starting point is, that while Britain can be considered to have a relatively good health and safety performance in European and world terms, there is still major scope for further reductions in current levels of risk, harm and loss associated with work activity across the whole economy - particularly in relation to occupational health and in small and medium size firms.

Ministers have made it clear that the main theme for the future is not necessarily going to be more legislation but finding better ways, working with and through others, to 'make health and safety happen'.

RoSPA made a substantial response to the DETR/HSC consultation exercise with its own 60,000 word memorandum entitled, *Making it Happen!: Reflections on Occupational Health and Safety Strategy*. This set out the Society's ideas for reinvigorating health and safety at work, reviewing the main strengths and weaknesses of the UK health and safety system and suggesting some of the main changes in policy and practice required to re-energise the system and produce sustainable improvement in future OS&H performance. In fact many of RoSPA's recommendations mirrored a number of remarkably common themes which emerged from the consultation phase such as the need to raise awareness, step up enforcement, make OS&H a boardroom issue, get the insurance industry involved, empower safety reps, make occupational health and rehabilitation a clear priority and provide financial incentives for OS&H improvement.

For the first time broad national targets have been set in the following terms for achievement by 2010: deaths and major injury accidents to be cut by 10 per cent, work related ill health by 20 per cent, working days lost by health and safety failure by 30 per cent. Half of this improvement to be achieved by 2004.

Whether the targets can be achieved in the timescales set and whether they can help motivate improvement in individual businesses is still far from certain. Firstly, accident rate targets will have no statistically valid meaning in SMEs and guidance will be needed at sector level on how to set 'process' or OS&H 'input' targets for such firms. Secondly, it needs to be remembered that, while fatal and major injury rates came down in the seventies and eighties (but have since plateaued, for example in construction and agriculture), how much of this reduction was due to better prevention is hard to determine. Clearly, some was simply due to continuing changes in hazard exposure as a result of shifts in employment from heavy industry to services.

Obviously any reduction in lives lost is to be welcomed but fatal and serious accidents are a crude indicator and arguably there is a real need to develop more meaningful reactive and proactive measures of national OS&H performance which go beyond rates of fatal or indeed other kinds of physical injury or ill health.

Although it has a number of apparently disparate elements, looked at broadly the 'revitalising' package focuses strongly on the 'three pillars' for delivering sustained improvement in health and safety performance within organisations: 1) developing competent and committed leadership from board level; 2) effective integration of health and safety into all management processes; and 3) strong workforce involvement.

There is a clear Government commitment to making board level directors more directly accountable for health and safety performance; setting out a statutory code for directors; making a single director responsible for reporting to and from the board on OS&H matters; urging companies to report on OS&H performance to a common standard (all firms employing over 350 to do so by 2004); and establishing an OS&H management 'yardstick'.

The report specifically mentions RoSPA's DASH (Director Action on Safety and Health) project and in particular the current RoSPA consultation exercise on measuring and accounting for corporate health and safety performance.

It also puts considerable emphasis on using the supply chain as a route for encouraging clients to require smaller companies to raise their health and safety management standards. Indeed; all government departments and public bodies will be required to become exemplars in the way they manage health and safety themselves, reaching 'best practice' rather than simply legally required minimum standards and insisting on evidence of high standards in all government procurement procedures, particularly in construction. (A high level HSE/DETR Task Group is being set up to drive it through.)

Other significant features of the Government's plans include:

- a general commitment to tougher enforcement by inspectors, 'naming and shaming' of employers found guilty of OS&H offences and the possibility of enabling private OS&H prosecutions;
- the possible introduction of novel penalties such as compulsory retraining of managers and directors and other kinds of remedial programmes;
- a commitment to make occupational health a central feature of all future health and safety and public health strategies, making OS&H part of local Health Improvement Plans (HIMPs) and providing services via Primary Care Groups (PCGs);
- plans to engage the insurance industry in the promotion of OS&H and to incentivise better health and safety performance through grants and tax incentives and by producing a 'ready reckoner' to help companies assess the likely cost effectiveness of investment in OS&H;
- plans to embed safety and risk concepts in education at all levels, including via the National Curriculum and in the education of safety significant professionals; and
- developing 'joined up' approaches with other departments and agencies, including, for example, working with Regional Government and the new Small Business Service (SBS) so that health and safety becomes an integral part of the development of every new business.

The world of OS&H will want to take time to digest the Government's and the HSC's revitalising commitments and to consider the implications of what is proposed. There's a lot to be done, including finding Parliamentary time for some important legislative changes - but 'the game's afoot and it's all to play for'!

March 2001**'HSC open meeting'**

In January, about 350 people from a wide variety of constituencies attended the first 'open' meeting of the Health and Safety Commission (HSC). As a first effort to make the HSC's deliberations more open and accessible, the Commissioners and, in particular their chair, Bill Callaghan, deserve to be congratulated.

The basic format was an opening address by Mr Callaghan followed by a series of presentations on the HSC/E's draft strategic plan followed by observations and questions from the audience. Presentations and resulting discussion were very ably guided by an independent facilitator, William Roe.

Major themes were: 'targets', including not only the headline targets set at national level but the need for linked targets at sector and corporate levels; prioritisation of resources, focusing on both key sectors and major problems; and the need - within finite resources - to get an appropriate balance between proactive and reactive work.

Other issues concerned HSE's approach to securing compliance and its plans for continuing to tackle higher hazards, including major hazards sites, nuclear activities and of course, the railways, where Lord Cullen's report on Ladbroke Grove is expected to have a ground breaking effect.

Basically the HSC were seeking to explain the logic behind their decisions rather than inviting views on what those decisions should be. They explained that, if they were to stand any chance of delivering on the headline targets, they would need to shift any surplus resources into three priority sectors and five major problems.

These are: agriculture; construction; and the NHS; and accidents with site transport; slips, trips and falls; falls from height; manual handling injury; and stress related ill health. It was explained that this did not mean any lessening of focus on other important issues (for example, asbestos, still set to be the biggest killer in health terms - 6,000 deaths a years over the next decade) but was the 'icing on the cake'. The audience was thus left a little confused since what was not so well explained was what would not be addressed if available resources were to be targeted in the way described.

Despite the constraints imposed by the big meeting format, a lot of measured and carefully considered points were made. For example, John Cartledge of the London Transport Users' Committee asked about the extent to which HSC/E should target resources at areas giving rise to obvious public concern as opposed to other areas of higher but less well perceived risk. There was also a widely voiced call for longer term investment in safety and risk education at all levels to enable everyone from school leavers to political representatives to develop a more balanced understanding. It is of concern to RoSPA that 'Revitalising' contains no review of the provision of OS&H training generally or indeed of degree level teaching or research. This is a major omission. HSC needs urgently to address Britain's ability to develop the intellectual 'seed corn' required for OS&H over the next decade.

What was not so well explored were the consequences for national health and safety performance of HSC/E being forced to adopt a more reactive and punitive stance rather than a developmental and educative approach. Indeed, few seemed brave enough to venture the suggestion that, beyond a certain point necessary to demonstrate that the law can and will be invoked against offenders, allocating more HSE resources to investigation would actually reduce the amount of time and expertise available to educate and guide employers to help avoid accidents and ill-health.

In the final panel discussion session I asked a question about work related road safety as follows: 'It is highly likely that the forthcoming HSE/DETR public discussion exercise on work related road safety will confirm: 1) the existence of relatively high levels of risk, harm and loss associated with 'at work' vehicle accidents on the public highway; and 2) the substantial scope which exists for further preventive interventions by employers. If this is the outcome, will the Commission adjust their priorities to ensure that adequate HSE resources are devoted to promoting occupational road safety?'

The response was tentative, with HSE Deputy Director General, David Eves stressing that HSE would be feeling their way carefully on this issue, reflecting perhaps HSE anxiety about venturing into new risk territory, even though it seems fairly clear that more people are killed and seriously injured in 'at work' road accidents than in all other RIDDOR notifiable events put together.

Although HSC/E have got to be prudent about their engagement with an ever widening hazard/risk menu, it should not be forgotten their 'can do' expansion over the last two decades (by taking in gas, rail, offshore etc) has not only helped them grow in influence as a national institution but has enabled these diverse areas to benefit from their cross sectoral, risk based, goal setting approach.

The underlying objectives of the Commission's strategy have to be to motivate employers to address OS&H systematically within their overall management of their businesses and to strengthen their OS&H management capability. This means not only emphasising 'the business case' but promoting the OS&H management 'systems' (HSG65) approach. And in turn this must mean highlighting key but underaddressed themes within all this (eg director leadership, training and competence, learning from accidents, measuring and reporting on performance etc).

Criticism is easy however and the HSC have set themselves some challenging tasks. Above all they have acknowledged they have a responsibility not just to oversee the work of HSE (which is still largely enforcement focused) but to exercise a broader 'leadership role' in the OS&H system, working in partnership with other key 'system' players. The priority now must be to develop a functional map of 'the system' (with 'the duty holder' rather than HSC/E at the heart of the OS&H universe) and encourage real debate around key strategic questions rather than the detail of HSC/E plans already drafted.

Perhaps there is a case for a new central forum (on lines similar to that which RoSPA and others are presently trying to establish in Scotland) which could bring 'key influencers' together to carry the debate forward and promote on-going strategic

dialogue and foster closer co-operation in joint forward planning. Readers' views would be welcome.

July 2001**‘Progress with ‘Revitalising’**

When it was launched in June 2000, RoSPA was generally encouraged by the Government/HSC strategy statement, *Revitalising Health and Safety* (RHS), particularly since it seemed to take on board many of the themes raised by respondents during the consultation phase - including a whole raft of ideas which the Society had submitted in a major document (*Making it Happen!*).

The ten strategic themes and 44 'Action Points' were subsequently complemented by a companion strategy document on occupational health, *Securing Health Together*. Together they set out an ambitious framework designed to stimulate a step change in H&S performance in the UK. Key features include:

- setting national headline targets for reduction in work related injury and ill health to workers and the self employed and a reduction in the associated rate of days lost;
- a major focus on the key OS&H role of directors;
- a challenge to all major private and public sector employers to report annually on their corporate OS&H performance;
- steps to enhance workforce involvement and the role of trades union safety representatives;
- a new focus on safety and risk concepts in education;
- building occupational health and rehabilitation into the OS&H mainstream;
- enhancing the role of insurers in promoting and supporting OS&H management;
- stepping up enforcement and developing innovative penalties;
- encouraging 'best practice', not just minimalist compliance;
- better 'joined up' approaches to OS&H between Government Departments and Agencies.

The implementation record on some of these 'Actions' so far has been mixed. For example, HSE seem determined to go ahead with the 'ready reckoner' (Action Point One) aimed at small companies to emphasise the cost of accidents and the 'business case' for investing in prevention. The 'reckoner' would be fine for accountants but not really persuasive with small firms since the macro business case for OS&H does not match up with micro level experience.

A draft 'directors' OS&H code' has been consulted on at great speed. This includes the advice that there should be a named 'OS&H director' at board level to champion action on this subject in the organisation. RoSPA very much welcomes this guidance but its content needs sharpening considerably to make it clear that the board as a whole have a collective responsibility to assure themselves of the risk management capability of their organisation, to set strategy and targets and to monitor progress.

A challenge has gone out to the top 350 companies and the public sector to include a minimum set of OS&H failure data in their annual reports. Work has been progressing on getting safety built into elements of the National Curriculum as well as on a whole host of other Action Points, for example, on enhancing the role of safety reps and using HSC/E's website to 'name and shame' those found guilty of OS&H offences.

This is all good stuff and no doubt there is more still to come - but it should not be forgotten there are still a number of quite major gaps.

Despite the headline targets there is no clear nation-wide challenge for individual employers to set their own targets based on a more holistic view of performance rather than simply reducing their RIDDOR figures. (RoSPA will be leading a 'key issue' project on 'good practice' in corporate OS&H improvement target setting, focusing on evidence based approaches, consultation etc.)

There are no targets set for reducing fatal and major injuries to members of the public, despite the fact that over 200 people who are neither employees nor self-employed are killed annually in work related accidents.

Despite HSE's commitment to clarify the *Management Regulations* to require employers to investigate and learn from accidents and incidents, there is no strategic steer on the importance of learning from OS&H management failures.

There is also still no clear steer on standards of competence for key roles, (particularly directors and line managers), for example basic knowledge of OS&H management system principles, 'human factors', impact of work on health and vice versa.

In the coming period HSC/E will need to continue to think hard about how it directs its resources to keep up the momentum. It has to avoid the 'rhetoric/reality gap' getting too wide and it also needs to follow a rational, evidence based approach - even if this is not to everyone's liking. For example, if it bows to political pressure to put more than the right amount of its precious resources into enforcement (including investigating accidents and taking prosecutions - all of which take up much HSE staff time) instead of devoting enough resources to proactive work - in the long run this will actually be bad for health and safety. Despite the need for 'justice' following accidents, HSC/E's strategic objective must remain one of building the risk management capability of UK PLC.

HSC/E will also need to work more on developing their 'best /good practice' approach. The Commission, for example, could take a more positive lead in signposting employers to the various 'tributaries' which lead into this broad stream, including giving a positive steer towards such options as awards schemes, benchmarking, preferred contractor lists, certification etc.

Bill Callaghan and HSE's Director General, Timothy Walker have indicated that their priorities in the short to medium term are going to be three sectors (agriculture, construction and the NHS) and five problems (falls from height, falls on the level, site transport accidents, manual handling injuries and stress). At first glance this seems fine. You need to focus resources to get results.

Similarly priorities need to be evidence based (taking account, for example, of findings on matters such as prevalence, risk, 'preventability', cost effectiveness etc.). On the other hand, the 'three sector/five problems' formula seems far too simple in that it ignores the immense breadth and diversity of the world of work which is replete with serious hazards and is constantly changing.

During the eighties and early nineties, when many official bodies like the Manpower Services Commission were 'going to the wall', the HSC in particular established its worth by adopting a 'can do' attitude, spreading its safety and risk expertise to fresh areas such as railways, gas, offshore safety and many specific problems like fairgrounds, swimming pools and so on. Any attempt now to pull back into familiar territory could reduce HSE's influence in the longer term and mean that fresh opportunities for OS&H renewal and development could easily be lost.

Oct 2001

'Developing the role of trade associations'

For over 45 years RoSPA has been making awards - mainly to employers - to recognise their achievements in the field of health and safety at work. Besides providing a series of targets at which organisations can aim, the Society's awards are also designed to help to identify exemplars from whose experience others can learn.

This year, for the first time, the Society's Awards Panel made a special award to the Chemical Industries Association (CIA) which, over many years, has taken a very proactive approach to os&h - including its 'Responsible Care' programme. The award took the form of a special commendation presented at the CIA's own awards dinner at the London Hilton in July.

What influenced the Panel's decision was not simply the CIA's outstanding contribution - as a trade association - to the improvement of os&h but the fact that it clearly shares RoSPA's vision of high standards of health and safety as a key aspect of overall business performance.

It is the same wider vision that also underpins the Government's and the HSC's plans for 'Revitalising Health and Safety' (RHS) and 'Securing Health Together' (SH2).

Although they underscore HSE's commitment to targeting its limited resources to best effect, RHS and SH2 clearly recognise that HSE can only reach a handful of businesses by direct field staff contact. Its experience in seeking to influence small firms has led it to recognise that the Executive needs to extend its outreach by working increasingly 'with and through' others including 'intermediaries' such as employer and trade associations.

The more well-known trade associations - such as the CIA, the Engineering Employers' Federation, the Construction Confederation, the Electricity Association, the British Printing Industry Federation and so on - all employ professional os&h staff. Many other employer/trade bodies provide some level of h&s services which can range from provision of information and 'signposting' to strategies for self-policing and promotion of compliance.

On the other hand, there are many trade bodies that, at present, still lack in-house os&h resources or indeed may not see the subject as particularly relevant. Nevertheless, they may still have considerable communication, networking and outreach capabilities that could be exploited.

What was surprising therefore was that there was little if any discussion in RHS about the level and impact of existing h&s services provided by employer/trade associations or what HSE should be doing to encourage and develop such activity.

Part of the problem is that RHS, for all its good points, failed to produce an agreed map of the 'oh&s system' on which the roles and agendas of key players, including the many potential 'intermediaries' such trade bodies, could be clearly spelled out. Apart from the fact that many players are not aware that there is a 'system' or of their place in it, there is the problem of agreeing a basic structure. HSE, for their part, still tend to

see themselves as the 'prime mover' in the 'system' and thus tend to conceive of themselves as being at the centre of a web of other lesser os&h interests and players (and in many respects their role as regulator justifies this). What RoSPA has argued for is the development of a map with businesses at the centre and with the other players ranged about them.

As part of this mapping process there is a clear need to identify the entire range of potential 'intermediaries' and to develop a data bank on their os&h activities and level of engagement. Key categories include not just employer/trade bodies (of all kinds) but large clients (from supply chain to 'good neighbours'), trades unions, business development and support bodies, banks, educational institutions, professional bodies (safety, hygiene, medicine, occupational health nursing etc), voluntary bodies and local h&s groups. Of course the strengths and weaknesses of all potential 'intermediaries' need to be established since each will have their own very clear os&h agendas.

Deciding future opportunities for developing the os&h role of trade and sector bodies therefore depends on understanding in each case 'where they are coming from' as well as their likely development needs and what might be appropriate to help them, including, secondments of specialist staff, providing mentoring and benchmarking or direct financial incentives and support. Where they have clearly established h&s programmes there may even be a case for putting co-operation with HSC/E on a firmer footing by establishing more formal 'partnership agreements'.

One of the reasons why more trade bodies have not developed their h&s role as much as others have done is because their directors may have a restricted view of the subject. There is still a need to dispel the myth that health and safety issues are costly, burdensome, complex, technical matters to be dealt with only by specialists and to really convince everyone that action in this area can not only help prevent accidents and ill health; but can also make businesses more successful. For example, more work is still needed to examine ways in which os&h can be integrated effectively into quality assurance schemes (ISO 9000), environmental management standards (ISO 14000), and Investors in People (IIP).

Developing sector level h&s input cannot rest simply with the HSE. In practice it is those relatively large organisations with established os&h culture, expertise and values, that are often best placed to exercise this kind of influence. Such organisations represent a body of expertise and commitment whose active interventions can have a really powerful effect, setting the pace and tone for others to follow, for example, by encouraging 'good neighbourliness' and influencing os&h standards via the contracting and supply chain. It is the larger firms that typically tend to exercise influence at sector level, for example, via the HSC's Industry Advisory Committees.

There are all sorts of potential os&h roles for trade bodies such as operating 'H&S passport' schemes and developing 'approved contractor' lists so that where member companies engage contractors they can have some assurance about their ability to work safely. There may also be scope for developing other forms of advice and support including: training, specialist occupational medical and hygiene services and encouragement to enter either the organisation's own or external health and safety award schemes.

Above all sector bodies need not just to participate with HSC/E in raising awareness; they also need to focus on adding value for their members by providing h&s services. At the very least trade bodies should be providing guidance on the kinds of 'competent' persons required to deliver essential services.

November 2001**'Deciding HSC/E priorities'**

HSC recently issued a short (six page!) discussion document (*Prioritising the work of the Health and Safety Commission and Executive - DDE17*) seeking views on where they should be putting their limited resources. This exercise followed the Commission's first open meeting held in January.

Commenting on that meeting (see 'Parting Shots' March 2001 OS&H) I pointed out that there was a danger that, if HSC/E were forced to put more resources into reactive work this could actually be bad for health and safety. Despite the need for 'justice' for victims of accidents and for exemplary prosecutions to motivate backward employers, stepping up enforcement activity could reduce the amount of effort devoted by the Executive to raising awareness, providing guidance and building the self regulatory capability of the UK 'health and safety system'.

Similarly in the July edition I commented that the Commission's short to medium term priorities - namely three sectors (agriculture, construction and the NHS) and five problems (falls from height, falls on the level, site transport accidents, manual handling injuries and stress) - were far too restricted. While accepting that you need to focus resources to get results, the 'three sector/ five problems' formula seems to ignore the immense breadth and diversity of the world of work. Furthermore, the approach seemed to me to be so circumscribed as to rule out the possibility of flexibility as evidence about risks changes and new problems come into sharper focus.

The document asks essentially what criteria HSC should use to help them to determine where to put the balance of HSC/E resources. Should they be focusing on hazards according to levels of risk involved, numbers affected, quality of evidence about risks and effectiveness of interventions? Should they be directing their resources in response to public concern and how should they evaluate or weigh such concern?

These are not easy questions to frame let alone begin to answer. HSE could, for example, be guided simply by the prevalence of work-related death - but on this scale, asbestos (over 6,000 deaths per year) and occupational road risk (possibly 1,000 deaths per year) could clearly soak up all the resources needed to revitalise H&S in high risk sectors.

Then there is the question of how HSC should balance efforts between acute risks which give rise to obvious public concern (like railway safety) and chronic longer term issues such as stress and musculo-skeletal disorders which are associated with massive costs to both business and the wider community. The HSC are clearly anxious to understand and respond to the expectations of stakeholders. They obviously operate in a political context and are answerable to ministers who in turn are keen to win public approval and ultimately votes. Yet equally it is the job of the HSC to help guide public concern and not simply be led by it.

What is it that HSE should be trying to achieve in the short to medium term? Fewer fatal and major injuries? Fewer minor injuries? Less work related ill-health? Fewer

days lost? Lower accident/ill health costs? Or greater awareness of health and safety, more workforce involvement and higher standards of health and safety management?

Although there is a degree of overlap between all these objectives, it is also the case that some can be pursued at the expense of others. In reality it seems more likely that HSC will opt for 'quick hits' to enable them to meet the injury/disease reduction targets in 'Revitalising Health and Safety' (RHS) even if this means ignoring other more intractable problems. In today's 'target driven society', short term 'measurables' claim everyone's attention, particularly when they are linked to future funding prospects.

But equally stakeholders should also be asking how HSC intend to balance action on short/medium term objectives with longer term goals. In practical terms this could mean how do you choose between employing HSE staff to take more prosecutions against irresponsible employers in construction and employing them to help get safety and risk concepts thoroughly embedded in education. Or it could mean choosing between using them to carry out fundamental research into slips, trips and falls as opposed to using them to help build the health and safety support capability of key 'intermediaries'.

What is missing in this debate is an agreed understanding of 'what HSE is for' or an agreed view about what constitutes effective regulation of health and safety at work.

The simple view is that, through consultation, HSC/E help Government make regulations (particularly about specific hazards); they produce information and guidance and then expend the bulk of their resources in inspecting workplaces to check, at the work face, whether hazards have been assessed and controls or safe systems of work have been put in place.

Within this model, HSC/E are the 'prime movers' and better health and safety is achieved by clear (preferably prescriptive) regulatory requirements, more inspections and more and stronger penalties. The role of all the other influencers and providers - who actually out-number HSE many times over - is rather ignored. Yet, in reality it is these players who form a vital linkage between HSC/E as regulator and 'self regulation'.

Looked at in this way a more sophisticated model of OS&H regulation is required, including a 'functional map' of the 'health and safety system' (with the employer and not HSE at the centre) setting out the roles and relationships of all the key players. Such a model then demands a more sophisticated view of HSC/E's role, suggesting that it should not simply be lawmaker and policeman but a 'development agency' responsible for helping to build the health and safety management capability of the entire 'system'. HSC/E's task arguably is not just to decide how to secure 'best value' from their own resources but how best to mobilise all the OS&H resources within UK PLC.

This wider view of HSE's role demands not just criteria to help it deal with choices between hazards based on risk, preventability, public concern etc. It demands a far more challenging set of guidelines which can help it achieve a 'balanced score card'

when choosing between action on immediate, short term priorities and longer term investments in future OS&H capability.

If the public are to be invited to contribute their views (which is not only their right but entirely necessary) then HSC have a responsibility to provide a clear strategic overview - certainly more than six pages of the real OS&H challenge. If they fail to do this, they risk being driven simply by some sort of general hazard unpopularity rating. More importantly they will be failing in their duty to engage stakeholders in a real dialogue.

January 2002**'A strategy for OS&H excellence'**

In comparison with many other industrialised countries Britain has a good occupational safety (if not occupational health) record. But there is substantial scope for improvement with 1 million occupational injuries and about 2 million cases of ill health caused or made worse by work every year.

As a key part of its strategy for *Revitalising Health and Safety* (RHS), the Health and Safety Commission (HSC), have set targets for improvement, including: a ten per cent reduction by 2010 in the number of fatal and major injuries; and a 30 per cent reduction in days lost through work related ill health (half of these to be achieved by 2004).

In addition, the HSC are encouraging organisations to adopt a 'best practice' approach to occupational safety and health (OS&H), going beyond mere compliance with legal minima and making continuous improvement in OS&H performance a key business objective.

RHS states '...The health and safety system needs to do more than just prevent work related harm. It must *promote better working environments* characterised by motivated workers and competent managers. This will require a shift in focus from minimum standards to best practice.'

At the heart of RHS is a determination on the part of the HSC to raise the status of OS&H. Part of this has involved issuing guidance for board level directors on their responsibilities in this area and challenging 350 major UK businesses as well as all major public sector employers to include details of their health and safety performance in their annual reports. (Response to this, it is understood, has been quite variable.)

The HSC's advocacy of 'best practice' is not new but what is new perhaps is its vision of a much stronger and more co-ordinated drive by all key stakeholders in OS&H (employers, trade associations, trades unions, insurers, voluntary and professional bodies etc) to work together to deliver a step change in UK health and safety performance.

An implied objective is that of enlarging the core of OS&H 'high performers' so that their values, expertise and influence can help to stimulate and support improvement in the wider in the health and safety system and thereby help in meeting the targets in RHS.

Few would disagree with the idea of 'excellence' as a goal. The question however is, how is that goal to be achieved? It is unlikely to happen on its own. Too many businesses are still satisfied with a minimalist approach. What is now required is a vigorous debate among all health and safety system stakeholders about how to develop a coherent strategy for the promotion of 'excellence' in the OS&H management.

At the heart of this is a need to bring about a change in the way health and safety at work is perceived, particularly by senior managers. They must be persuaded away from a view of OS&H as being a lower order, regulatory, prescriptive, technical and potentially burdensome issue to one which is viewed as strategic, risk and goal based, business rather than law led, and generally cost positive and empowering.

There are numerous individuals and organisations who are involved in a wide range of activities which currently feed into the broader stream of OS&H 'excellence' and 'best practice'. These include trade association schemes (such as the Chemical Industry Association's 'Responsible Care' programme); 'benchmarking' (via trade associations and via partners); participation in awards (both status and competitive, such as the RoSPA scheme); and 'certification' (e.g. to OHSAS 18001). Organisations committed to 'excellence' in OS&H also take management of their contractors very seriously; they may be involved in 'Good Neighbour' schemes and 'partnership' schemes or they may enter 'good practice' schemes (as being developed by the European Agency for H&S at Work).

Why do they do this? Firstly perhaps because they recognise that an 'excellence' approach to OS&H is not only highly beneficial for their business and their stakeholders but is part of showing that they are 'world class'. Secondly, their commitment to 'excellence' is founded on the conviction that the effective protection of people and organisations from harms associated with work activity is a hallmark of all socially and commercially responsible organisations. They are not just meeting legal requirements but responding to essential moral and financial imperatives underpinning business success.

From this perspective, the pursuit of 'excellence' in OS&H is seen not as an end in itself but of part of an organisation's commitment to strive for ever higher standards in areas as diverse as finance, research and development, production, marketing and sales, human resource development, environmental management, external relations and so on. In this sense, a general 'culture of excellence' rests on an organisation's vision of itself, including its position in the market and in wider national (and indeed, international) society and on its broader 'corporate values'.

OS&H 'excellence' has many hallmarks. It may be visible in areas such as: high standards of health and safety training - from all new starters to board level directors; in standards for the selection and management of contractors; in health and safety communications; in rigorous approaches to risk assessment and learning from accidents and incidents; and in the adoption of higher risk control standards than those required by law (e.g. higher machinery guarding standards, stringent noise and airborne contamination levels etc.).

Organisations committed to 'excellence' in OS&H will also exhibit real commitment to effective workplace involvement. They will have a strong focus on health, seeking to improve the whole working environment and to promote 'well being', including, wherever possible, the prevention of harms to employees originating outside work. They will often insist on the adoption of universal standards for the protection of safety and health worldwide, regardless of the host country's legislation.

Invariably such 'excellence' is clearly and visibly led by all members of the board and by all senior managers (including by personal example). It is sustained by the setting of corporate and subsidiary performance improvement targets with constant monitoring (active and reactive), providing essential data with which to review performance and learn lessons, which in turn can be fed back to establish continuous improvement.

Furthermore, any effective 'OS&H excellence' strategy will be able to link with all the factors which tend to drive organisations in the direction of general 'business excellence'. These include: customer and client pressures; competitive pressures ('excellence' providing a 'market edge'); public image; adoption of 'Quality' and 'Business Excellence' models (eg the European Foundation for Quality Management model); adoption of HR standards like 'Investors in People' (IIP); corporate risk management requirements (Turnbull etc); and the wider 'Corporate Social Responsibility' and 'Sustainability' agendas.

All these drivers should, of course, tend to link up to create an overall culture of 'excellence' in every part of an organisation. In practice however, while they may tend to promote higher standards of business behaviour in the areas they address, they can still by-pass OS&H.

For example, while, in practice, it is more likely that high OS&H management standards will be found in organisations with certificated quality management systems, this is not always the case. Quality management addresses consistency of operation in delivering against specification. It is quite possible for a product to be produced by an organisation operating a certificated quality management system while the product itself is manufactured on an unguarded machine which produces harmful toxic exposures for the operative and unacceptable environmental impacts. Indeed, the product itself may be unsafe for end users.

Similarly, schemes which attest to the ability of an organisation to manage their external environmental impacts may completely ignore management of internal working environmental risks.

Another example can be seen in the 'Investors in People' scheme which focuses on corporate HR capabilities but does not probe occupational risk management in any depth, even though OS&H training is clearly an essential part of overall 'people development'.

Any strategy to encourage 'OS&H excellence' must therefore seek to engage wider 'business excellence' initiatives to help transform their approaches to OS&H, particularly by persuading their organisers that OS&H is not part of a separate regulatory domain but permeates every aspect of an organisation's operations. In this respect, one of the strengths of HSE's publication, *Successful Health and Safety Management* (HSG65) has been its use of the 'quality management' model and associated concepts to show how OS&H management can be addressed within business management systems.

Defining what is meant by 'excellence' is not without its problems. Some defined it as simply a corporate determination to improve continuously (however slowly and

imperfectly). For others, it means demonstrating that their organisation has exceeded a certain level of performance or has reached some absolute performance standard (for example, 'Zero Accidents').

Then there is the question of how far an organisation should be prepared to go beyond legal minima. Duties in health and safety law are qualified by 'reasonable practicability', that is exemption from spending more (in terms of time, money, effort etc) in controlling risks once a point of gross disproportion between risk and cost has been reached. Although in practice decisions on what is 'reasonably practicable' are rarely based on rigorous cost benefit analyses, they are assumed to reflect the need for proportionality between risk and the cost of risk control, taking account of the tolerability of residual risks. The business case for OS&H asserts the cost effectiveness (in the long, if not the medium, term) of action to prevent work related harms. If, as a consequence of adopting an 'excellence' approach, residual risks are reduced below 'reasonably practicable levels', some might argue that such action is clearly disproportionate and hence represents a waste of resources that might be better spent elsewhere.

On the other hand, it is often the case that what are defined in law or guidance as 'reasonably practicable' standards are in fact a political compromise which takes account of the needs of the most backward businesses. Going further than such minima can thus be clearly justified, particularly where minimum 'RP' standards still involve significant levels of residual risk, for example, for vulnerable groups. And of course there are still numerous areas of risk where there are no legal standards and organisations are thus challenged to identify appropriate standards themselves.

In today's business world, organisations identified externally by a single brand are often far from homogeneous (particularly where they are the product of mergers and takeovers). Even in those organisations with generally outstanding approaches to OS&H, there are likely to be areas of non-compliance with legal minima and some accidents and cases of work related ill-health are likely to occur from time to time. These may be the result of deep-seated weaknesses in management systems but equally they can be due to local peculiarities.

To what extent therefore should such infrequent events preclude an organisation from describing its approach to OS&H as 'excellent'? If the answer is that the status of 'excellent' equates to total absence of harm, then whether or not that status is maintained may be as much a matter of chance as design. ('Zero accidents' - rather than injuries - is actually impossible and 'zero injuries' - even for significant periods - gets harder the bigger you get.)

Neither can 'OS&H' excellence be proclaimed as the sole preserve of large, 'blue chip' companies. Any 'excellence' strategy has to be able to encompass small as well as large organisations, emphasising that 'excellence' has as much to do with attitude and philosophy as it does with expertise and resources. While large companies can afford to employ professional advisers, many smaller organisations, by their persistence and application, continue to demonstrate that they are able to develop effective approaches to OS&H - often incorporating innovative solutions. And, just as with large organisations, 'excellence' in health and safety in small firms can greatly enhance their commercial profile.

Perhaps most difficult of all, especially for HSC, is the question of how the status of self proclaimed or externally accredited 'OS&H excellence' should be viewed by the regulator. In practice, HSE and Local Authorities tend to prioritise their limited enforcement resources towards organisations with significant risks, poor records and weak management capability. To what extent should the status of 'excellent' - whether asserted by organisations themselves or confirmed by third parties - influence the attitude and strategy of enforcers? In the past arguments have been advanced in favour of creating a stronger 'self regulatory' option for the 'excellent' (however defined) in exchange for an undertaking that inspectors will not intervene unless there is an accident or a complaint. This could create an incentive for organisations to achieve exemplary standards and it could help to free-up scarce regulatory resources to concentrate on organisations with poorer performance. On the other hand, it could be argued that, such an approach would deny workers in 'excellent' enterprises the benefits associated with regular visits by inspectors.

How should the drive for 'OS&H' excellence now be taken forward?

What are the options? Incorporation of OS&H management criteria into existing quality, HR and environment schemes? A common statement by the providers of existing routes to OS&H 'excellence' about its importance and its cardinal features? Adoption of a set of common OS&H 'excellence' principles by all businesses and organisations committed to this approach? Adoption of a common 'OS&H excellence' hallmark by organisations putting the 'principles' into practice, perhaps based on self-attestation backed by consultation with key non-regulatory stakeholders (e.g. unions, insurers etc) plus verification via some or all of the above routes?

These are only a few of the ideas that need to be debated. Readers' views would be welcome. (E-mail: rbibbings@rospa.co.uk)

April 2003

'Nurturing good practice'

The idea of 'Good Neighbouring' in health and safety has been around for some time. But, says RoSPA's occupational safety adviser Roger Bibbings, the last two to three years have seen a whole range of initiatives beginning to emerge - to such an extent that there is now a danger of 'good practice schemes' proliferating without adequate co-ordination.

Among the more high profile schemes launched by HSE has been the 'Working Well Together' Campaign that has been running in the construction industry since May 1999. It was developed by HSC's Construction Industry Advisory Committee (CONIAC) to raise standards of health and safety within the construction industry and to challenge industry stakeholders to commit themselves to raise their own standards by continuous improvement through: *commitment* - to higher standards of health and safety; *competence* - ensuring everyone involved is trained and competent to do their work; *communication* - ensuring the health and safety messages permeate throughout a project - involving workers as well as managers in solving problems that arise; and *co-operation* - building up relationships of trust and partnership so that everyone gets the right things right, first time every time.

Companies are being urged to get more information about WWT by accessing <http://wwt.uk.com/Default1.asp> or contacting the WWT Info line on 020 7556 2244. Participants are asked to demonstrate their commitment by drawing up an action plan setting out the ways they will improve co-operation; communication and competence and to publicise it and encourage others to adopt good practice.

WWT was preceded by HSE's 'Good Neighbour Scheme' that started in 1997. The scheme exists to encourage the sharing of health and safety expertise between organisations. In particular, it invites organisations with experience of good health and safety management systems to share their expertise to help other organisations improve their health and safety performance. (Further information on the scheme can be found in the Good Neighbour Scheme leaflet in the 'free leaflets' section of www.hse.gov.uk)

A number of organisations are working with HSE on promoting the scheme and each of these can also provide further information. Contact details for these partners in the Good Neighbour Network are listed in the leaflet. HSE are keen to see as many organisations as possible subscribe to the scheme. To help the process HSE have now launched the Good Neighbour Directory on the HSE site. Which gives details of companies participating in the scheme. Organisations which would like to be recognised as a Good Neighbour and to appear in this list, are asked to complete the registration form at the back of the Good Neighbour Scheme leaflet and click on the 'submit' button to e-mail it to good.neighbour@hse.gsi.gov.uk, or post it to the address given on the HSE site.

'Good Neighbours' in turn is paralleled by yet another good practice scheme called the European Week Awards Good Practice Awards. The idea of this scheme is to invite companies and other organisations to submit details of schemes and initiatives which they have taken in the support of the theme behind 'European H&S Week' held in

October each year. In 2002, BP Grangemouth, for example, was one of twenty companies from across Europe who received an award in recognition of outstanding and innovative contributions to the prevention of psychosocial risks, especially work-related stress which the theme of the 'Week'. Some thirty local award winners were invited to a prestigious national awards dinner in March 2002 at the Royal Museum, Edinburgh. This year's awards dinner took place at Cardiff City Hall last month. Details of the European Week Awards can be accessed via <http://www.hse.gov.uk/euroweek/index.htm>.

A further recently launched (and potentially interesting) scheme is the 'Inside UK Enterprise' (IUKE) 'Health and Safety Programme', funded by the Treasury's 'Invest to Save Budget' (ISB) and developed in partnership with the Health & Safety Executive and IUKE (a national Business Link Service). It provides organisations with the opportunity to visit award-winning businesses - 'Health and Safety Hosts' - and learn, first-hand, how they have tackled a wide range of health and safety issues.

Current hosts (3M Healthcare, Birds Eye Walls, Churngold Construction, Controlled Demolition Group, Elkes Biscuits, Ford Motor Company, Ilford Imaging, Kier Group, MTM Products, Southco Manufacturing, Thomas Vale Construction, Warings Contractors) have been selected from a variety of industry sectors. Most are RoSPA Gold award winners and they have all been chosen for their health and safety expertise and ability to inspire others. Each host holds a number of one-day visits, at their premises, throughout the year where participants can hear practical advice from the men and women who have already addressed the challenges which they are facing in their own businesses. The scheme is aimed at owners and senior managers from UK businesses of all sizes, as well as health and safety managers and safety representatives.

A wide range of health and safety issues are covered including people related issues such as behavioural safety, drugs and alcohol screening, ergonomic assessment, manual handling, musculoskeletal disorders and occupational health. Other topics include: safe working at height, slips and trips, stress management, VDUs and office equipment, 'work-life balance', working with dangerous goods and workplace transport.

The IUKE scheme covers supply chain related issues such as control of contractors and health and safety management process related issues such general health and safety management (writing a company action plan), risk assessment, active monitoring, accident investigation, asbestos management, facilities management and health and safety benchmarking. The benefits to be gained include learning how others have addressed the same challenges, picking up innovative ideas, networking with new people and gaining motivation to implement change. Typically visits to hosts will include: presentations on a range of health and safety issues, open discussion and debate, a networking lunch, a guided tour of the site of factory and a question and answer session. Attendance at each visit is limited to small groups to ensure there is plenty of time to answer questions individually and to tailor presentations to specific areas of concern. There is a charge of £95 + VAT (per person, per visit). A free brochure or further information are available from the IUKE team on 01730 235015 or via e-mail at the contact point at www.iuke.co.uk

A cheaper alternative to this sort of scheme is for organisations simply to follow up the advice in HSE's benchmarking guidance, *Health and Safety Benchmarking: Improving Together* (which is accessible on <http://www.hse.gov.uk/pubns/indg301.pdf>). This guidance suggests that organisations can benefit by selecting either internal or external benchmarking partners with whom they can arrange structured sharing and comparing of key information. (For some years RoSPA has offered the facility to introduce companies to would-be benchmarking partners from among its lists of award winners.)

Clearly, companies which put themselves forward as exemplars gain certain benefits, including not only an enhanced corporate reputation but access to information and learning from others who are keen to learn from what they have achieved. Being 'named and acclaimed' however also means having to be open and being prepared to put your record, good and bad, up for public scrutiny, for example, reporting via company websites on targets, performance and good and practice in line with RoSPA and HSE guidance.

It also means supporting local networks such as the 80 or so H&S Groups spread around the country which depend a good deal for support and patronage on the goodwill of local 'market leaders' in health and safety.

But perhaps the greatest test for all for schemes of this type is the extent to which the excellence, enthusiasm and expertise locked up in major organisations can actually be shared - not just with the 'second division' of H&S but the 'third' and 'fourth' divisions. These include particularly the hundreds of thousands of poor performers in small firms where ignorance and cavalier attitudes towards risks at work mean that thousands of workers are still damaged unnecessarily and vital resources which could be saved to enhance competitiveness are squandered simply because those involved have not grasped the 'why' and 'how' of good H&S management.

October 2003

‘Short on detail, long on effect’

On 1st July the Health and Safety Commission published a potentially important discussion document ‘*Strategic thinking on health and safety: work in progress*’ (SID01). (Copies can be accessed online at: <http://www.hse.gov.uk/consult/disdocs/strategicthinking.pdf> .) The closing date for responses is 13th August 2003.

The aim of this discussion exercise is to draw key ‘health and safety system’ (HSS) stakeholders into the process of future strategy development. This is obviously important if HSC/E want to secure consensus and develop a wider understanding of the challenges facing them. Hopefully it will also provide an opportunity for individuals and organisations to influence the Commission’s and the Executive’s overall approach. HSC/E acknowledge it is vital that this keeps pace with social, technological, political, economic and labour market change and that they remain fully effective in securing a continued reduction in work related harms and the advancement of well being at work. One of the consequences of producing a very brief (only seven pages!!) and informal document is that there has no coverage of HSC/E’s rich history - from the report of the Roben’s Committee onwards – and thus readers who may not be familiar with this background have not been provided with any sense of perspective on HSC/E’s heritage. Without this it is very hard for the general reader to get a sense of how both HSC/E’s approach to their role and the wider occupational HSS have evolved together over the last three decades.

Although it does not mention it, the new document seems to go over much of the ground covered by an earlier discussion paper (‘*Prioritising the work of the Health and Safety Commission and Executive*’ - DDE17 July 2001). Readers may recall that I responded to this with a ‘*Parting Shot*’ in November 2001 in which I questioned whether HSC/E should be seen primarily as a ‘hazard chaser’ or a ‘system builder’.

In its response to the latest document RoSPA has made many of the same points which I made in that article and on which it has focused during the whole ‘*Revitalising Health and Safety*’ (RHS) exercise. It has also drawn on the new RoSPA ‘vision’ for the future of OS&H which is posted on the ‘occupational safety’ pages of www.rospace.com.

In response to HSC/E’s question ‘Have we got the issues right?’ RoSPA has suggested that the definition of ‘issues’ is closely linked to definitions of HSC/E’s role. For example, is HSC/E’s role focused primarily on hazards and harms or is it focused on developing the institutions, mechanisms and processes in UK society that will deliver effective protection?

Looked at in terms of hazards/harms it is clear that HSC/E need to focus their limited resources in a balanced way on: the main sources of work related injury and ill-health which can be addressed by known, cost effective solutions; disaster level work related risks (nuclear, offshore, major hazards etc); and areas where they can intervene in partnership with others (rehabilitation etc). RoSPA has continued to stress that, on the safety front, far more HSE resource must be devoted to improving work related road safety since many more employees and others are injured in work related road crashes

than in all notifiable accidents put together. Similarly on the health front, the continuing scale of early death due to exposure to one single agent, asbestos (now found only in existing installations) might be seen to deserve the lion's share of available HSE health protection resources.

On the other hand, RoSPA accepts that HSE faces hard choices in balancing resources between acute problems and more prevalent but generally less serious accidents and forms of ill health (such as slips trips and falls on the level, musculo-skeletal disorders and stress) which, while rarely if ever fatal, in aggregate represent a much higher burden of suffering and economic loss. Choices of this kind obviously need to reflect changes in the world of work and the emergence of new opportunities to enhance the 'business case' for health and safety and the contribution which higher health and safety standards can make to improve competitiveness. HSE needs to be thinking 'ahead of the game', spotting new hazards before they enter the world of work and in this sense RoSPA sees a much greater role for HSC/E as a co-ordinator of H&S focused research activity both inside and outside HSE

Looked at however in terms of developing prevention capability, it is very important that HSE is not simply drawn into chasing an impossibly long list of hazards connected with work. As RoSPA has argued consistently, HSC/E needs to re-examine its vision of what it is to be a 'regulator' in contemporary society, revisiting but going beyond some of the basic notions of 'self regulation' set out in Robens (now generally interpreted as effective 'health and safety management'). Of course HSC/E have to react to public concern and political pressures but they also have a responsibility to choose between immediate reactive, medium term proactive and longer-term development interventions. They also have to exercise strategic leadership and, in this sense, they have to decide whether they exist primarily to tackle hazards and risks (particularly those giving rise to heightened public concern) or whether their fundamental purpose as a regulator is to tackle the underlying reasons why those hazards and risks have not been tackled by others, particularly risk creators themselves.

This means re-examining what it is that really keeps people safe while at work. There are clearly many influences: law and its enforcement, professional advice, training, senior management commitment, workforce expectations and involvement, the influence of numerous intermediaries and so on. In reality however the key 'protectors' are effective health and safety management systems and strong health and safety culture - with all that these imply.

If this is the case, then it should have profound implications for the way in which HSE see themselves and the way in which they operate. It should mean abandoning the traditional view of HSE as essentially 'regulation maker and enforcer' (tempered by information provision in partnership with 'intermediaries'), and re-inventing HSC/E as **the 'development agency' for the HSS**. This means that, instead of just being focused on securing compliance through inspection - backed by advice/campaigning, HSE's main aim should be to work to ensure that all the elements of the HSS are in place to deliver effective H&S management in every business and organisation.

HSE may still justifiably call itself the 'prime mover' in the 'system' but they should not forget that there are now many more people (and there is arguably more expertise)

outside HSE and Local Authorities (LAs) than within. (Such people include health and safety professionals, safety reps, trainers, clients, safety suppliers, topic specialists etc, etc). HSE cannot afford to say, 'we make regulations and enforce and the market does the rest'. HSE has to establish strategic partnerships with key players in the H&S marketplace and work to facilitate development and change. Some of the main challenges here include:

- co-ordinating H&S research (both inside and outside HSE);
- establishing a national health and safety services framework capable of meeting health needs at work (with a strong emphasis on health) linked to business development advice services for small firms;
- within this context, ensuring that every business employs or has access to competent advice;
- setting clear competence benchmarks particularly for managers, again with a strong emphasis on managing health at work;
- similarly, overseeing the development and delivery of health and safety training (based on a strategic review of the state of H&S training provision and revision of the Management of Health and Safety at Work Regulations ACoP with regard to competencies) and with a much stronger focus on health issues within existing health and safety management courses;
- working with insurers to assess duty holders' competence and to incentivise continuous improvement in health and safety management systems and performance;
- working with and through business auditors and business advisory services of all kinds to ensure systematic scrutiny of health and safety management capability and targets; and
- **leading the integration of safety and risk concepts into education, from playgroup to business school (embedding risk in the National Curriculum and in further, higher and professional education).**

In this sense, HSC/E being the 'prime mover' in the HSS involves far more than just being the guardian of the H&S law. It means seeing 'working with and through others' as the prime challenge rather than as an adjunct to the regulatory role - as and when time and other resources allow. In RoSPA's view this wider development role has to be central to HSC/E's strategic vision.

The key to developing this approach, RoSPA has argued, is developing consensus about the shape and key features of a 'functional map' of the HSS (with risk creators/risk takers' **and not HSE** at the centre), setting out the roles and relationships of all the key players. Within such a model HSC/E's role needs to be seen as that of a body charged with building the health and safety management capability of the entire 'system'. The challenge before HSC/E therefore is not just to decide how to secure 'best value' from their own resources (which are always finite and never sufficient) but to decide how best to mobilise and secure best value from all the OS&H resources within UK PLC.

This wider view of HSE's role demands not just criteria to help it deal with choices between hazards based on, risk, harm, preventability, public concern etc. It demands a far more challenging set of guidelines which can help it achieve a 'balanced score card' when choosing between action on immediate, short term (usually topical and

hazard focused) priorities and longer term investments in building future HSS capability.

RoSPA would like to see formal ‘partnership agreements’ between HSC/E and major HSS players detailing the contributions which each would make to shared objectives within specified timescales with an accompanying commitment to periodic monitoring and review. Candidates here might include not only employer organisations and safety organisations and trades unions but professional bodies, other Government agencies and departments and even insurers. Through this mechanism HSC/E should seek to leverage more resources for H&S into the ‘system’ as a whole. ‘Partnership agreements’ with Government departments and agencies, for example, could be used to develop exemplary ‘best practice’ programmes, including promoting high standards via procurement and building H&S requirements into all Government policies and plans.

At the heart of HSE’s strategy should be the aim of ensuring that every major business has an effective H&S management system (with all that that implies) in place audited by independent and competent H&S professionals and reporting on performance and targets to its stakeholders. This should lead to the development of formal ‘partnership’ arrangements which would enable HSE to withdraw from inspection unless there was an accident or a complaint. This in turn would mesh very closely with better linkage of arrangements for compensation for workplace injury which also incentivised and supported prevention and helped rebuild damaged lives. Together with the British Safety Council and IOSH, RoSPA is arguing that DWP proposals for linkage of Employers’ Liability Compulsory Insurance premia and standards of H&S performance need to be brought forward as a matter of urgency with new liaison arrangements between insurers at national level to ensure the development and delivery of an effective and non-bureaucratic approach. The three organisations want to see the development of a code of practice via ABI and the development of a protocol for ‘partnership agreements’ between HSC/E and insurers and brokers. There is also a strong case for setting up a top level HSC advisory committee on management system standards and auditing, developing indicative standards based on HSG65, with protocols developed with auditors, engagement of major accounting firms, development of a H&S management performance index and so on.

RoSPA has also suggested that HSC/E could also leverage more resources for compliance into the system by helping to develop novel and more effective penalties, including compulsory retraining and remedial programmes under external expert supervision coupled with suspended sentences. Similarly HSC/E could actively encourage more preferred contractor etc lists held by key intermediaries and similar schemes to enable clients to verify the health and safety management capability of their business partners (such as contractors and suppliers).

Outside OS&H HSC/E have a much wider contribution to make, for example, by leading new strategic emphasis right across Government on learning from prevention failure and also by making safe design a similarly strategic theme. And on the international stage it also needs to develop better mechanisms to promote international co-operation to share Britain’s H&S knowledge and expertise to help raise standards throughout the world. (This might involve for example, co-operation between HSE and DfID to ensure integration of H&S into international development

projects and encouragement of twinning of overseas H&S bodies with key British HSS players.)

Inevitably HSC/E suggest that increased activity in some areas will require reduced activity in others and thus they have asked for views on where HSC/E and Local Authorities should be reducing their involvement? This is always a difficult question. More resources are required to enable HSC/E to help develop and promote the HSS but clearly some resources can be redirected to better effect. RoSPA favours a strategic review of the current involvement of Local Authorities in H&S promotion and enforcement. There could be merit in Agency Agreements between each LA and HSC/E in which the operational control of inspectors would pass to HSE managers. Alternatively LA H&S resources might be merged within HSC/E completely.

RoSPA is strongly opposed however to the idea floated in the document that HSE should seek to withdraw (if only partially) from its involvement in the protection of the public from work related harms. As in other areas, there is undoubtedly scope for working with and through others (e.g. in activity centres, water safety etc) but RoSPA has campaigned fiercely against the view that H&S at work is simply about worker safety. Not only are many members of the public killed and injured or made ill as a result of work activities but, in practice, the steps required to protect them (i.e. effective health and safety management systems), are essentially the same as those required to protect people who are engaged in the work activities to which they may be exposed. In an economy which is shifting evermore towards the provision of services and thereby producing a greater interface between work organisations and the public, extending employer based H&S management arrangements offers a real prospect of reducing casualties among the public and thereby helping to meet the Government's overall targets for injury and cost reduction. (A good example here is work related road safety.)

RoSPA recognises HSC/E's anxieties about the apparently limitless scope of public protection in relation to work activity under Section 3 of the Health and Safety at Work Act. HSE cannot police the whole H&S scene and in every area of HSE's work therefore key HSS stakeholders should be asked to examine what scope there might be for achieving HSE's objectives by involving others. (Although there may be difficult issues of public accountability to grapple with, the general principle here is that HSC/E should establish criteria to be met by alternative schemes of self regulation and/or memoranda of understanding about shared enforcement responsibility with other agencies.) Obviously some degree of prioritisation needs to be agreed but there must be no attempt to withdraw from existing areas of 'Section 3' involvement without a comprehensive review based on full public consultation.

In general HSC/E faces the dilemma that the higher the perceived value of their brand, the more they will be asked to do and the greater will be the criticism if they fail to deliver. Yet the most difficult challenge which confronts them is how to balance the longer-term development of their role (as suggested above) against the need to react to today's demands. Some might be tempted to argue that in reality HSC/E will always be likely to opt for 'quick hits' to enable them to meet the injury/disease reduction targets in 'Revitalising Health and Safety' (RHS) (10 per cent reduction in fatalities/major injuries by 2010 with half by 2004) – even if this means ignoring other more intractable problems. In today's 'target driven society', short-term 'measurables' tend to focus everyone's attention, particularly when they are

linked to future funding prospects. With its headline targets written into HSC/E's Public Service Agreements with the Treasury, there is a real concern that investment in longer term change will suffer.

The importance of the present consultation exercise is that it offers yet another opportunity for stakeholders (particularly H&S professionals) to offer fresh ideas on how HSC/E can best balance action on short/medium term objectives with longer-term goals. In practical terms this could mean balancing the taking of more prosecutions against irresponsible employers in construction against employing more HSE personnel to help get safety and risk concepts thoroughly embedded in business education. Or it could mean choosing between using HSE resources to carry out fundamental research into slips trips and falls as opposed to using them to help build the health and safety service support capability (e.g. in occupational health) of key 'intermediaries' such as major trade associations. Or it could mean choosing between more contract research projects on priority hazards or setting up new projects to revitalise degree level OS&H courses and/or research in universities or to secure greater action by insurers.

These are ultimately choices for HSC/E as regulator but setting them in context of a bigger picture of HSC/E's role in the whole HSS is vital if stakeholders are to be kept informed if not 'on board'. It is vital that the consultation is followed up with good feed-back so that respondees (as well as other 'key players' not responding) will be able to see the balance of arguments that have emerged. People are more likely to 'buy into' future HSC/E thinking if they feel their ideas have had influence and have not 'disappeared into a big black hole'.

RoSPA would be pleased to receive copies of responses to SID01 by other organisations.

November 2003

'Training for the Future'

In July the DfES, supported by the DTI, the Treasury and the DWP published an important White Paper (accessible at <http://www.dfes.gov.uk/skillsstrategy/>.) *'21st Century Skills; realising our potential'*. It sets out an ambitious, although somewhat complex framework designed to raise the overall level of skills training and development right across the UK economy, making sure that employers have the skills they need for growth and competitiveness and that employees have encouragement and access to opportunities to improve their skills and income. It also addresses the need for training providers to work in new partnerships that will enable them to deliver. The White Paper does not set out anything substantially new but is focused on developing the training infrastructure that already exists.

Although it does not focus on specific skills areas, it ought to raise important issues for the health and safety at work community as a whole. RoSPA has tried to encourage a number of key players to respond to DfES by the 31st October deadline. Key points which we have sought to make are not only that the skills necessary to manage and work safely are fundamental in a civilised society but that effective health and safety management is a fundamental requirement for improving competitiveness. It is not just that accidents and ill health are extremely costly to businesses and Society generally but the skills to work and manage safely are inseparable from those required to run any enterprise successfully. After all, understanding hazards, assessing risks and implementing and monitoring control measures goes right to the heart of day-to-day operations. Key H&S management skills such as consulting and involving workers in decision making or leading investigations are also key skills for managing generally. If you can manage H&S well you can probably manage any other aspect of the business such as quality, HR or environmental protection.

HSE have done much recently (as part of *'Revitalising Health and Safety'* - RHS) to ensure that safety and risk concepts are embedded in the National Curriculum and in the training of safety significant professionals such as engineers and architects. One of the key tests of the Government's new skills strategy will be the extent this same integrated approach can be carried through, particularly in the key general skills areas identified in the White Paper including foundation skills; and technician, higher craft and associate professional skills.

As a result of a combined approach to the Minister for health and safety by RoSPA, the British Safety Council, IOSH and the Chartered Institute of Environmental Health, a small corresponding group has recently been set up to help HSE carry out an initial review of the state of the health and safety training market. All four organisations have stressed that, while they believe passionately in the power of good training and are firmly committed to helping to achieve the targets set out in RHS, they have strong doubts about whether these will be achieved without a stepwise change in the promotion and delivery of training and by a major increase in the uptake of training by organisations large and small across all sectors (including HSC/E's priority sectors of construction, agriculture and the NHS). A key point made in the joint letter to the Minister was that there needs to be a careful examination of the current state of the H&S training market, including 'drivers', costs and benefits and barriers. The reality is

that good firms invest in training, particularly for senior, middle and line managers, while poor firms do not. (Also, when corporate budgets have to be trimmed, it is invariably training budgets, and H&S training budgets in particular, which are the first victims.)

To help build the case for a more vigorous approach, RoSPA, IOSH and BSC are currently working together to gather qualitative evidence about the part which such training plays in helping to promote change in health and safety management in a variety of organisations.

On reflection, addressing the H&S skills gap was something of a weakness in the RHS strategy and HSC/E will need perhaps to pick this point up when progress with the strategy is reviewed next year. Indeed the percentage of people at work who have received any form of H&S training might be seen as a further important indicator of the success of RHS.

At the same time, all H&S training providers need to look at critically at what they are offering to ensure that it really is tailored to the needs of particular groups and organisations; that it is relevant and that it uses the most effective techniques. A key point here is that training courses for managers particularly should place as much emphasis on health at work issues as they do on safety. Providers also need to look closely at how employers and key intermediaries can help employers assess their real H&S training needs. Sadly much training is still purchased simply to ensure that training budgets are spent rather than to ensure that real needs (assessed, for example assessed via periodic staff appraisal and review of risk assessments) are properly addressed.

HSE too, in their role as regulator, need to underline more vigorously than hitherto that H&S training is not a soft option. In March last year HSE updated their overall strategy statement which set out their vision that *'Everyone at work should be competent to fulfill their roles in controlling risk'*. Yet arguably they have still to provide sufficiently clear guidance to indicate what the 'competence' and 'training' requirements in the HSW Act and the Management Regulations really mean. There is a clear need for HSE to establish agreed types of training for the various skill levels within organisations and to an agreed standard. Although it is perhaps harder to identify that other risk control measures, the right training is an essential part of any successful risk control system. Where shortcomings are clearly the result of failure to train line managers, for example, or where directors have had no training in how to manage H&S at the corporate level, HSE should not be afraid to issue improvement notices.

The main thrust however has got to be on helping those who advise organisations on their training needs to integrate health and safety into their overall training needs analyses. Unfortunately many business advisers in the 'Business Link' network, for example, still see H&S as a relatively minor operational issue if not a 'burden on business' and thus they may need extra targeting with the *'good H&S is good business'* message. The White Paper commits the Government to producing *'An employer's guide to good training'*. HSE must ensure that this highlights both the legal and business cases for the right H&S training for everyone, from induction training through skills training to management training at every level. In turn they need to

highlight their existing guidance on legal requirements for training under specific H&S regulations as well their useful general guidance (<http://www.hse.gov.uk/pubns/indg345.pdf>) to employers on how to assess their general training needs. Indeed a new training area on the HSE website highlighting these resources, making 'the business case' and signposting providers would be a useful initiative.

A further area in which the whole H&S Community needs to work together is in getting the Government's machinery for learning and skills development, including the Learning and Skills Councils (LSCs) and the sector bodies, to signpost the training that is available locally and to promote and fund this as part of their advisory services to employers. A decision has been reached to appoint H&S safety advisers to LSCs at regional level and it will be interesting to see if and how they can be drawn into this wider challenge.

The key point in all this is that a fresh window of opportunity may be opening as a result of the White Paper and that unless those committed to H&S are proactive in exploiting this to secure recognition of H&S training as a mainstream training issue there is every possibility it will continue to be marginalised and remain the preserve of the already committed.

January 2004

'HSC/E the vision thing'

It was the great George Bernard Shaw who once wrote to a friend that he had written him a long letter because he had not had the time to write him a short one. Whether on this principle the Health and Safety Commission's (HSC) latest consultation document of only 10 pages, '*A Strategy for Workplace Health and Safety in Great Britain to 2010 and beyond*' is a work of Shavian genius is something that can be debated but, in seeking to produce a brief document in the hope that it might be read by more people, they have inevitably attracted the criticism that their analysis and vision of the future is quite superficial. For example, the new strategy document does not contain any kind of evaluation of successes and failures in carrying through the 10 key themes and 44 Action Points that were contained in '*Revitalising Health and Safety*' launched so enthusiastically by John Prescott in June 2000. Many of these themes will of course carry over into the new strategy but some form of assessment by the Commission and the Health and Safety Executive (HSE) of what has gone well and what has proved more difficult would certainly have helped to put many of the ideas in the document into perspective for potential respondents.

The time available to discuss the document is quite short (responses have to be with HSE by 1st December). It contains some potentially interesting ideas that need to be discussed at some length. What RoSPA welcomes particularly are signs that HSC/E has begun to develop a much broader vision of its role as a regulator in contemporary Society, not just addressing 'changing world of work' issues (the shift from manufacturing to services, contracting, stress etc.) but thinking much more creatively about what needs to be done to make high standards of health and safety at work a reality for every worker and in every workplace. What is particularly welcome is HSC/E's apparent enthusiasm to exercise a broader leadership, facilitative and development role in the UK 'health and safety system', something which readers of this column will know I have been arguing for for some time. But this needs thinking through in much more depth. Indeed RoSPA believes that much more time is needed to engage more people in radical thinking here, revisiting all the processes through which people at work are actually protected from harm (i.e. not just by periodic inspection but as a result of all the internal and external factors which together promote and support effective health and safety management and culture). In this sense there is a danger that the term, 'health and safety system' will become yet another modish phrase, tripping all too easily off the HSE tongue, without all parts of HSE developing a sufficiently broad and rich understanding of the system's complex anatomy and their place within it. One thing is certain though and that is that this idea will only be of value if HSE abandons its previous view that it is the 'prime mover' and is thus at the centre of the 'system'. The world of work must be seen as centre of the system in which there are many other bodies and forces which determine if and how risks at the workplace are managed. **HSE is thus not a star but a planet** but, of course, it has a major gravitational effect!

Similarly, while the suggested HSC 'vision' to secure recognition of health and safety as a 'value' in a 'civilised Society' is worthy, it rather misses the point. The main problem is not the 'don't know, don't care' employers (nor indeed the 'do know, don't care' employers). They must be dealt with through effective enforcement. The greatest problem is how to assist the 'do care, don't know's'. Thus the overriding 'vision' needs

to be one not so much of securing commitment as instilling expertise; not motivation but empowerment, turning general commitments into practical action. In this respect the Commission's commitment in the 'strategy' to making competent health and safety services and advice available to every workplace is much nearer the mark.

In turn this means that **HSC/E's 'mission' should be to ensure that there are effective risk management systems and culture in all work organisations** and that all parts of the 'system' work effectively together to deliver this. As RoSPA has stressed repeatedly, HSC/E needs to see their role as working to become the 'development agency' for the whole 'system', not just a regulator/enforcer and provider of information and guidance. HSE's challenge is not just how best to mobilise its own resources but how to mobilise all the health and safety resources of UK PLC taken as a whole. (There are now many more health and safety professionals outside the HSE than within it.)

Another important point to be made here is that **this cannot be approached as a deregulatory agenda**, in which HSE reduces its input in the hope that resulting gaps will be covered by others. It will only be successful if it is backed by more Government resources not less.

RoSPA is not yet convinced that HSC/E has a sufficiently comprehensive and detailed understanding of the 'system'. The list of players in the consultation document is woefully inadequate and needs expansion and major development to explain the roles, contributions and interactions of the wide range of institutions and bodies involved. The whole health and supply side for example, (including training, consultancy, PPE etc.) is not mentioned at all. HSE needs to begin to do some serious mapping work here in consultation with key players (including key non H&S bodies) to get their views about where they think they fit into this wider and more complex picture. There is a need particularly not just to mobilise key promoters such as the insurers, the banks and the Government's business support infrastructure but others such as the key professional bodies as well as trade associations, professional bodies, trades unions and local health and safety groups - so that together they can all play a much stronger and more closely co-ordinated role. This will not happen however unless they are able and willing to share in a wider vision of where their contributions fit with those of others.

One mechanism which could go a long way to promoting this kind of closer involvement would be the establishment of **formal 'Partnership Agreements' between key players and HSC/E** in which each agrees what they were going to 'bring to the party' in pursuit of shared objectives and with a commitment to review progress periodically and feed back lessons learned.

But the strategy, of course, cannot just be all about cuddly co-operation. HSE needs to signal its determination to bear down even harder on blatant and serious non-compliance - with a new offence of corporate killing, stronger enforcement and more effective penalties, including compulsory retraining and remedial programmes. On this latter point, RoSPA has made radical proposals for remedial sentencing to bring the expertise of health and safety professionals outside HSE into play to act as supervisors appointed by the courts to help promote and sustain improvement among failing employers.

Recognising the complexity of the 'system' also means that the HSC's composition (if not its constitution - including its advisory committees) needs to be opened up to reflect the diversity of 'key players'. Can an essentially bipartite (TUC/CBI) Commission as a present still be justified? HSC also needs to establish more specialist advisory groups to give it access to expertise outside HSE as it has done by establishing Programme Action Groups as part of its strategy for health and work, '*Securing Health Together*'. In RoSPA's view there is particular need for a strategic group on corporate health and safety management issues. There is also a need to develop a broadly based, standing advisory group to help stimulate much more innovative approaches workforce involvement.

The document quite correctly identifies the need for a better system of compensation for workplace injury which also incentivises and supports prevention and helps rebuild damaged lives. Whether or not the Department of Work and Pensions really can engage the ELCI sector here remains to be seen but it is also important to ensure that ministerial (Treasury?) pre-occupations with getting more of the long term sick off benefits and into work do not lead to any diversion of HSC from their prime focus which must always be prevention.

One area however where better joined up Government is a must is in creating a co-ordinated system which integrates health and safety development in SME's into existing frameworks for delivering business development advice to small firms. Health and safety still needs to be much more effectively embedded in the work of the Learning and Skills Councils, the Small Business Service and schemes like Investors in People etc. etc., so that they are capable of playing a much stronger part in delivering health and safety services, including health and safety training and are capable of addressing health needs at work.

HSC/E obviously face dilemmas when deciding the best allocation of resources between programmes to address high prevalence, chronic problems such as stress and musculo-skeletal disorders on one hand as opposed to more acute problems such as asbestos linked disease, cancer, and occupational asthma on the other. In RoSPA's view the emphasis has always to be on tackling problems with potentially fatal and serious outcomes. In this context **it is vital that work related road safety must be made a clear priority** in the new programme. Not only are more workers killed and injured when on the road while at work than in all other RIDDOR events put together, but there is major scope for prevention and this is also very much a 'changing world of work' issue, associated as it is with increasing workforce mobility, stress and even higher rates of low back pain. Similarly there is still major scope for enhancing prevention of fatal and serious injuries to members of the public from work activity and thus any wholesale abandonment of enforcement of Section 3 of the HSW Act (as hinted at in the document) would be a big mistake.

The major emphasis on health in the strategy however is vital. More than twice as many people suffer ill-health as a result of their work as are injured in accidents. Health is still the 'poor cousin' in the H&S relationship but this will not be overcome by establishing 'OH' as something separate from 'H&S' and indeed there are signs that internally at the level of policy HSE may be attempting to close the artificial rift between these two stereotypical domains.

At the same time it is also vital that **the ‘safety baby’ must not be thrown out with the ‘Revitalising’ bath water!** It is a great mistake to think that health problems are complex and that accidents are simple. Indeed, as anyone who has investigated an accident in any depth will know, the aetiology of safety failure is in many ways as complex and challenging as the aetiology of work related disease.

The HSC need to continue to set challenging targets at every level to help secure progressive reduction in work related injury and health damage from all causes, including from work related road accidents. But **the strategy must have upstream targets** as well as 'downstream' outcome targets such as reductions in accidents and days lost etc. One such target the might be to ensure that all managers in UK PLC must have had some health and safety training by 2010.

The document is also quite correct in highlighting the need to maintain a focus on health and safety as a top-level, board focused, strategic business performance issue. HSC needs to continue to think about **how to utilise the commitment and momentum of ‘higher performers’** in both private, voluntary and public sectors, ensuring that all such organisations seek recognition of their performance (for example through external auditing and awards) and demand high health and safety standards of their business partners (such as contractors and suppliers). Indeed **every major business must be challenged to have an action plan and targets** as well as access to competent advice and services in safety and health. (Every major employer should be challenged to adopt effective independent audit.) The engagement of other key intermediaries is also vital here, for example working with the major consulting accountants to link health and safety in much more effectively with the burgeoning Corporate Social Responsibility movement. But in turn this means developing much better advice about what is meant by health and safety performance in different contexts. The vision needs to be one of every business having an effective health and safety management system, lead by senior and line managers, supported by safety representatives and health and safety professionals and reporting on targets and performance to its stakeholders.

On the other hand, HSC/E cannot promote health and safety as a top-level issue within business unless it is similarly **a top level issue within Government**, with clear leadership of all prevention issues (not just related to work) by a Cabinet level Minister. Government too needs to be seen to be acting as an exemplary employer committed to health and safety 'best practices', promoting high standards via procurement, building health and safety requirements into all its policies and plans and abandoning crown and parliamentary immunity.

Above all HSE’s role in developing the ‘system’ has to be one of providing **strong ‘intellectual leadership’**. Under John Rimington’s guidance HSE played a key role in establishing a risk based approach to safety which it was able to champion with others right across Government. This now needs to be developed further and made much more accessible to everyone. Indeed **suggestions in the document that HSE should now move back to a prescriptive approach (for example, because ALARP is not for small firms) is actually quite patronising.** (They need to stick with goal setting, proportionality and good guidance.) HSE have a massively important role to play (with others) in developing ‘safety and risk literacy’ in Society, for example, by

embedding of safety and risk concepts in the National Curriculum and in further, higher and professional education. HSE need to move on from risk assessment to create a new strategic focus on key themes such as safe design and on learning from accidents and incidents - powerful themes on which they can take a clear lead right across Government and business. Similarly HSE have a key role to play in strengthening an evidence based approach to policy making, although of course it is vital that this is tempered by the precautionary principle in which the benefit of any scientific doubt always goes to those exposed to risk. The **HSE's research agenda needs to be far more strategic**, looking not just at their own research needs but encouraging co-operation between key players. HSC/E also need to look beyond the UK to see how they can play a much more powerful role in embedding health and safety management in international development.

All this is asking a very great deal of the people who make up HSE and suggests that, at a senior level at least, they might be required to have an almost encyclopaedic grasp of all aspects of the subject - which after all is as complex and diverse as work itself. It can also be argued that, at lower levels in the organisation, some HSE staff are still much too focused on acting when things go wrong to correct immediate risk issues and need to be more thoroughly immersed in health and safety management systems thinking. **Every inspector and every policy person needs to be 'in the world of work but not of it'**. There are strong arguments to suggest that every policy officer in HSE must have had some experience (if only indirectly) of managing health and safety in an organisation. HSE career structures need to be made more flexible to allow staff to move between employers in the public, private and voluntary sectors and back into HSE with career prospects and pension rights protected. There also need to be more creative approaches to career breaks and secondments to allow senior HSE people 'to get back to the floor'. Perhaps every Commission member should also have a mentored CPD (Continuing Professional Development) plan.

Having worked with HSC/E for some 30 years I have enormous respect for them as a highly professional and dedicated band of men and women who play an enormously important and often undervalued (especially by Government) role. What perhaps the current consultation signals most is that they need our support and our suggestions on **how they can continue to move forward in a changing and challenging world**. Readers' input would be welcome.

February 2004

‘The right prescription’

There is a strong suggestion in the recent HSC consultation about their strategy to 2010 and beyond that goal setting health and safety law, informed by risk assessment is not for SMEs. Apparently HSE’s research around the consultation exercise has suggested that small firms do not want to have to work out for themselves the control measures that need to be applied in their businesses. They want HSE and LAs to tell them what to do. A common plea is that they have neither the time nor the expertise to undertake risk assessments specific to their businesses and are reluctant to employ outside expertise. They are fearful (often quite rightly) of unscrupulous advisers or consultants ‘over-egging’ the pudding and prescribing gold plated ‘Roll’s Royce’ solutions when simple measures might suffice. Behind this very often there is a general feeling that expenditure on health and safety is likely to be disproportionate to the true extent of hazards and problems that might arise. This is not so much about the perceived costs of precautions and hardware as the time and money needed to engage with the topic in the first place - particularly the amount of time required for training and carrying out routine procedures. SMEs, HSE tell us, have an innate fear of contacting the regulator (HSE or Local Authority), although they also perceive them to be the ‘horse’s mouth’ when it comes to getting an authoritative interpretation of compliance with duties in particular circumstances.

The UK’s reliance on a framework of general duties in its health and safety law stems from one of the central theses of the Robens report of 1972 which recommended that the employer’s common law duty of care for his employees (master for servant - which goes back to Saxon times) should be henceforth be embodied in the statute law. In deciding how far employers had to go to meet such a duty, courts had to be satisfied that they had done all that was reasonably practicable. The qualification of ‘reasonable practicability’ in UK health and safety law still remains under threat from the European Commission who continue to maintain that it weakens legal protection for employees, although in practice and properly applied, it not only guarantees good standards of protection but gives employers flexibility in the way which the goal of protection can be achieved. It also enables both the duty holder and the regulator to work within the ‘ALARP (As Low As Reasonably Practicable) triangle’ and in particular to determine the societal balance of risk and cost when deciding just how far broadly ‘tolerable’ risks (as defined in HSE’s ‘Reducing Risks, Protecting People’ – R2P2) need to be reduced.

Is it really the case that SME’s, many of whom are in really quite sophisticated lines of business, cannot understand this idea of balancing risks and costs? Do they really need everything spelled out for them by the regulator? Is not the insistence on everything being in Janet and Jill terminology rather patronising? There is always a need for good guidance and indeed, R2P2 suggests quite correctly that ‘good practice’ should always be taken as a starting point when indicating what is required for SFAIRP (‘so far as is reasonably practicable’) compliance. On the other hand, the call for greater prescription is often somewhat disingenuous. Businesses will often say that they want the regulator to tell them what to do so that they can feel that they have shifted some of the burden of their responsibility onto the latter’s shoulders (perceived as a possible defence in the event of any civil proceedings for damages, for example). But as the volume of specific prescriptions increases with more and more

modifications and caveats to cater for different circumstances, the same businesses are liable to turn round and complain that the whole approach is both impossibly complex and rigid and is stifling flexibility and innovation. The truth of the matter, as Robens correctly concluded, was that to attempt to prescribe for even a small part of industry all the various measures needed to deliver effective protection was an Herculean (if not ultimately a Sisyphean) task and was always doomed to lag behind technical practice and accident and ill-health experience. The regulator must of course be an expert generalist but their expertise can never be expected to match in every detail the knowledge and understanding of risk creators (employers) and risk takers (employees), particularly in Britain's very diverse small firms sector. The need for prescriptions, whether in the form of regulations, approved codes or guidance, is usually not recognised until accidents and health problems have emerged on a significant scale. Detailed guidance, if that is what is required, takes time to generate and is usually out of date by the time it is published, especially where technologies are changing very quickly. The truth is that it is impossible to prescribe in detail for every hazard, every exposure, every condition and every context. Also the idea that one should try to set down in detail exactly what every citizen should do on every occasion goes against one of the founding principles of English law which is that a person can do what they like so long as it is reasonable and it is not forbidden. Contrast John Stuart Mill (1806 – 1873); '*Liberty consists in doing what one desires*' with Montesquieu (1689 – 1755) '*Liberty is the right to do everything which the law allows*'. A subtle difference perhaps but one that is still at the root of continental Europe's opposition to Britain's attachment to SFAIRP.

A further problem is that in many cases, prescriptions, particularly where they tend to err on the side of safety for precautionary reasons, can often require too much action and thus give rise to the justifiable criticism that resources which could be used to better effect elsewhere are being wasted. At the other end of the scale, prescriptions designed to control the 'average' condition will not necessarily embody all the additional layers of protection needed to deal with extreme conditions and thus, if applied slavishly, will sometimes leave people dangerously exposed.

Many of course, including HSE, may say quite rightly that all these things are true but in practice, to stick rigidly to a general duties/risk assessment approach is a case of the 'the best being the enemy of the good'. In practice it is better to point most SMEs towards simple guidance literature rather than to insist that they find the time and money go on a risk assessment course - and/or engage a consultant - so they can work the answers out from first principles. HSE produces much good guidance and indeed they show signs of being prepared to signpost (if not formally recognise the 'control' status of) much good consensus guidance developed by outside bodies such as professional and trade associations. On the other hand, one of the dangers of HSE producing ever more guidance itself is that any publication with the HSE logo on it becomes misrepresented, particularly by unscrupulous advisers, as being the letter of the law as made by Parliament itself, which clearly it never is. Nevertheless, the myth persists that health and safety legal requirements are spread across some 1,500 major pieces of HSE guidance which no employer and few professional advisers can ever be expected to remember in outline let alone in detail.

But the even greater problem caused by passive and often begrudging compliance with prescription is one of lack of ownership and engagement. The duty holder does

what is required by the relevant paragraphs without necessarily following the logic behind them or even recognising that they may only be suggestions which they may need to modify in the light of specific conditions. For example, in how many cases has the figure of 25 kg listed in Figure 1 of Appendix 1 at the back of guidance on the Manual Handling Operations Regulations been quoted as if it was a statutory upper weight limit for manual handling operations? How many fit and strong workers have been told they must not lift more than this? How many injured and less strong workers have been told that 25 kg is quite safe for them to lift even though they know it is not?

On the principle that a volunteer is worth ten conscripts, how much more powerful (if not always totally effective) in practice are risk control solutions which duty holders have devised themselves? Ownership of the decision-making process and 'bespoking' of resulting solutions is much more likely to lead to active and on-going implementation. But of course, to follow this route duty holders need some reassurance that their solutions will be given credit by the regulator (and the courts) and they probably need some form of help, if not training, in risk assessment.

The truth is that to be successful, a goal setting approach to health and safety regulation, informed by risk assessment requires a much higher level of competence of duty holders and a correspondingly greater level of technical support. What HSE are reflecting in their view that risk assessment is not for SMEs is an admission that few small firms have invested in training to help them understand the assessment based approach and that there is no National Health and Safety Services Strategy to ensure that they get the face-to-face help which they require to apply general principles appropriately to their particular operations.

But there is far more profound reason why HSE need to help SMEs to stick with the goal setting approach and that is that it is only by raising the general level of safety and risk literacy in business (and in society generally) that HSE will be able to avoid duty holders and advisers making over-the-top responses to general health and safety duties. In their 2010 Strategy document HSE have become really quite focused on perceived threats to the wider reputation of health and safety flowing from stories in the press about schools banning conkers, or councils banning window boxes or high wire artists wearing hard hats - all because of the dreaded 'Health and Safety at Work Act'. This will not stop until HSE makes a determined attempt to challenge columnists, MPs and pundits generally to engage with basic R2P2 concepts.

Going further down the route of greater prescription may seem attractive, for example to curry favour with the SME lobby and to respond to the constant mantra of 'keep it simple, stupid' (KISS) but it is potentially a quite dangerous concession. Good guidance is important, as is signposting of good practice by others but HSE must avoid at all costs a further retreat from the basic principles set out in R2P2. People have to be helped to grapple successfully with risk management concepts applied to the real world in all its diversity and complexity (remember, the devil, is always in the detail!). As Einstein is reputed to have said, *'Things need to be made simple but no more so than is absolutely necessary.'*

March 2004

‘Deregulation or innovation?’

One of the major points of concern raised by respondents to the Health and Safety Commission’s (HSC) recent consultation exercise on their strategy up to 2010 and beyond (visit <http://www.hse.gov.uk/consult/condocs/strategyresponse.pdf>) has been that many of their proposals sounded like a charter for de-regulation. Questions like ‘*What three things do you think HSE should stop doing next year and why?*’ hardly conveyed a tone of high ambition in an exercise designed to seek new ideas on how to transform health and safety performance in UK PLC. Similarly hints that HSE might in future rely more on guidance and less on enforcement (while reducing the amount of guidance it produces) or withdraw from enforcement of the HSW Act in major areas such as large swathes of activity within scope of Section 3 (protection of the public) - have been taken by many to mean that HSE is going ‘soft’. Also, the suggestion in the consultation that HSE should be working in closer partnership with other ‘H&S system’ players has been seen by many as a way of getting others to step in and fill gaps which HSE should be covering.

These are perfectly valid and important concerns and need to be addressed but there is a danger that by focusing only on the question of HSC/E resources and ignoring how they are used, important opportunities will be lost for dialogue on the way HSE works and how to ensure that they are more effective in the future.

As regular readers of the column will know, RoSPA has welcomed the HSC/E’s suggestion that they need to work more closely with all parts of the ‘system’ but we have expressed concern that, on the face of it, the Executive’s grasp of the various elements in the ‘system’ and how they relate to one another seems to be rather weak. The list of ‘system’ players in the consultation document was quite restricted and needs expansion and major development to explain the roles, contributions and interactions of the wide range of institutions and bodies who together promote and support H&S management in UK businesses. For example, the whole health and safety ‘supply side’ (including training, consultancy, provision of PPE etc.) was not mentioned at all, although clearly it plays a vital role. (Copies of RoSPA’s submission to HSC/E can be obtained from the “What’s New” section of occupational safety at www.rospace.com.)

RoSPA has suggested that HSC/E should now undertake a major ‘H&S system’ mapping exercise in consultation with key players to develop a shared vision of where their contributions fit with those of others. We have also suggested that HSE needs to be developing formal ‘Partnership Agreements’ with a wide range of bodies such as ELCI insurers, consulting accountants, the banks and the Government’s business support infrastructure as well as the key professional institutions and the very many separate trade associations, trades unions and local health and safety groups. The idea behind such ‘Agreements’ would be spell out clearly how HSE and the parties concerned would work together to help meet shared priorities and objectives.

At the same time RoSPA has also pointed out that while HSC/E are right to focus on what it is they can do well within the ‘system’ and look to how to enhance the contribution of other players, it is very important that this is not an excuse for reducing HSE input. Indeed, it will only be effective if it is backed by more

Government resources not less. In reality more HSE staff resources will be needed to develop contact with and support work with bodies such as RoSPA, IOSH, the BSC etc.

Yet whatever the state of HSC/E's finances there is clearly an important debate to be had about how HSE resources can be used most effectively and where they should be directed to have most effect, particularly in the short to medium term. Should HSE continue to concentrate, for example, on high prevalence, chronic problems such as stress and musculo-skeletal disorders (to improve worker's quality of life and to reduce the massive number working days lost from these causes) or devote the balance of their effort to tackling more acute but less prevalent problems such as asbestos linked disease, occupational cancers or occupational asthma? Or should they redirect any spare resources towards tackling major, un-addressed issues like work related road accidents (in which more workers killed and seriously injured than in all other comparable RIDDOR events put together)? Of course, one can argue that they should address all these scourges and that the Government should pay up. Yet, even if Government doubled the current HSC/E budget (shades of snowballs in hell?), even though much more could be done (and loathe as I am to use current 'Blairspeak'), these kinds of 'hard choices' would not go away.

Similarly, when it comes to deciding where to concentrate inspection effort in their drive to meet the injury and ill-health targets set out in 'Revitalising Health and Safety', should HSE be concentrating on larger employers who are much easier to identify and engage in dialogue or should they be concentrating on smaller, hard-to-reach firms?

For RoSPA the answer is clear. Whatever the political temptations for them to concentrate on the 'low hanging fruit' in the corporate sector, HSE (and Local Authorities) need to be pressed to use their limited enforcement resources to focus on employers whose performance is poorest. To free up more resources to this end, RoSPA has suggested that new a system should be established under which acknowledged 'higher performers' could be put 'on trust' to manage their health and safety risks without HSE or LA intervention - unless there was an accident, health damage or a serious complaint and provided that such organisations made use of independent, professional external audit. Such an approach however would need very careful piloting to ensure that effective safeguards were built in, including for example, consulting workforce representatives before putting such arrangements in place.

RoSPA believes that many 'higher performers' would be keen to earn (and preserve) the enhanced reputation that such 'on trust' status would imply. On the other hand, care would be needed not to repeat the mistakes made when HSE has tried this approach in the past and, of course, it needs to be remembered that, particularly with the rapidly changing structure of most large firms through mergers and acquisitions, there are always likely to be pockets of poor performance within otherwise excellent organisations.

If handled correctly however, the advantage of an 'on trust' approach, would be that besides freeing up inspector resources to concentrate on poorer performers, it could

also generate a growing list of higher performing organisations whose example others could be encouraged to learn from and emulate.

This in turn links closely to another key strategic HSC/E theme, namely how to utilise the commitment and momentum of such organisations in both private, voluntary and public sectors, encouraging them to seek recognition of their performance, for example, through external auditing (in RoSPA's view, every major employer should be challenged to adopt effective, independent audit) and awards and pressing them to demand high health and safety standards of their business partners (such as contractors and suppliers). In RoSPA's view a lot more can be done to encourage 'higher performers' to share their H&S training resources, for example, with their immediate neighbours and sector peers and to champion the business case for excellence in H&S.

And of course, 'primus inter pares' in this respect should be Government acting as an exemplary employer committed to health and safety 'best practices', promoting high standards via procurement and building health and safety requirements into all its policies and plans. (As with the company CEO who is committed to H&S in words only, the credibility of the Government's political leadership on H&S issues will be called into question if it fails to 'walk the talk' as an employer!) One idea suggested here by RoSPA is that the Cabinet Office should be challenging all Government employers and agencies to test their level of health safety management achievement by entering appropriate H&S award schemes.

Yet despite the potential for massive improvement which exists through improving means of encouragement, persuasion and the provision of better H&S services and advice, there is absolutely no doubt that this is a hard core of employers out there whose thinly disguised contempt for the whole subject of health and safety needs to be confronted by tough and uncompromising enforcement. In this respect Government decisions such as putting off yet again action to introduce a new offence of corporate killing send out entirely the wrong message to these people. More innovative as well as tougher penalties are needed. RoSPA has suggested, for example, the introduction of a new system of remedial sentencing under which the courts could compel persistent offenders to undergo H&S training and to implement health and safety management improvement plans under the supervision of H&S professionals drawn from outside HSE. This approach could be underpinned by use of substantial suspended fines, which would have to be paid if businesses did not come up to scratch.

The Health and Safety Commission are still digesting all the comments they have received and will be publishing their plans in due course. Whatever is decided, campaigners for health and safety development will need to go on pressing the Government for more resources and for a tougher approach but this should not rule out debate on new ways of doing things simply because these could be construed as part of a de-regulation agenda. It's not a case of more resources or smarter ways of working but both!

As always, readers' views would be welcome. If you agree, disagree or have alternative proposals, contact me on rbibbings@rospa.com

March 2005

Rethinking RIDDOR

The Health and Safety Executive (HSE) called a forum meeting of stakeholders on 20th January to get views on options for the next upgrade of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) which were last subject to major revision in 1995. It is heartening that, before developing proposals for public consultation, HSE have decided to tap the experiences and views of those outside HSE who have an interest in the subject and whose insights can help to frame a better reporting regime for the future. A variety of options were discussed from minor amendments to existing requirements to scrapping RIDDOR altogether and in future relying instead on complaints to HSE and statistical surveys.

RIDDOR requirements (to notify enforcing authorities of certain kinds of work related accidental injuries and specified dangerous incidents and ill-health conditions) have been an important part of the health and safety regulatory regime for a very long time. Indeed, the requirement to notify injuries severe enough to cause more than three days absence from work has been the basis of reporting in Great Britain since 1923. Yet, as both the world of work and the 'health and safety system' change, there is a need to revisit important pieces of law such as RIDDOR to see whether they are still 'fit for purpose'. What are the fundamental reasons for having a requirement for employers (and the self-employed) to tell the regulator (by certain routes and by certain time-scales) and to record that they have had an injury, an instance of specified work related ill health or that they have had a notifiable dangerous occurrence? And to what extent are these requirements similar, for example, to like requirements in other fields, for example, the duty to notify the police about road accidents, the Civil Aviation Authority about air incidents, DEFRA about animal diseases etc. When and indeed why, should citizens have to tell the State if and how things over which they have had control have gone awry?

Most obviously enforcers need to be informed of serious health and safety failures to enable them to decide whether to investigate further. They need to do this to establish the circumstances surrounding accidents, diseases or dangerous occurrences so they can decide on any necessary action which needs to be taken, including prosecution, the issuing of notices or advice or even wider early warnings to other employers or manufacturers of equipment etc. In this sense HSE and Local Authorities being statutorily informed about health and safety failures above a certain level of severity is a vital part of the intelligence chain, keeping enforcers abreast of what goes wrong and why and helping them decide if it is in the public interest to use their various powers. It can generate useful case study data. (How many in health and safety today still remember that excellent journal with the yellow cover and intriguing artist's sketches called 'Accidents' which was published pre-1974 by the then Department of Employment and why has the family of similar HSE 'Black Spot' reports which followed it largely dried up?). It can suggest areas where further research is required. Investigation of RIDDOR notified events is an important training ground for inspectors and keeps them in close touch with the reality of health and safety management at the workplace. And, of course, RIDDOR data are an important source of data on numbers and trends, although there is clearly room for debate about whether the kind of data collected are the most relevant in this respect and RIDDOR figures have to be adjusted using the results of other survey data because of the

massive and persistent problem of under-reporting. At present only 40 per cent of notifiable accidents are reported to HSE.

HSE initiatives to create more direct reporting routes (for example the on-line facility at <http://www.riddor.gov.uk/>) have been moderately successful in reducing the number of RIDDOR events not reported but under-reporting remains high, especially in sectors characterised by small firms and self employment where not only ignorance of the Regulations but fear of possible regulatory intervention inhibits notification. Those who remember NADOR (The Notification of Accidents and Dangerous Occurrences Regulations 1980) which preceded RIDDOR will recall that, with the exception of fatal and major injuries which had to be notified to the authorities directly by employers, the bulk of less serious injuries were eventually notified to HSE as a by-product of the application by the injured employee for National Insurance Industrial Injury Benefit. When this benefit was abolished in favour of Employers' Statutory Sick Pay, this reporting route via the employee was lost but clearly the rate of reporting of over three day injuries was much higher when the employee had a direct interest in providing injury details in order to be able to make a claim.

Of course, RIDDOR has many weaknesses. Besides its inherently prescriptive complexity (undoubtedly a factor in under-reporting), it does not cover huge swathes of ill-health caused or made worse by work (particularly cases of work related stress and musculo-skeletal disorders). It contains a rather arcane historical list of notifiable Dangerous Occurrences (mainly affecting high hazard sectors) although many kinds of very significant 'near-miss' are not on this list. And then there is the three-day absence threshold. Internal analyses by HSE's statisticians have suggested that, while the rate of fatal and major injuries in large firms in manufacturing is about half that in small ones, for the band of injuries which fall between 'major' and 'over three days' the reverse is true. This may be because, in small firms which may have less generous sick pay arrangements and where employees are needed as part of the 'team', unless injuries totally incapacitate, there is a stronger incentive for them to return to work, despite being injured. The practical effect on the operation of Regulations here is that, at the margin, whether or not information about accidents has to be notified to the authorities depends on employee resilience and their motivation to return to or remain off work.

A further major gap in RIDDOR is that it does not cover work related road injuries. There are estimated to be between 800 and 1,000 fatal road injuries which involve people or vehicles being used on the public highway in the course of work (possibly twice all existing RIDDOR 'fatals'). Both the Government's Work Related Road Safety Task Group and, more recently, the House of Commons Work and Pensions Select Committee have recommended that work related road injuries should be RIDDOR reportable. (Even though the Police will now be inquiring about work relatedness at the scene of road crashes and recording data, these are likely to be quite limited, police officers being ill -equipped to ask penetrating questions about health and safety management and thus it will be important to ensure that employers too have systems in place to track these events so they can reported to health and safety enforcing authorities under RIDDOR.)

There is another important dimension to RIDDOR which also needs consideration and that is the requirement in the regulations for employers to keep records of notified accidents etc. The purpose here is to enable the employer to estimate the scale of accident problems and track trends, provide a measure of performance perhaps and also to provide evidence in subsequent civil proceedings (although, strictly speaking, the latter is nothing to do with RIDDOR but is covered in civil justice pre-action protocols).

Having to report an event under RIDDOR also is psychologically important in many organisations in that it not only reminds people at work about the importance of health and safety, it also defines a level of significant health and safety failure. Although RIDDOR reporting thresholds should not be the trigger for carrying out an investigation, in practice it is often the case that notification of the authorities also sets internal investigation procedures in motion. (RoSPA has argued that decisions to investigate should really be based on the safety significance and learning potential of accidents - and not the severity of injury - and we were not happy with the idea in proposals for a clearer legal duty to investigate - now defunct- to link investigation requirements to RIDDOR.)

RIDDOR therefore has perhaps something of a totemic significance within many businesses. This has a downside too in that far too many organisations still seek to measure their health and safety performance simply in terms of changes to their RIDDOR rates rather than the more expanded 'inputs', 'outputs', 'outcomes' approach to performance which has been advanced by RoSPA (visit www.gopop.org.uk) and HSE (see CHASPI at <http://www.hse.gov.uk/research/chaspi.htm>). Common shortcomings in using RIDDOR data as a sole measure of corporate performance include: problems of statistical significance (small numbers issues – particularly significant in SMEs); they are a lagging indicator; RIDDOR numbers can change because hazard burdens change; the fact that RIDDOR does not cover work related health adequately; and it largely ignores major hazard issues. False significance is often ascribed to RIDDOR data because they represent an easily measurable 'outcome' whereas what are much more significant are data about the 'input side' of health and safety (particularly the robustness of management systems and culture) but these often defy meaningful quantification.

Besides providing an important opportunity for stakeholders to pool ideas and suggestions on how to improve RIDDOR, the HSE forum meeting on the 20th January also provided a chance to revisit fundamental objectives. In other words, what do we really want from the law in this area? Everyone agreed that if we were to rely on RIDDOR as the sole source of statistical data on accidents (and especially on occupational diseases), we would wait forever for compliance to improve enough to give us anywhere near the full picture. On the other hand, everyone seemed to accept that a requirement for employers and the self employed to notify enforcing authorities (so that the latter could decide whether or not to take action) remained very important. There was also agreement that reporting had to be made easier and more attractive for SMEs, that more effective ways had to be found to identify cases of work related ill health and that recording and learning from dangerous occurrences (which, it was suggested, had been allowed by HSE to wither on the vine) needed a complete re-think with possible extension of systems such as SADIE (visit http://step.steel-sci.org/SADIE/main_sadie_fs.htm).

The Forum also reflected on the fact that HSE and Local Authority enforcers receive a huge volume of RIDDOR reports and that clearly they cannot and will not investigate every one. At present HSE investigate about 9 per cent of RIDDOR notifications (mainly the more serious injuries) but even this, it is alleged, tends to skew them into being quite a reactive organisation. It is tempting to believe that unshackling HSE from RIDDOR might enable them to become more proactive and that more HSE proactivity would save more lives and safeguard more workers' health. HSE are under increasing pressure from campaigners however to carry out many more investigations and thus, even if their resources were increased substantially this tension between reactivity and proactivity would still remain quite severe. There is no doubt that extending RIDDOR to things like work related road injuries or stress would generate even more reports but, in RoSPA's view, this should not be taken as a reason for HSE ruling such changes out. More reports about more serious things should not lead HSE to contemplate abolishing RIDDOR. It will simply mean that they will have to be tougher about priorities.

Neither should it be suggested that RIDDOR be abolished simply because it has many imperfections and that the statistics which it generates are limited and incomplete. RIDDOR could be ditched and instead HSE could try and direct their operations by relying on survey data. However, given all the other functions of RIDDOR, this really would be 'throwing the baby out with the bath water'. It needs to be accepted that statistical information is only one by-product of RIDDOR and in this sense it probably makes more sense to retain RIDDOR as a statistical source within a much wider HSE intelligence strategy which seeks to integrate information from a wide variety of sources including, surveys to track workplace injury and ill health trends, research projects and HSE's own operational experience.

If there is one theme in the current debate which RoSPA favours as a possible way forward it is creating a much stronger link between internal notification, investigation and recording requirements in the Management of Health and Safety at Work Regulations and the duty in RIDDOR to inform enforcers. Rather than viewing the RIDDOR problem in the first instance from the HSE 'end of the telescope', it might be better to look at what system of legal requirements in this area would best support effective health and safety management practice following accidents, dangerous occurrences and cases of work related ill health (e.g. internal notification, appropriate investigation, record keeping etc.). Duties to inform the regulator could then be built on this although, of course, they would need to be compliant with our European obligations in this area.

It might be, for example, that a statutory duty could be introduced to make it a legal requirement for significant events etc. to be notified in the first instance internally to the employer's 'competent person' who would then be required to record key details and facilitate internal investigation where appropriate, wherever possible with the participation by safety representatives. The resulting information (including information about remediation, rehabilitation etc) would then need to be held available to be viewed when an inspector called but the criteria for direct notification to the authorities might in future be limited to fatal injuries and injuries resulting in hospitalisation. The latter would still be quite an arbitrary criterion but one perhaps which might be more readily understood by duty holders.

The forum meeting ended with an apparent consensus that there was every reason to keep RIDDOR and to build on lessons learned about reporting over past decades but to use the opportunity of the impending revision to really focus on what arrangements in the future will best meet the needs of people at work. A report is being made to the Health and Safety Commission but, in the meantime, it might also be helpful if readers also sent in their views to fmcguigan@hse.gsi.gov.uk.

April 2005

Penalty Points

As part of their follow up to public consultation on review of their 'Enforcement Policy Statement', the Health and Safety Executive (HSE) are seeking further views on developing approaches to sentencing for health and safety offences. For an update on how the evaluation is progressing and how you may contribute to this work, please visit <http://www.hse.gov.uk/enforce/index.htm>.

HSE's latest call for ideas follows in part from a commitment made by the Health and Safety Commission (HSC) in 'Action Point' nine in 'Revitalising Health and Safety' (RHS) - in response to many consultees who suggested that a more innovative approach to penalties might be more effective in changing companies' behaviour.

HSC said.. *"Among the specific proposals which the (Commission) will consider are:*

- *finances linked to turnover and profitability of a company;*
- *prohibition of Director bonuses for a fixed period;*
- *suspension of managers without pay;*
- *suspended sentences pending remedial action;*
- *compulsory health and safety training;*
- *penalty point system on the driver's licence model;*
- *fixed penalty notices for specific offences;*
- *deferred prohibition notices on welfare issues."*

They also said that they would consider what effect Community Service Orders (CSOs) might have as an appropriate penalty in some health and safety cases.

HSE are now seeking views specifically on:

- 1) *what alternative sanctions would make a particularly positive impact on health and safety law enforcement?*
- 2) *how can HSE ensure that any alternative sanctions are feasible in practice and capable of being applied proportionately and consistently?*
- 3) *are the current sanctions adequate and effective and that as such, no alternatives are needed? and*
- 4) *what sanctions are most effective in promoting and achieving sustained compliance with the law?*

In RoSPA's view the whole issue of penalties has to be seen in the wider context of calls for stronger enforcement, including calls for the reform of the law on corporate manslaughter and a tougher approach by enforcing authorities to use of their notice and prosecution powers. Bodies such as the Centre for Corporate Accountability (CCA), for example, have continued to highlight a perceived 'justice gap' in the wake of a number of high profile cases, reflecting a feeling that HSE and local authority (LA) health and safety enforcers are failing to investigate and to prosecute sufficiently in the aftermath of serious accidents, particularly those which could easily have been prevented if employers had taken their duties more seriously.

While welcoming tougher enforcement to deal with offenders, RoSPA and bodies such as the British Safety Council and IOSH have stressed that a wider range of

approaches is required to motivate and support the improvement of health and safety management by employers. In this sense, all three organisations see stronger enforcement as only one ingredient (albeit a major one) in a more complex recipe for change. RoSPA has argued strongly for alternative forms of leverage to influence employers' efforts to raise standards, such as stronger individual and collective workforce involvement; a more commercial focus by insurers on the 'business case' for better health and safety; encouraging major clients (including Government as a major procurer) to exert pressure for better standards via the supply and contracting chain; and building health and safety into business advice services.

These steps however should not be seen as an alternative to Government providing more HSE resources which are still needed, both to enforce and to promote health and safety in partnership with others. On the other hand, in the short to medium term at least, a necessarily imperfect balance has to be struck by HSE and LAs between reactive and proactive work. Getting tougher with offenders is fine but if enforcers were to devote all their available resources to prosecution, with nothing left over to help disseminate information and advice and to raise awareness among well motivated but ill-informed employers, then overall health and safety performance could actually deteriorate.

RoSPA has argued consistently (see 'OS&H' in April 2002) for new arrangements for remedial sentencing by courts so that businesses found guilty of health and safety offences could be dealt with much like youth offenders or those convicted of motoring offences. Most recently in its submission on the Enforcement Policy Review (and also in written and oral evidence to the Work and Pensions Select Committee enquiry into HSE) RoSPA has said that, instead of simply imposing a fine, courts should have the option of ordering a root-and-branch review of health and safety management in failing organisations. This could be carried out by independent health and safety professionals from outside HSE appointed by the courts who would have to be paid for by the guilty organisation. The same professionals would then act as supervisors, reporting to the court on what needed to be done to put things right and on whether remedial action had been taken within specified timescales. In this way additional expertise could be levered into enforcement from outside HSE to help promote and sustain improvement among poor performers, for example, by requiring persistently non-compliant businesses to invest in training or implement improvement programmes. Failure to implement remedial action would mean having to pay suspended fines.

This is only one option however and arguably the most important thing to establish in the current debate is some sense of agreement about the objectives to be achieved by sentencing in health and safety cases. This is not easy because there are several and often they can conflict. For example, is the aim to impose a heavy fine or even impose a term of imprisonment to indicate society's disapproval? Is it to deter by creating an exemplary effect? Is it to deliver some sense of 'justice' for victims? Or is it to promote changes in future behaviour? The former do not necessarily guarantee the latter.

Achieving such objectives in particular cases means that sentencing needs to be tailored to the circumstances surrounding both offences and guilty party(ies). It also requires some account to be taken of the expectations and needs of key stakeholders,

including not only victims but current and future employees and wider the community. What good is it, for example, imposing a heavy fine to show social disapproval if this simply leads to the company going bust and employees losing their jobs with all the personal and social dislocation that that entails?

The important thing is that the courts should be under an obligation to explain the rationale underlying the sentences which they impose in particular cases. Approaches adopted to sentencing in health and safety cases should be broadly congruent with approaches adopted to sentencing for other kinds of offence of similar severity. It is important to remember that health and safety offences (however unintended) are crimes and not just unfortunate corporate mistakes.

It can be argued quite strongly that exemplary sentences should always be considered where they are likely to be effective in changing attitudes to compliance in relation to specific issues or in particular sectors. Also short, sharp custodial sentences should always be considered for flagrant disregard of the requirements or enforcement notices. But for lesser offences fines should not be viewed as the only option. CSOs, linked in some way to better health and safety outcomes, would be a good way of getting those involved to reflect on the importance of proper preventive measures.

Also, it could be made a statutory responsibility of those found guilty of health and safety offences to inform key stakeholders such as clients, local authorities, recognised trades unions, training organisations and so on and to make this information publicly accessible, for example by including it (together with other information on their health and safety performance) on their websites. Further, the names of directors (or senior managers of relevant sites in organisations – or other relevant individuals) who had been found guilty of offences could be publicly listed.

Naming and shaming has its place but, in RoSPA's view, remediation of underlying risk management capability should always be considered where this has been an underlying cause of non-compliance and no significant evidence of change in health and safety management systems and culture has been offered in mitigation. Perhaps consideration should be given to putting persistent health and safety offenders 'on probation'. In cases of continuing failure to comply with health and safety law, consideration could be given to giving HSE powers (subject to appeal procedures – see below) not just to halt specific hazardous activities but to prohibit further trading altogether.

Because taking organisations to court is extremely time consuming and diverts scarce HSE and Local Authority resources away from preventive work, keeping inspectors at court for long periods is actually bad for health and safety. There could be significant advantages therefore in introducing a new system of administrative fines to be imposed by inspectors without having to go to court. These might be, for example, only for certain kinds of offences and might accumulate so long as compliance was not achieved.

This approach might also be combined with a business or site-specific fixed penalty points system, points being imposed either administratively by inspectors or by the courts (or both) for specified offences. Such a points system might also be considered for key individuals, found guilty of health and safety offences.

But if we draw an analogy here with penalty points on driving licences, this option might be so designed that where points exceeded a certain threshold, this might automatically trigger compulsory external audit by competent persons named by the enforcing authorities (to be paid for by the duty holder) or lead to the organisation being put on probation. Equally, organisations which had made major strides in rectifying non-compliance and enhancing their health and safety management capability and culture could apply for early removal of points, subject to views being canvassed from stakeholders such as employees or clients.

A further option that might be considered is giving inspectors powers to formally caution non-compliant duty holders on the understanding that such cautions might be referred to in evidence in any future proceedings. Cautions might also be combined with the issuing of general advice about remediation of specific systems of work or general health and safety risk management regimes.

On the other hand, in any system of administrative fines or points (or even cautions) it would not accord with principles of 'natural justice' if inspectors were in effect both judge and jury. There would need to be adequate means for individuals and organisations to appeal to a suitably constituted tribunal (made up of representatives of the social partners and experts) if they thought points had been imposed unreasonably.

The closing date for comments in the current consultation round is 30th April 2005. Comments received will help to ensure that the next review of the 'Statement', scheduled for 2007, will be informed by evidence and views from stakeholders.

Have your say (Email HSE at jonathan.russell@hse.gsi.gov.uk) and keep RoSPA in touch (Email me at rbibbings@rospa.com)!



Parting Shots

HSE protecting the public

➤ **Alongside their debate on 'risk aversion',** the Health and Safety Commission (HSC) has published an important discussion document on the public safety role of the Health and Safety Executive (HSE). RoSPA's occupational safety adviser, **Roger Bibbings**, examines the six draft 'principles' contained within it.

The document (DDE 23 accessible at: www.hse.gov.uk/consult/disdocs/dde23.pdf – comments were due back with HSE by 30th September) refers to HSE's mission which is that '... while not promoting a society which is risk free, HSE's role is to ensure that risks are properly appreciated, understood and managed'.

While RoSPA supports HSE's call for 'sensible safety' (see 'safety points' at: www.rospa.com/aboutrospa/rospa_safetypoints.htm), we are concerned that fears expressed by Ministers about Britain becoming 'too risk averse' may be unbalanced and are not evidence-based. We also feel it is important to say that, in line with HSE's R2P2 (*Reducing Risks, Protecting People*), it **is** part of HSE's role to ensure that 'intolerable' risks are eliminated (rather than just managed).

In their document HSC have set out six draft 'principles' which in future will guide their involvement in protecting the public, particularly in relation to developing policy and enforcement around *Section 3* of the *Health and Safety at Work etc Act 1974*, (HSW) which requires employers to safe-

guard non-employees who may be affected by their undertakings.

HSE see the document as the first stage of an overall coherent approach to public safety which will create greater clarity of responsibilities for the very many agencies involved in protecting the public in line with 'Hampton principles'. Before consulting formally on final draft principles, policies and ways forward, the Commission's aim at this stage is to stimulate debate on issues such as the weight it should give to worker safety as opposed to tackling risks to the public linked to work activity.

For some time, RoSPA has been pressing quietly to get HSE to clarify its role in this important issue. A large proportion of the public is potentially at risk from exposure to obvious work-related activities such as transport activities and major hazards. Many are at risk by being close to undertakings such as construction sites, and many face risks as clients or users of services.

Indeed, apart from accidents in the home, in purely private leisure pursuits and injury due to crime, war and terrorism, there are few accidental harms which are not in some sense related to work.

RoSPA has estimated that annually there

are some 11,500 deaths from all accidental causes in the UK. As an organisation committed to enhancing Britain's capacity to prevent injury accidents of all kinds, the Society has long argued that the duties placed on employers by health and safety law to control risks to the public – particularly to carry out risk assessments and put health and safety risk management arrangements in place – provide a powerful framework for ensuring that such risks are managed effectively.

We have always argued against the misconception that the balance of health and safety law is weighted overwhelmingly in favour of the protection of workers and that protection of the public (which, for example, is not a feature of the *EU Health and Safety Framework Directive*) was a somewhat inappropriate afterthought by those who drafted the 1974 Act. Over 100 members of the public are killed annually in work-related accidents reportable under RIDDOR (the *Reporting of Injuries, Diseases and Dangerous Occurrences Regulations*) compared with about 220 workers. And there may well be other such fatalities which escape the RIDDOR net.

RoSPA has argued that a more vigorous

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response by organisations to duties imposed on them by *Section 3* of the *HSW Act* could arguably contribute a good deal to reducing the suffering and costs associated with a significant proportion of accidents suffered by the public.

For example, HSE's involvement in regulating swimming pool safety (including publication by HSE of *Safety in swimming pools* and its subsequent revision as *Managing health and safety in swimming pools*) has helped to halve the number of drownings in this area since 1998. Action to combat slips and trips in public spaces similarly could reduce casualties and cut costs to the NHS.

Section 3 has a lot to deliver but, because the discussion under each of the 'principles' contained in the document is quite general, it is hard to evaluate them by seeing how, when and where, health and safety enforcement authorities might work to advantage with other agencies to reduce accidental harms. Rather the focus seems to be on how to balance calls on HSE's limited resources.

RoSPA has always accepted that, in the short to medium term at least, HSE must target its finite resources in a rational way. Trying to hit too many targets at once limits HSE's effectiveness. But equally, together with many other stakeholders in the health and safety system, we have argued that government should increase resources to HSE, particularly on a 'spend to save basis'.

The document does not indicate, for example, where HSE might do more if it had the resources to do so. It would have been more useful, in RoSPA's view, if it had contained an outline analysis of the scale, causation, severity or 'preventability' of harms affecting the public that are in some sense work-related. (This would not be an easy task. Much of the data is sparse or incomplete. It would need to address things as diverse as product safety failures, home accidents linked to contractors, hospital-acquired infections, injuries caused by at work vehicles and many more accidental harms where a work organisation could have had a hand in prevention).

Yet without a much broader analysis on these lines, it is not possible for those who have been invited to comment on the document to take a clear, evidence-based overview of the 'principles' and their application in practice.

What RoSPA would urge contributors to this discussion to focus on are those areas of risk to the public where refocused HSE input might help to create significant safety

gain and reduce casualties, for example: inland water drownings, work-related road safety and accidents in parts of the leisure sector.

Further, there is a need to reflect on whether 'regulation' in this context is primarily about standard setting, inspection and enforcement as opposed to securing safety gains by improving the provision of information and by raising awareness of hazards, risks and appropriate control measures.

Much of this promotional and advisory work, which is a key part of HSE's role as a regulator, can be accomplished by it working in partnership with other players or even encouraging such bodies to redirect their own resources to help enhance safety, thus multiplying the effectiveness of HSE's own efforts.

A further issue not discussed in the document (and which has not surfaced in the 'risk aversion' debate either) is the principle, stemming from HSE's work on the 'tolerability of risk', that in general the maximum level of work-related risk that can be tolerated by members of the public is an order of magnitude lower than that which can be tolerated by workers.

Traditionally, HSE has accepted that members of the public deserve a higher level of protection than employees but, while this has been an accepted yardstick in nuclear and major hazards safety, it is harder to apply elsewhere (for example, preventing slips, trips and falls to members of the public). It is nevertheless a valid aspiration.

Also the document has not addressed in any detail the question of how HSE should respond to heightened public concern about specific risks, for example, those particularly affecting children, young persons and those with disabilities. There **is** a case for responding to higher levels of public concern about certain risks but equally HSE has also to stay focused on major risks which the public may be more tolerant of.

Principle 1 says: *'HSE will provide public assurance that health and safety risks in the major hazards industries are properly managed.'* This is widely accepted as a key part of HSE's role. HSE is clearly a world leader in regulating major hazards and nuclear risks. The expertise generated as a result of over thirty years' involvement in this field has created a massive safety resource, the application of which has also helped to improve safety in many other fields.

Britain's record of protecting the public from accidents involving such installations has been very good. Nevertheless, major hazards and nuclear safety require sustained

effort to ensure that levels of assurance are maintained and that risk management regimes do not deteriorate. On the other hand, there are other areas of safety where multiple fatalities affecting the public have occurred in recent years and where arguably HSE's role could be enhanced.

Principle 2 says: *'HSE will continue to work with other regulators that have public safety duties, and specific expertise, to promote a coherent overall approach to public safety, including greater clarity of responsibilities among the regulatory bodies.'*

The idea that HSE should work in close co-operation with other regulators (and indeed other key stakeholders) is self evidently sensible but without an overview of work-related risks and accidents affecting the public it is very hard to assess where the priorities for innovative co-operation might lie.

Principle 3 says: *'HSE will not unnecessarily restrict the liberty of people to engage in certain hazardous activities, should they wish to do so.'* This is important because individual risk taking is a liberty, which with over-zealous and risk averse action can be restricted. Contrary to the impression that many of our detractors seem to have, neither HSE nor RoSPA favour banning sports and leisure pursuits just because they are 'dangerous'.

In the context of commercially provided leisure activities there needs to be a balanced approach to the management of risks (provided that these are not intolerable). Authoritative guidance (which does not always have to be produced by HSE) needs to be in place and kept under review to help duty holders understand what constitutes 'good practice'.

In reality, however, the question of purely private risk taking by individuals is arguably more complex than the document might seem to suggest. RoSPA thinks that individuals need to be given information and allowed to make choices about the risks they take in a purely private capacity. But, equally, Society recognises that individuals do not always have the right to expose themselves to intolerable risks without regard to consequences for others, particularly when things go wrong (for example, calls on the rescue and emergency services).

There are, of course, many examples of private activities where the law imposes restrictions in the name of safety on individuals (safety helmets for riding motorcycles, seatbelts in cars, restrictions on the use of drugs etc.).

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Principle 4 says: 'HSE will give particular priority to intervention when the risks to the public from a work activity and the risks to workers from that same work activity are linked'. At first sight this looks like a sensible idea, particularly where risks to the public are the same as those to workers and are closely linked in time and space, but it may not be able to deal with problems of latency (risks arising after work activity has ceased) or geographical spread (for example, risks arising from infrastructure and extended networks etc.).

A more relevant test might be the extent to which management of the risk by the duty holder was within scope of their policy, organisation and arrangements (e.g. its foreseeability, the degree of management control possible, the practicability of precautions and so on).

Principle 5 says: 'That where possible and appropriate, risks to public safety that arise in a particular locality be dealt with by those within that locality'. Again this looks like a sensible suggestion, indicating that the role of Local Authorities (LAs) in regulating work-related risks to the public which are within their domain should be increased. On the other hand, this needs to be considered in the context of the expertise and other resources required.

Where complex risks are to be regulated by LAs, additional HSE expert input may be required. Conceivably, particular LAs could be encouraged to have lead responsibility for certain kinds of risks and provide advice to others (examples might include, aspects of water safety, motor sports events, crowd safety etc).

The devolution to LAs of regulation of more risks affecting the public cannot be considered however without looking at the extent to which they can shoulder additional safety roles from within their existing resources.

Finally, **Principle 6** says: 'HSE will, where circumstances demand, apply its unique expertise in controlling and managing risk to pressing issues of public and national concern'. It points out that it will not regulate where there are other safety regulatory regimes in place.

RoSPA agrees 100% that HSE should use its limited resources to address matters of pressing national concern, and it is precisely for this reason that it disagrees fundamentally with HSE's refusal to prioritise occupational road safety as an area for enforcement action. RoSPA continues to argue against the HSE assertion that this matter is adequately dealt with by

road traffic law and police enforcement and that regulatory expertise in relation to the management of occupational road risk lies with DfT.

Fatal work-related road injuries (WoRRIs) are, in all probability, three times the number of all RIDDOR reportable injuries. WoRRI is the biggest risk faced by millions of workers, including not only vocational drivers but those who cannot do their work without driving. Thousands of members of the public are injured in accidents involving vehicles being used for work purposes.

RoSPA and many other organisations have argued consistently that road traffic law does not address employers' risk management duties in this context and that a clearer focus by HSE on this important aspect of worker and public safety could not only help to make working life safer for employees and the self-employed but it could also help to improve road safety for the general public.

In RoSPA's view, HSE's persistent refusal to accept these arguments risks severely damaging its otherwise excellent reputation, particularly in the eyes of thousands of 'higher performing' organisations which are now integrating action in this area into their mainstream health and safety management.

We have argued that, as workers become increasingly mobile in a service-based economy, HSE's stance on this major area of work-related risk prevents them from responding to a vitally important dimension of health and safety in the rapidly changing world of work.

It is notable that the recent report on HSE by the House of Commons Work and Pensions Select Committee (to which RoSPA submitted detailed evidence on this point – see: www.rospace.com/morr/information/18arguments.htm) underlined the need for HSE to become more involved and to work with other partners to help employers manage work-related road safety as a key priority.

We do not favour HSE enforcing road traffic law but we do favour them being more proactive in advising on/enforcing the HSW Act and the *Management of Health and Safety at Work Regulations*, in relation to employers' duties to ensure the safety of employees (and others) while at work on the road.

We agree that the police should remain

in the enforcement lead on the road and at the scene of road traffic accidents but argue that HSE should become more involved in reviewing policy, organisation and arrangements for managing occupational road safety (in line with their advice in INDG382) during their visits to workplaces.

We support existing liaison arrangements between the police and HSE in relation to the investigation of road death where there may be causal factors associated with work (*ACPO Road Death Investigation Manual*). We believe that by promoting work-related road safety, HSE could help to make working life safer for millions of employees who have to drive in the course of their work and that this could also help to meet road casualty reduction targets.

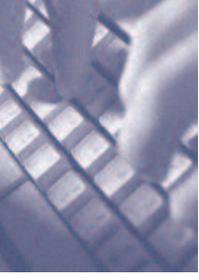
In this sense it is not a case of duplication of effort as HSE allege, but of finding innovative ways to create useful synergy between road safety and occupational health and safety law.

HSE's continuing assertion that road safety law and police enforcement are all that are required suggests that they have been unmoved by the massive weight of detailed argument and evidence which RoSPA and other players in the occupational and road safety communities have assembled since the 'Stoke Court Declaration' on managing occupational road risk of 1998. This is not only unhelpful for safety and accident prevention, it is bad for the future of HSE.

Readers' comments should be sent to: rbibbins@rospace.com



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Parting Shots

Consolidation and continuity?

► **A consultation document** has just been published proposing the merger of the Health and Safety Commission and the Health and Safety Executive. RoSPA's occupational safety adviser, **Roger Bibbings**, asks is a merger simply an efficiency move or is it a rejection of the social dialogue model that has underpinned health and safety for so long?

Many people, even those inside the world of health and safety, are not really aware of the difference between the Health and Safety Commission and the Health and Safety Executive. Perhaps a little history is in order.

The Health and Safety Commission (HSC) was established by the 1974 *Health and Safety at Work Act*, which itself was a product of the Robens Commission of Inquiry, which reported in 1972. It brought together – in a unique forum – representatives of employers, trade unions and local authorities under an independent chair appointed by the Secretary of State.

The idea for the Commission arose from the need for officials to consult informally with representatives of these different parties before taking ideas for new regulations to Ministers. (In fact the *HSWA Act* itself requires Ministers to consult with organisations representing employers, unions and LAs in making appointments to the Commission.)

The new body was charged under the Act with securing the health, safety and welfare of workers and the public affected by work activity. Its duties include proposing new laws and standards, conducting research and providing information and advice. The Health and Safety Executive (HSE) advises and assists HSC in its functions and has specific responsibility, shared with local authorities (LAs), for enforcing health and safety law.

Before the HSC there used to be a convention called the 'Chief Inspector's lunch' which involved this senior official taking employer and union officials out to a favourite watering hole to test their views on what he was going to put to his political masters.

Questions of health and safety policy have thus always been understood as matters of social rather than purely technical judgement, and ones on which regulators need to get agreement between key stakeholders about things such as:

- how risky things really are (the evidence and what it means);
- if and how they can be made safe (the approach to risk control); and
- the level of residual risk that is acceptable to risk creators (employers) and risk takers (employees).

HSC (and all its subordinate advisory committees on things like toxic substances) is thus a peculiar kind of arena in which questions of science and politics meet and are dealt with far more efficaciously than they might be elsewhere.

What is remarkable about the HSC is that, since its establishment, it has survived when many similar, so called 'tripartite' organisations went to the wall, particularly during the Thatcher years. There are many reasons for its survival: able stewardship by seasoned civil service professionals such as John Rimington; the strength of a shared interest in good health and safety by what used to be called 'both sides of industry' (although some union-based critics accused the HSC

of being too weak, the CBI actually valued it quite highly along with TUC officials); and more significantly perhaps, from a political perspective, there is the fact that the 1980s was not only the decade of disasters but of the building of more nuclear plants and of incoming EC directives to be implemented in the UK.

The government needed the HSC and expanded its influence taking in railways (now lost again), offshore safety, domestic gas and complex issues like genetic manipulation.

For over thirty years the Commission has worked away largely unnoticed, even by the rest of the health and safety community, meeting on average twice a month and considering a whole raft of complex issues. Not only proposals for new laws, guidance and standards but strategic questions governing enforcement, research and the wider strategies to be employed to try to keep the flag of H&S flying.

Its brief has been very wide, not just traditional workplace safety, but increasingly health, (2.2 million cases of work-related ill health annually compared with about 1.1 million accidents) and the whole gamut of hazards and sectors.

And unlike EU law which deals only with worker H&S, the UK regulatory scene also encompasses the public (remember, in 2005, 212 workers were killed in work-related accidents compared with 386 members of the public).

Public interests on the Commission are represented by two LA members and also a

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ninth member who speaks as an 'independent' for the wider public and from a consumer protection perspective.

This ninth seat is presently up for reappointment under so called Nolan procedures.

Although background and skills are important, under Nolan the appointment process has to be open and fair and based on merit.

Clearly, however, ensuring that new members have not just expertise but sufficient 'position power' in their own constituencies has been critical in bolstering the overall authority of the Commission.

Before publication of the consultation document (CD) last month, the proposal for merger had not been widely aired even among those 'in the know', perhaps because it is not seen as particularly controversial. In effect the existing members of the Commission will become non-executive members of a combined HSE board chaired by the HSC chair.

At present the Executive of the HSE is composed of three senior civil servants who oversee an HSE Management Board. This deals not only with policy issues to be considered by HSC but all the management and administrative issues that arise from running a government body employing some 4,000 people and having links to numerous other departments and agencies.

Social partners

So is this proposed change significant at all? Does it not just represent a logical move, a form of streamlining that has occurred in the governance of other bodies?

Well in part there may be a logic in drawing the HSE and HSC closer together; giving officials an 'official' and transparent say in policy discussions and allowing former HSC members to have some influence on the way this large organisation is run and the way it influences other parts of government.

Another reason for change may be connected with the fact that the Commission's work is now less about 'social partners' bargaining over the detail of new laws and standards and is more focussed on devising ways of 'making health and safety happen'. (This has been the dominant thrust of their work since *Revitalising Health and Safety* was launched in 2000 by John Prescott.)

On the other hand, the original purpose of having a Commission (which under its current chairman Bill Callaghan, has become much more open in style) was to create a public forum in which certain senior people drawn from key interest groups can discuss, argue out and agree effective compromises (all safety is a matter of compromise, whatever the purists say).

In part the effectiveness of the HSC over three decades has rested on the ability of Commission members to speak not just from personal impression but from carefully prepared briefs put together for them by staff in the TUC and the CBI – who in their turn spent long hours taking soundings with their constituents. This has been described by Bill Callaghan as 'non-executive, bargained corporatism', something which he sees as out of date and to be replaced by what he calls 'a networked paradigm'.

Of course, less and less of industry and commerce (either as employers or employees or the self-employed) now belongs to representative organisations. The majority of people at work are not connected by a chain of representative links which transmits their perspectives reliably to those in authority.

Ministers have also made more appointments to HSC from outside the membership spheres of CBI and TUC to cover small firms and unions not in the TUC.

More significantly perhaps, the internal resources of the CBI and most of the major trade associations and unions that were devoted to feeding in to the Commission have been pruned right back. (In part this because the EU regulatory tap has been turned right down – if not entirely off.)

To respond to the consultation document however, it is no use simply quoting the old adage, 'if it ain't broke don't fix it'. The world **has** changed and systems and structures do clearly need to change too. The question is how?

The following analogy might help:

In every workplace where health and safety are properly managed, the need for a joint H&S committee is fairly well understood (even in a non-unionised setting).

Management structures and systems need to be in place to ensure that hazards are recognised, risks assessed and appropriate controls routinely implemented and monitored. But a separate forum is still needed where managers, employee representatives, H&S professionals and other key roles can still sit down, review progress and problems and tap into different views and perspectives. This (what EU colleagues would call) 'social partners' approach lies at the heart of successful H&S management. It leads to co-operation but does not merge with or supplant mainstream management structures.

Of course a Nation is not just a large business and suggesting that the HSC is simply the joint H&S committee for UK PLC might be stretching the analogy too far. Nevertheless it is important in any new consolidated governance structure to ensure that the key

principles of independence and balanced representation of key interests are preserved.

Also, there may be a case for a much more broadly based arena (some sort of parliament for H&S perhaps) sitting alongside HSC in which important issues can be thrashed out with a wider range of stakeholders.

One of the effects of the HSC on Parliamentary politics (good or bad depending on your viewpoint) has been that, for thirty years, MPs have been effectively cut out of the debate on the detail of new health and safety legislation.

From a democratic perspective this has not been so serious because the HSC/E have had a very good record on consulting widely and openly on their proposals. In many ways their approach to formal and informal consultation puts them head and shoulders above other departments and agencies.

MPs only really get to comment on proposals for legislation after they had been laid before Parliament. And of course they have continued to exercise scrutiny (sometimes in quite a piercing way) of HSC/E through the select committee system.

Challenges

In future the distance between the HSE and HSC is to be eliminated and its members are to be appointed more as individuals than representatives. They were never mandated representatives and were bound by a cabinet discipline once decisions were taken. But in future it seems that, while they may still nominally come from business or union backgrounds, they will be selected more from the point of view of their ability to help guide large organisations.

Challenges this may create for would-be health and safety policy influencers are:

- ensuring that the public and specific interest groups are much more active in responding to HSC/E consultation (many feel that their comments disappear into a huge void and it is not worth commenting to HSE); and
- ensuring that MPs begin to take a much closer interest, for example, by reviving the largely quiescent All Party H&S Group.

The consolidation of HSC/HSE is clearly a move to ensure efficiency and effectiveness but it is important to ensure that it does not entail a rejection (to some extent at least) of the Social Dialogue model that has underpinned H&S for so long and which, all said and done, has delivered a good deal.

Readers can respond to the consultation – www.hse.gov.uk/consult/condocs/cd210.htm – until **5th March 2007**. Send me your views at: rbibbings@rospa.com

Parting Shots

Towards self-regulation

► **Responses** to the simplification plan recently published by the Health and Safety Executive as part of the government's on-going drive 'to cut red tape' have included a call for HSE to review "the extent to which it can move towards a model based on earned autonomy". RoSPA's occupational safety adviser, **Roger Bibbings**, considers how this could be achieved and asks – is this really what businesses want?

The Health and Safety Executive's (HSE) simplification plan is rooted in the Health and Safety Commission's (HSC) 'Strategy for workplace health and safety in Great Britain to 2010 and beyond' and is designed to provide new impetus to HSC's four strategic themes:

- developing closer partnerships;
- helping people to benefit from effective health and safety management;
- focusing on HSE's core business and the right interventions; and
- communicating the vision.

The Better Regulation Commission (BRC), the government's focal point for regulatory change, generally welcomed HSE's plan but among other things suggested that one area that HSE should review is "... the extent to which it can move towards a model based on earned autonomy or (as some would prefer) earned recognition", as a means to achieve significant reductions in regulatory costs without a significant increase in the risk of accidents.

The premise here is that a well-run business or organisation that has externally verified or audited health and safety management systems in place should be treated differently from a similar organisation without these benefits.

There are over 26 million people employed in the UK in over three million businesses. UK PLC has a generally good safety (as opposed to health) record but even so there

are still about 1.1 million accidental injuries related to work (excluding work-related road injuries) and 2.2 million cases of ill health caused or made worse by work (the majority associated with musculoskeletal disorders – MSDs – and stress). This is estimated to cost some 26 million lost working days annually and just under 3% of GDP.

Even though HSE has been coming under attack in the media recently, for allegedly encouraging the 'nanny state' and restricting personal liberty, it is actually highly valued – by government, employers, unions and the professions. It is generally agreed that HSE has a vital role to play in maintaining and improving the UK's H&S performance – something that is critical in the drive towards improved business efficiency and competitiveness.

Resources

The Health and Safety Commission which oversees HSE – although there are proposals to merge them – has recently undergone cuts but still has an annual budget of £245 million and employs around 4,000 staff. In addition to administrative and technical specialists, there are policy and research staff, as well as specialists in areas such as major hazards, nuclear and offshore H&S (sectors where HSE operates 'permissioning regimes').

To scrutinise health and safety in the generality of businesses and in the public and voluntary sectors there are some 1,300 HSE inspectors in the field as well as local

authority (LA) inspectors.

The *Health and Safety Enforcing Authority Regulations* split enforcement responsibility between higher versus lower risk premises so that LAs mainly inspect lower risk workplaces.

Priorities

HSE has to direct its resources to points of greatest need and where its interventions will have greatest impact. For many years, to assist it in prioritising its effort, HSE has maintained an internal database in which employers are ranked according to factors such as numbers employed, risk level, previous record, competence and so on.

Some businesses are visited by HSE quite frequently but most HSE-enforced premises do not see an inspector very often.

HSE try to influence employer behaviour by publicising enforcement action and by dissemination of publicity and guidance. They also seek to work in partnership with other players to raise awareness, for example, of their priority topics (slips and trips, falls from height, workplace transport safety, stress and MSDs).

HSE is also working with large organisations (over 10,000 employees) through the Large Organisations Partnership Pilot (LOPP) to find the most effective ways for regulators to engage with large, multi-site organisations. (One result of effective engagement would be the cutting out of redundant and irrelevant visits – multi-site organisations are likely to be particularly prone to these – and

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so LOPP will save resource both for regulators and the regulated.)

Much HSE field resource is consumed, however, in reactive work, responding to incidents and complaints and investigating accidents, particularly ones with serious potential or involving serious and/or fatal injury. In part this is due to the terms of the HSC Enforcement Policy Statement (EPS) which directs HSE and LAs to react to serious events.

In reality therefore HSE leave many businesses to 'self-regulate' and indeed this concept was one of the cardinal ideas advanced in the *Robens Report* of 1972 from which the *Health and Safety at Work Act* of 1974 sprang.

Self-regulation

Over the years there has been a desire to formalise self-regulation, to set conditions under which better performers might manage themselves without HSE intervention unless, for example, there was an accident or a complaint that could not be resolved internally.

In September 2004, HSC published a consultative document *'Regulation and recognition – towards good performance in health and safety'*. Responses to the consultation showed that there remain powerful and differing views about recognising good health and safety performance.

Many consultees accepted 'recognition' as a valid and existing concept as reflected in HSE's use of its rating system and HSC's EPS. However, some saw formal recognition as limiting the scope for improving standards. They also feared that formal recognition would absorb more HSE resource than it would release because HSE staff would have to spend a lot of time judging how good organisations were.

Many saw it as only serving to make good performers better but doing little to address poor performers, which they all agreed should be HSE's main focus.

RoSPA generally welcomed the discussion but called for greater recognition by HSE of existing standards such as its own audit scheme, Quality Safety Audit (QSA), OSHAS 18001 etc. We suggested a 'Chatham House Rules' seminar to explore the balance of advantages and disadvantages of putting higher performers 'on trust' to self-regulate.

The Society called on HSE to support its 'Going Public on Performance' (GoPOP) approach (www.gopop.org.uk), which challenges organisations to put their H&S policies, targets and performance in the public domain via the Internet, ensuring that they meet the information needs of a

wide range of stakeholders. To be credible however, this information needs to be externally verified.

RoSPA also asked HSE to recommend the value of awards to organisations, for example, as way of recognising and celebrating performance achievement and building up a core of higher performers whose example can be commended to others.

GoPOP and the RoSPA awards encourage organisations to report organisational H&S competence by including data such as rankings or scores obtained using audit schemes such as QSA and other proprietary audit systems (BSC Five Star, DNV, CHASE etc) or benchmarking schemes such as CBI 'Contour', HSE's CHASPI and so on.

RoSPA would like HSE to make it clear to businesses that inspectors will consider this kind of information when prioritising them for inspection.

SMEs

There has, generally, been no move by HSE to promote self-regulation among small firms. HSE's strategic drive here has been to improve its communications, present clearer guidance and raise awareness of key issues.

HSE and LAs, of course, continue to target the higher risk SMEs that come to their attention. But many assessments to gauge H&S competence in SMEs are also carried out in the funding/supply/insurance chain by a variety of players such as: major clients – particularly in construction (linked to duties in the CDM regulations), training providers, trade associations and insurers.

Although much of this work is useful, the 'tick box'/compliance approach sometimes adopted by those carrying out this kind of scrutiny can lead to bad experiences for SMEs. There are a variety of standards and approaches, much wasteful duplication of effort (due to lack of mutual recognition) and 'paper only' as opposed to on-site and/or face-to-face engagement.

RoSPA's National Occupational Safety and Health Committee (NOSHC), as part of its Inquiry into work by intermediaries to promote higher H&S standards in SMEs, is going to be looking in depth at forms of assessment currently being used by third parties to see what might be done to improve their effectiveness.

Future work

While bodies such as BRC are urging HSE to move towards more 'earned autonomy' for higher performers, it is not clear whether there is a substantial appetite for this within the business community. Contrary to what might be imagined by commentators, many

businesses really value regular HSE contact. Trade unions value it too and have generally been opposed to even the higher performing businesses being able to opt out of inspection.

One of the keys to progress has surely got to be much greater openness and simplicity of approach. HSE needs to give businesses access to its internal databases so they can see the risk ranking they have been ascribed. HSE then needs to indicate to them the steps they could take to reduce that ranking.

HSE also needs to indicate the standards – or forms of evidence of organisational competence – in which it has confidence and to which it will refer in prioritising organisations for visits and other forms of intervention.

Businesses too need to be encouraged to 'go public' on their policies, standards and performance, putting key information in the public domain. But for this to be meaningful, the plethora of standards or forms of evidence which organisations can currently use to attest to their H&S competence has got to be simplified.

That said, the barriers to a move towards stronger 'self-regulation' (in support of – but not substituting for – the overall regulatory regime in the UK) are essentially political rather than technical in nature.

At present there is much confusion surrounding the various forms of sub-regulation (third party schemes run through supply chain, insurance, funders requirements etc) currently operating in the UK. Tackling the weaknesses and bureaucracy in such existing schemes has clearly got to be a priority. (A good starting point would be for HSE and key players to work towards a core or 'meta' standard – and also a minimum competence requirements for third party assessors).

But above all, 'recognition' in H&S has got to be developed as a positive, value-adding experience for organisations (and for SMEs particularly), so a clear range of benefits must be available to organisations that achieve it. (On their own, freedom from HSE intervention, reduced insurance premia etc are not going to be enough.)

The key to making progress must surely lie in creating a new vision of 'self-regulation' and mobilising key stakeholders in support. Business, trade unions, professions etc need to come together and reach a new consensus – but this cannot be done without HSE initiating a new debate which engages them and captures their imagination.

Readers' views welcome.
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Punishing safety crimes

► **Next month**, after many years of delay, the *Corporate Manslaughter and Corporate Homicide Act 2007* will come into force. Now the Government's Sentencing Advisory Panel is asking how should those organisations found guilty of the new corporate manslaughter offence be punished? RoSPA's occupational safety adviser, **Roger Bibbings**, discusses the options.

The new offence of corporate manslaughter was introduced after a very protracted struggle, particularly by groups representing victims of accidents and disasters. It is designed to overcome problems identified when seeking to apply the existing common law offence of manslaughter by gross negligence to organisations rather than to individual defendants.

Its purpose is to secure, in a wider range of situations than under existing law, convictions for a criminal offence that properly reflect the seriousness of the worst instances of management failure causing death. It is designed to complement, rather than replace, existing health and safety offences, for which organisations may still be prosecuted as an alternative to, or in addition to, corporate manslaughter.

It is entirely possible that, following a death caused by negligence, as well as the organisation being prosecuted for corporate manslaughter, individual directors and managers might also be prosecuted for the common law offence of manslaughter by gross negligence. How the Crown Prosecution Service (CPS) will choose to use the corporate manslaughter option alongside common law manslaughter, the *Health and Safety at Work Act* and other relevant legislation remains to be seen.

Under the new law, when sentencing an

organisation found guilty of corporate manslaughter, a court will be able to impose an unlimited fine, a publicity order and/or a remedial order. The latter penalty is novel in the context of England and Wales and has been pressed for by a number of health and safety bodies including RoSPA.

Key factors in determining the nature and level of sentence to be imposed include not only the financial means of the guilty organisation but the seriousness of the offence, the scale of harm, the level of culpability, aggravating and mitigating factors, the organisation's previous record, its overall attitude and so on.

'Seriousness' factors include: the extent to which the behaviour of the organisation fell far below the level that might have reasonably been expected; whether there were multiple deaths; whether there was failure to following basic standards or advice; failure to follow warnings and so on. Mitigating factors might include whether individuals had acted on their own and whether the organisation had a previously good record.

A key issue focused on in the recent consultation on sentencing options for the new offence conducted by the Government's Sentencing Advisory Panel (see: www.sentencing-guidelines.gov.uk) is how best to set fines for the full range of potential offenders, from companies of small means to those with very large resources, or organisations funded from the public purse

where it is often argued that, in the end, fines merely represent a re-circulation of public funds back to the Treasury.

The Sentencing Advisory Panel has made it very clear that a key factor in determining the level of sentence must be the ability of the organisation to pay. Their suggested starting point is a fine amounting to 5% of the organisation's annual turnover averaged over the previous three years but with the possibility of increasing this to up to 10% when aggravating factors are taken into account. On this basis it is conceivable that a single death in certain circumstances could result in an organisation being hit very hard indeed.

At the same time the Panel also recognise that large fines may have a 'spill-over' effect, punishing not just the organisation's directors and senior managers but also its employees (for example, through possible consequential job losses) or shareholders (who in reality may have had little or no control of management processes that led to the deaths concerned) or customers (who might be made to bear the cost of subsequent price increases) or the workforce and the wider public who might continue to be at unacceptable risk because funds for improving safety had been used to pay a large fine.

There is also the problem of how to deal effectively with public bodies. Clearly they should not escape substantial punishment

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just because they are not privately owned but equally why should members of the public who are service users suffer because of the management failures of those in charge of bodies which operate of their behalf?

There is also the question of the approach to be taken to the new publicity order option, particularly given the massive impact, which recent major accidents have had on company share prices, for example.

Deciding whether a publicity order should be made as well as its extent and content is not going to be easy and should certainly not be seen as a soft option. Following high profile disasters such as the BP Texas City Fire (albeit a case outside the UK) the effect of adverse publicity on the share price even exceeded the massive fines imposed by the US regulators.

On the other hand, the public might eventually become de-sensitised to formal publicity orders, particularly if they were used quite often or if corporate PR machines were set to work to offset their impact on the public consciousness.

Similarly, even though they would only be imposed after consultation with appropriate authorities like HSE, remedy orders could be seen under certain circumstances to be unfair, perverse even, for example, if remediation could be traded against the level of a fine also imposed. Put off making necessary safety changes until you are sentenced and you could end up paying less!

Obviously there is no 'one size fits all' solution and the sentencing options in the *Corporate Manslaughter and Corporate*

Homicide Act do seem to offer the option of 'mixing and matching' fines, adverse publicity and remediation.

Some argue that a major problem in punishing organisations as opposed to real people is that, in contrast to the latter, organisations have '... no soul to be damned and no body to be kicked' (Lord Thurlow, 18th century Lord Chancellor). Yet organisations are owned by, are made up of, are controlled and serve the interests of real people – punish an organisation and you do end up punishing real people (if only indirectly) and then quite often the wrong people.

The nub of the sentencing problem therefore is: how best to show society's disapproval; how best to punish, often in an exemplary way to deter other would-be offenders; and how best to serve the interests of justice with punishment at a level that recognises the anger of victims – and all this without having other unintended effects.

Making the sentence fit the corporate crime, the corporate criminal and the wider public interest presents a challenge that even the Mikado might have baulked at!

It seems fairly certain that there will be a continuing call by the victims of accidents and by the campaigning groups for more directors to be prosecuted, for example, under *Section 37* of the *HSW Act*. And, of course, in our centuries old justice system there are the combined wisdoms of the Court of Appeal and the House of Lords which have to be exhausted before the true shape and scale of justice arising from prosecution under new laws are clearly established.

Although corporate manslaughter has now passed into law and seems like a 'done deal', as the SAP consultation shows, there is still much to play for and many of the arguments which were in play before the Act reached Royal Assent are likely to surface again. It will be important to continue to focus on what, as a society, we are trying to achieve. Is the agenda primarily one of securing exemplary punishment (whatever the consequential price) in the name of deterrence but in reality in order to satisfy a thirst for vengeance? (It has always struck me as odd that many of those who claim that deterrence works in the corporate sphere, deny its efficacy elsewhere.) Or is the agenda about securing better health and safety?

My own view is that the latter is more important than the former and that in sentencing for corporate manslaughter the emphasis, wherever possible, should be on making organisations put things right. That said, when it comes to the need for punishment, particularly for transgressions that are very serious and highly culpable, it makes more sense to proceed against individuals rather than the institutions they inhabit.

I am no lawyer but to me the idea of a crime that is purely corporate – a collective offence due to the failure of many otherwise generally blameless individuals – seems as strange as it is rare.

Readers' views welcome.

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Time for change

► **With things a-changing** at HSE, there is a need to rethink national health and safety strategy, says RoSPA's occupational safety adviser, **Roger Bibbings**.

Change is in the air at the Health and Safety Executive. Judith Hackitt is now firmly in the chair of the new HSE 'Board' (which oversees the recently merged Health and Safety Commission and HSE), a whole range of recommendations regarding the way HSE operates are being offered by the Work and Pensions Select Committee and the Government's Better Regulation Executive (BRE), and despite its long-delayed Treasury settlement, it is clear that HSE still faces difficulties due to increasingly scarce resources, compounded operationally by problems such as moving its headquarters from London to Merseyside.

Yet despite all this, HSE remains under pressure to deliver a reduction in work-related casualties and days lost due to work-related ill health. With all these difficulties it is clear that HSE cannot be expected to deliver in the old way. New approaches are going to be needed.

Shortly, HSE is expected to begin a public consultation exercise to get ideas and views on how it should move forward. And it is not only stakeholder and representative organis-

ations which need to put on their thinking caps and contribute; individual practitioners, managers, safety reps and others at the coal-face of health and safety need to think about the bigger picture and make their contributions to the consultation too.

On the face of it, many might be tempted to think that the health and safety at work problem in the UK has been solved. After all, ministers say justifiably – and with some pride – that injuries have come down and that, when it comes to accident rates, we are number one or number two in the world.

Under-reporting

But the figure for notifiable deaths to workers (which rose to 241 in 2006) rather understates the problem. It leaves out the deaths of around 100 members of the public who are killed each year as a result of work activity (these deaths are still under-reported in RoSPA's view); it leaves out an estimated 1,000 fatal injuries in work-related road accidents; and it ignores the huge extent of early death due to work-related health damage (estimates vary from 6,000 to 24,000 cases annually).

More significantly, by focusing on the relatively small number of deaths at the top

of the iceberg, it ignores data on morbidity (including about 1.1 million work-related injuries annually – all severities but excluding road injuries – and about 2.2 million cases of ill health caused or made worse by work). In all, this is estimated to contribute to about 36 million lost working days.

HSE's problem, strategically, is how to deliver a sustained reduction in these figures, meeting targets agreed with the Treasury, against a background where its resources are tight and it is having to cope with problems posed by major internal change, including significant loss of corporate memory. HSE is a highly respected organisation but in current circumstances, its belief that the solution is simply to crank up incrementally the existing recipe of information, inspection, notices and prosecutions is profoundly mistaken.

At this point I need to point out that we in RoSPA believe firmly in the prime value of an effective enforcement regime. Without good regulations and guidance, adequate HSE and local authority inspection, and without notices being served and offenders being prosecuted and sentenced to severe enough penalties, the health and safety regime in the UK would be totally toothless.



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Enforcement needs to be firm and fair and well publicised, particularly to create the clear impression among would-be and actual backsliders that they stand a good chance of being caught if they do not comply.

On the other hand, to believe that every instance of safe and healthy working has only come about because of a recent visit by an over-worked inspector is also profoundly naive. Generally speaking, these conditions exist where they do because of inputs from other 'actors' in the health and safety system.

While HSE information and guidance are important, more often than not, it is only because of services and support from other H&S system providers (awareness raising materials, information, H&S training, supply of PPE and products and specialist services) that employers and workers have been able to establish health and safety management capability, enabling them to:

- understand the need for risk assessment;
- introduce appropriate control measure; and
- to monitor and review performance.

HSE might be a key motivator but the health and safety provider sector plays a key role in actually making safe and healthy working happen.

Management

If HSE is to succeed therefore in driving down the casualty and days lost figures – and keeping them down – then more will be required than just having campaigns (excellent as they are) about key hazard areas such as falls from height, slips and trips, vehicle accidents, stress or musculoskeletal disorders.

HSE will need to take action to raise the general standard of H&S management in businesses across the country, particularly among medium-sized organisations which are better placed to put in place and develop management systems which mesh or resonate with other management systems dealing with environment, quality, security and so on.

HSE's (and indeed the UK's) main H&S problem is how to tackle health and safety standards in small firms which are not necessarily hostile to H&S red tape (as is often suggested), but lack the internal expertise – and above all the time – to work out what they have to do.

The recent evaluation report on the five HSE Workplace Health Connect (WHC) pilots in England (which ended in February and are not to be continued in England – unlike Scotland and Wales) has shown just how massive the need to advise and help really is at this level.

WHC in England reportedly reached over 100,000 firms and, although the focus was supposed to be on occupational health, health promotion and return-to-work, most of the personnel involved seemed to have been absorbed in helping firms write H&S policies and do basic risk assessments.

What RoSPA has said is that while spreading the lessons from WHC is crucial, rather than attempting to set up a separate and parallel set of H&S services, HSE's focus now needs to shift to working with existing services and networks to help them become more SME user-friendly and to ensure SMEs identify and connect with the services they need.

One key area here is the need to improve the quality and impact of H&S pre-qualification procedures – as evidenced by our National Occupational Safety and Health Committee's recent mapping report on sources of help and assistance to SMEs. NOSH's inquiry (www.rospace.com/occupationsafety/sme/index.htm) has found that literally millions of UK businesses have to undergo H&S pre-qualification in one form or another. For example, over one million visits are done every year by Learning Skills Council-funded organisations as part of their 'Safe Learner' requirements for trainees.

But there is massive duplication of effort with many, many businesses having to go through repeat assessments under different schemes and for different clients. This does nothing to dispel the myth that *'elf and safety has gone mad'* and is concerned simply with endless form filling.

But there is another even more compelling and strategic reason why HSE needs to work more closely with other H&S providers and that is the recommendation in the recent Better Regulation Executive post-Hampton implementation report (www.berr.gov.uk) that it should be doing much more to bear down on rogue employers and not be intervening in businesses which are competent to manage their risks effectively.

RoSPA continues to argue that to help achieve this, HSE should indicate the various corporate H&S performance benchmarks (such as QSA, OHSAS 18001, DNV, Awards, CHAS, CHASPI etc) which inspectors should take into account when assessing businesses for priority inspection.

This does not mean that HSE would endorse these schemes or that it would grant 'an inspection holiday' to organisations which used them. It would simply mean that HSE recognised the importance of everyone seeing H&S as a corporate performance issue and commended to business the value of being up-front about their performance

status. After all, if clients, funders, insurers, investment organisations, professional bodies and many others think it is important that businesses should be open about where they stand on H&S, is it not more than a bit bizarre that HSE seems quite indifferent about the benchmarks which industry is using to do this?

In the same vein it is to be hoped that Judith Hackitt, the chair of the new HSE Board, who herself has considerable H&S management experience, will make a clear public statement about the value of organisations entering H&S award schemes. This is important not just to encourage high standards and to celebrate success, it also enables more businesses which are higher performers in OSH to serve as exemplars to others and provide a stronger base for business-to-business learning on H&S (as in Scotland – see: www.rospace.com/occupationsafety/scottish/index.htm).

If the new health and safety strategy is really to be about closer working with all the 'actors' and businesses that are committed to H&S, to help HSE catch the rogue element, then there is obviously much to be done.

There is a need to refresh HSE guidance on H&S management, ensuring continuity of key doctrines but making them more accessible. There is also a need to really promote and evaluate the new HSE/LoD guidance on director leadership of H&S (INDG 417) – the LoD are to set up a new oversight group here. And there is a real need to 're-boot' workforce involvement in safety and health (WISH) nationwide. This year, for the first time, RoSPA's awards scheme included a new WISH Trophy (awarded to Royal Mail) and we hope to help promote forthcoming HSE guidance in this area.

Crossroads

In many ways HSE's fortunes seem to be a bit of crossroads, with parts of the organisation feeling the strain or becoming quite defensive in the wake of media scepticism, if not hostility. The forthcoming consultation offers a chance to inject some optimism and provide reassurance that HSE is indeed a vital and valued national asset. But it is also an opportunity to remind HSE that it needs to work ever more closely with its allies elsewhere in the 'H&S system' if as a nation we are to cut accidents and really secure health and wellbeing.

When the consultation is launched, make sure you have your say. And keep us informed at RoSPA. Email me at: rbibbings@rospace.com



Parting Shots

All for one...

► **In its new strategy**, the Health and Safety Executive is calling on all stakeholders in Great Britain's health and safety system including employers, workers, their representative bodies and other third party organisations, to work with it towards a common set of H&S goals. RoSPA's occupational safety adviser, **Roger Bibbings**, considers how this could work in practice and discusses other key issues raised in the draft document.

The Health and Safety Executive is currently consulting on its new strategy *'The Health and Safety of Great Britain: Be Part of the Solution'* (www.hse.gov.uk/strategy). Based around a number of key themes (including leadership, workforce involvement, SMEs, health, major hazards etc), the strategy is more of a plan for the UK health and safety system as a whole rather than just a strategy for the HSE.

The key focus is less about which issues HSE should concentrate on and more about how HSE – and all other contributors to better health and safety at work – can work more closely together. It is about linking up all the key bits of the H&S 'system' – employers and employees (and their representative bodies); the self-employed; government; professional bodies; and voluntary and third sector organisations – to help raise standards of health and safety management, in order to make change happen. (RoSPA has been arguing for this broader approach for over ten years!).

HSE says that Great Britain's health and safety performance has stopped improving. The combined incidence of injury and ill health has plateaued; the statistics are much the same as they were five years ago. And publication of its proposed new strategy comes at a time when HSE staff numbers are down substantially and levels of investigation, proactive inspection and enforcement activity are down significantly as a result. (Pressure has to be maintained to reverse this despite the current economic crisis.) Nevertheless, it still makes good sense to see how, as the

lead agency in health and safety, HSE can deliver more effectively by working with and through the 'third sector', leaving its inspectors free to concentrate more on enforcement and difficult risk issues.

In this context, RoSPA would like to see HSE putting yet more emphasis on working through industry H&S initiatives like the glass industry's *'Glass Charter'*, the construction sector's *'Working Well Together'* campaign and the *'Step Change in Safety'* initiative running in the offshore sector.

In many sectors, however, there are no joint initiatives like these. With this in mind I have suggested to HSE chair, Judith Hackitt, that there might be merit in commissioning an overview of all the various H&S industry initiatives that have worked and then organising workshops to share best practice and learning that could be then taken out to other trade associations and sectors.

It would be good if, despite constraints on its resources, HSE could provide some funding for H&S service capacity building in trade associations and sector consortia.

Penalties

The strategy sets out HSE's views on enforcement. It states that the three main objectives of enforcement are to: compel dutyholders to take immediate action to deal with the risk; promote sustained compliance with the law; and to ensure that dutyholders who breach health and safety requirements (and directors or managers who fail in their responsibilities) should be held to account for their actions.

RoSPA has long argued for a remedial approach to sentencing for H&S offences, in line with similar trends for sentencing in other parts of the criminal justice system (eg. training in exchange for fines reduction, rather like speed awareness courses for speeding drivers instead of points or remedial programmes in youth justice). HSE has consulted on this approach in the past but the issue has gone off the boil. Is it now time to raise this idea again in the context of the strategy consultation?

Might third sector H&S bodies, for example, show the way forward by offering remedial training to those firms awaiting trial for H&S offences on the understanding that this would be likely to result in lower fines? Or could they be appointed by the courts to provide supervision and improvement services to certain offenders as part of remedial sentencing?

Might HSE publish the names of companies that it is prioritising for attention because of high risk and/or poor past record so that these firms would know they had the option of getting into improvement programmes to get themselves off the list?

Leadership

One of the key themes of the proposed strategy is that health and safety leadership must start at the top. It states that 'members of the board have both collective and individual responsibility for health and safety' and that 'leadership must also permeate throughout the management and supervisory levels and the workforce'.

The House of Commons Work and Pensions



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Select Committee has said that if the HSC/ Institute of Directors' guidance *'Leading Health and Safety at Work'* (INDG417) published in October 2007 (www.hse.gov.uk/pubns/indg417.pdf) is not successful in changing board level awareness and behaviour on health and safety, then a stronger regulatory approach should follow.

The purpose of INDG417 is to give directors 'straightforward practical advice on how to – plan, deliver, monitor and review – health and safety in the workplace' and to remind directors across organisations of all sizes that it is their responsibility to lead on health and safety and establish policies and practices that make H&S an integral part of their organisation's culture and values.

I am part of an Institute of Directors' (IoD) oversight group for INDG417 and HSE has asked its chief scientist, Patrick McDonald, to lead another group, with employer and TUC input, to devise a research programme to look at the effect of this guidance on director awareness of health and safety.

Whilst there has been some shift in director awareness of H&S, in all probability the findings of HSE's study are likely to show that the guidance has only had an effect on director behaviour in organisations already committed to health and safety.

The TUC, the Centre for Corporate Accountability (CCA) and IOSH already favour regulation to enforce board level H&S leadership. The CBI, IoD and Federation of Small businesses do not. RoSPA's view is the question must be decided on the evidence – although 'policy led evidence making' must be avoided of course.

Healthy workplaces

In November 2008, the government's response to Dame Carol Black's (the National Director for Health and Work) review of the health of Britain's working-age population (published in March 2008, see: www.workingforhealth.gov.uk) was published.

It contains a number of initiatives designed to meet Dame Carol's goals of keeping people healthy at work, and also for helping people return to work if they get ill. These include the piloting of "Fit for Work" and other early intervention services; the introduction of an electronic "fit note" to replace the outdated "sick note"; and a range of measures to support SMEs (see last month's *OS&H* for further details).

A key issue which still needs to be addressed though, is what will follow the Workplace Health Connect (WHC) pilots in England which were designed to provide free occupational

health advice to SMEs.

HSE's strategy states that all stakeholders involved with SMEs should find new ways to help them understand how to comply with health and safety law in a manner proportionate to the risks posed by their work activities'. With this in mind, there will be pressure to establish a free OH service in England for SMEs similar to those that have been set up in Wales and Scotland (www.hse.gov.uk/workplacehealth). However, there are unlikely to be sufficient DWP funds for a new free service and also how will services like WHC feed into HSE's new H&S strategy?

I have argued that HSE should take the lead in establishing a 'national health and safety services framework' in which it acts as the broker or gateway to services that are signed up as part of this scheme, rather than establishing a separate service based in HSE/DWP.

H&S management

In a previous *Parting Shots* (*OS&H* December 2008) I reported on what is happening with HSE's plans to revise its guidance on effective health and safety management – HSG65 (HSE's best selling publication).

Clearly advice about H&S management needs to change to reflect current management thinking but because HSG65 is so embedded in current practice I have been arguing for evolution not revolution.

The 'plan, do, check, act' quality management approach may now be seen as out of date in some quarters but it underpins certification based on the latest OHSAS 18000 series and it is to be found in most H&S management courses. Some hard research to test the benefits and appropriateness of HSG65 could help here.

RIDDOR

There could be a lot of value in looking again at how to improve organisational learning from accident and incidents (another RoSPA key issue). Is it likely that HSE will revisit the case for revising (or even abandoning perhaps) RIDDOR (*Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995*)? Some may feel that, given the high rate of under-reporting, these

regulations are of limited value anyway and better data are available from sources such as the annual Labour Force Survey.

On the other hand, employers being required to notify and keep records of accidents and incidents is actually useful for business in that it represents a symbolic line in the H&S sand. If HSE does look again at RIDDOR, it would need to be accompanied by clearer requirements on employers for internal reporting, investigation, record keeping etc. But, at the present time, when H&S regulations tend to be regarded as a 'burden', this could give rise to opposition.

On the agenda

Other key H&S issues for 2009 include 'workforce involvement' (now back on the agenda as a key part of the HSE strategy); 'access to competent advice' where there is still work to do to bottom out allegations about problems caused allegedly by poor consultancy (a bigger problem is likely to be that most firms still have no access to competent advice at all); and then there is the vital question of 'supervision'. My own view is that 'supervision' is still a very weak point in the H&S performance chain. Should RoSPA and others take the initiative and press for parallel guidance and good practice case studies to be published on 'leading teams safely'?

And then there is, of course, the whole question of how H&S development is funded. Insurers only provide Employers Compulsory Liability Insurance (ELCI) because the law requires employers to have it. Other European countries do not follow this model. If premia for ELCI rise again, might it not be time for setting up a government-backed insurance scheme so funds could be used for both compensation and development of services?

Making health and safety happen in a recession is going to be harder than ever. That is not an excuse for giving up – just another good reason to think even harder about new ways forward.

Readers' views on the topics raised in this column are welcome.

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Parting Shots

A new dynamic?

► **The Health and Safety Executive** is busy analysing the responses to its recent consultation on the way forward for the UK health and safety system. RoSPA's occupational safety adviser, **Roger Bibbings**, argues that a key theme that needs to be explored is how to create a new dynamic between HSE and the wider H&S market.

During January and February HSE held a series of public consultation meetings around the country to get views on its future strategy (see: www.hse.gov.uk/press/2008/e08061.htm). Just under 700 people attended the workshops and the comments and ideas resulting from them will be considered alongside around 200 written responses that HSE received during the three month consultation.

While this public consultation process is obviously to be welcomed, particularly to get perspectives from ground level – it also seems to have led to the criticism that the HSE strategy document is far too general and lacks detail on specific steps which HSE intends to take. Many respondents seemed to be disappointed that the document contained only broad goals and did not include detailed plans and targets.

Such a response, however, while understandable, suggests that the consultation may have gone over the heads of many, particularly those who are not used to thinking in strategic terms. It is, after all, supposed to be a high level exercise in thinking afresh on a broad canvas – a chance to consider the bigger picture and to discuss creatively how HSE might try to develop new ways of working (especially with key stakeholders) to

improve standards of health and safety management and thus save lives, reduce injuries and safeguard health.

Indeed from RoSPA's perspective we feel that the consultation may not have been strategic enough. Although, encouragingly, the proposed strategy has been billed as a strategy for the UK H&S system as a whole (and not just one for HSE and local authorities), it is clear that HSE's grasp of much of what is going on in the system beyond its boundary fence is still not strong enough.

A lot more work is needed to enable HSE to understand fully all the manifold influences which actually help to deliver safe and healthy working in various kinds of organisation. In fact there is a danger that the title of the document itself, *'Be part of the solution'* might actually seem to be quite insulting, for example, to the tens of thousands of H&S activists outside HSE who have been working on this important agenda, many of them for decades. And it might also be seen as ignoring the fact that millions of workers, especially in better performing businesses, together with their line managers, safety reps and directors are already well and truly 'on the case' when it comes to tackling H&S.

To me, all this suggests that HSE centrally – although not necessarily at sector level – still has a rather hazy idea of what the other key actors in H&S actually do to help ensure

work-related risks are managed effectively.

There seems to be insufficient understanding that, were it not for the patient and dedicated work of this vast network of actors (who actually outnumber HSE several times over), there would be many more fatal and serious injuries, many more major incidents and much more ill health caused or made worse by work.

RoSPA continues to argue forcefully that HSE needs to see H&S professionals as key allies and equals in the struggle to get casualty figures down and not untrustworthy auxiliaries or potentially maverick irregulars.

We in RoSPA feel that a key theme to be explored in following up the consultation (which ended last month) must be how to create a 'new dynamic' between HSE and LAs on one hand and the wider H&S market on the other. In particular, how can HSE give greater recognition and support to the vital work of non-HSE H&S bodies? How can it become a more effective leadership and development agency in building a united national H&S effort – especially to bring about better standards of H&S management in the millions of SMEs which now account for most of UK employment?

Many will argue of course that HSE's prime focus must be on exemplary enforcement, seeking out H&S wrong-doing and bringing offenders to book. Clearly enforcement and



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justice are vital, particularly to isolate callous and unscrupulous employers, but surely ensuring 'H&S justice for all' cannot be achieved unless all the vital ingredients for promoting and sustaining successful H&S management are in place and working in workplaces the length and breadth of the country.

What then should be HSE's relationship with the H&S market – training, advice and information, technical standards, auditing and assurance, pre-qualification, certification, professional development and so on?

The traditional answer used to be – particularly from civil servants who were schooled (probably quite correctly) to remain apart from anything of a commercial nature – 'We are regulators, the market does the rest'. That is fine in theory but as current economic realities show all too vividly, markets are often quite imperfect. In fact the H&S market only really engages the 'first' and the upper part of the 'second' world of UK business. Across vast swathes of the economy the appetite (particularly in times of recession) to invest appropriately in H&S is virtually non-existent.

Stronger focus

So what should 'a new dynamic' involve? Here are some thoughts:

- Firstly, knowledge and recognition by HSE of what is going on out in the wider H&S system and a commitment to avoid duplication. (For example, given the plethora of existing audit schemes, why invest in yet another in the form of CHASPI?).
- Secondly, a commitment to determine 'what works' and what is appropriate, furnishing research evidence on the efficacy of what is on offer.
- Thirdly, encouragement and facilitation to enable businesses to be matched with the services they need.
- Fourthly, a much stronger focus on standards of corporate health and safety performance, with open reporting so that not only HSE and LAs but all other stakeholders can assess an organisation's approach to H&S and can prioritise their interventions accordingly.
- And finally, HSE needs to move beyond using non-HSE H&S professionals in limited areas such as research and engage them much more widely in raising awareness, following up accidents and incidents, supervising remedial programmes and so on, with the cost borne in the main by businesses which are failing to come up to scratch (akin to the 'polluter pays' principle).

Of course, as I emphasised in my February article, none of this is without its challenges and risks – but that is not a reason to hesitate exploring what could be achieved.

Reactions such as 'HSE cannot promote or endorse anything of a commercial nature' or 'HSE cannot interfere with market choices' etc need to be seen as outdated, narrow and far too risk averse. Indeed, the case for harnessing the energy of the wider H&S community is now so compelling that attempts by HSE to remain neutral or at best agnostic will soon be unmasked as little more than ignorance about the extent of what others are doing and its impact.

As a first step therefore in following up the strategy consultation HSE must create a suitably comprehensive map of the wider **H&S delivery landscape**, again seeking views of key players on the space they occupy within it and the role they play. (Everyone needs a shared helicopter view!)

This sort of map obviously needs to include the roles of key actors such as employers' organisations and trade unions but it also needs to cover the roles of clients, insurers, consultants, trainers, standards setters, professional bodies, local groups and networks, equipment suppliers, campaigners, technical and specialist press and many, many others.

This needs to be followed up with independent evaluation of many of the things currently on offer to employers, such as OSHAS, behavioural safety programmes, e-learning, induction training, H&S passporting etc, etc.

Many employers need help to enable them to make good choices, invest wisely and not waste precious resources on solutions which are inappropriate or disproportionate to their real needs. There is quite a lot of 'snake oil' on offer and in the field of H&S particularly, 'caveat emptor' just will not do!

RoSPA continues to argue for the establishment of a national H&S services network and a series of clearing houses which can give good 'advice about the advice' and services which businesses really need to help them manage H&S.

HSE needs to indicate to employers the kinds of performance benchmarks which will help them to prioritise their limited resources for proactive inspection. This is not saying, for example, that things like OSHAS certification will lead to an 'inspection holiday' or that independent audit can substitute for inspection by regulators. HSE must remain free to intervene as and when necessary but HSE and many others on the H&S scene need good intelligence to help them use their limited resources effectively.

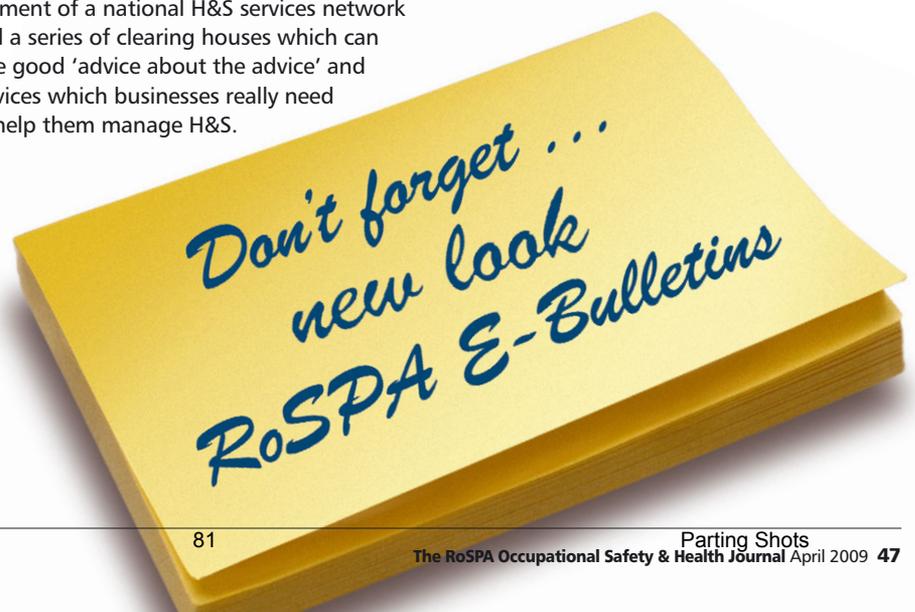
In short the 'new dynamic' has to be about 'making the market work' and creating effective synergies between the work of the regulator and other H&S actors, be they internal like professional H&S advisers and safety reps or external such as consultants, trainers or specialist service providers.

Partnership

With the demise of the Health and Safety Commission and its replacement by an Executive Board, there also needs to be a revisiting of options for bringing key players together at a national level, including, for example, the idea of a '**national implementation group**' of key organisations, keeping the focus on innovation and partnership working (this model works well in other areas of government).

Obviously many contributors to the strategy consultation will have focused on the detail of how HSE staff do their work. Their views should not be ignored but the real prize can only be won if people in our field lift their sights and think more creatively about new approaches that will take H&S forward.

Readers' views welcome.
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Earned autonomy?

► **Phrases such as 'light touch' regulation and 'earned autonomy' seem to be back in vogue – as does the idea that employers that can manage their health and safety risks adequately should be left to do so without external interference. RoSPA's occupational safety adviser, Roger Bibbings, explores these ideas.**

We are now a few weeks into the new coalition government and with the fog of the political battle still settling on the horizon, there are numerous uncertainties in most policy fields – not least predicting how a new incoming administration will deal with health and safety enforcement.

One thing does seem clear however, and that is that with major reductions in public expenditure now inevitable – coupled with commitments to cut bureaucracy and regulatory 'red tape', the health and safety at work community will need to be able to respond effectively to changed approaches to regulation and enforcement.

Phrases such as 'light touch' regulation and 'earned autonomy' seem to be back in vogue – as does the idea that employers that can manage their health and safety risks adequately should be left to do so without external interference. The underlying idea is that inspectors would then be left with more time to bear down on the 'unconscious incompetent' or worse still those criminal employers 'who know but still don't care' about their people's health and safety.

There is nothing wholly new here. Self-regulation after all was the much misunder-

stood watchword of the Robens Report from which the *Health and Safety at Work etc Act 1974* sprang. In reality, it meant not wholesale exemption from inspection but companies organising themselves to be able to manage their risks systematically (along the lines, for example, of guidance such as that in HSG65 and OHSAS 1800); learn from their operational experience; and follow a path of continuous improvement. And for its part, HSE has always sought to prioritise proactive inspection effort so it is directed less towards competent employers and more towards businesses with substantial risks, poor records and less competence to manage.

History

Back in the 1980s I remember a senior HSE official returning full of enthusiasm from California where the Americans were beginning to roll out their Voluntary Protection Programme (VPP) under which companies could sign formal deals that exempted them from regular inspection. A similar initiative was then trialled in the UK in the construction sector, during which certain companies with good records were selected and promised inspection holidays, unless of course there was a

serious accident or a complaint.

The construction unions were offered an influential role in the process of approval. But needless to say, despite the supporting efforts of the TUC, the idea met with wholesale trade union opposition.

Not long into the trial, one of the contractors selected experienced fatalities to sub-contractors and the whole exercise was quietly shelved.

That was then of course. Things are likely to be different a quarter of a century later. Or are they?

One thing which is certainly different is that in the intervening period other countries which have sought to travel this path have been learning lessons – positive as well as negative – and as a result there is much more experience to draw on to help guide us in finding a way forward in the UK.

In the US, when the Reagan administration launched the VPP in the early 1980s, it was the Federal Occupational Safety and Health Administration's (OSHA) first foray into voluntary programmes and partnerships with industry. The idea ostensibly was to recognise the efforts of employers and employees who had achieved exemplary occupational safety and health performance and to give organisations with good safety ►



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programmes a chance to maintain and improve them while working co-operatively with OSHA rather than in an adversarial enforcement relationship (see: www.osha.gov/dcsp/vpp/index.html).

VPP has certainly developed since then. There are three ways to participate: site-based, mobile workforce and corporate. In practice, VPP sets performance-based criteria for a managed health and safety system – invites sites to apply – and then assesses applicants against these criteria. OSHA's verification includes an application review and an on-site evaluation by a team of OSHA health and safety experts. OSHA then approves qualified sites to one of three programmes – Star, Merit and Star Demonstration. Sites that gain approval must submit annual self-evaluations and undergo periodic on-site re-evaluations to remain in the programme.

Success claimed by OSHA for the VPP approach includes reductions of 'Days Away Restricted work or Transferred to another job' (DART) case rates of 50 per cent below the average in most sectors.

And besides cost reductions for companies due to better performance, OSHA claims that the system also enables them to gain a corps of ambassadors to spread the message of health and safety management, promote knowledge sharing and benchmarking, and provide them with valuable input to augment their limited resources. In this context, another interesting feature of the programme, is the option of having Special Government Employees (SGEs) approved by OSHA and funded by their companies to participate. After submitting an application and completing the required training, these volunteers are sworn in (rather like deputies) and approved to assist as VPP on-site evaluation team members.

New dynamic

In addition to the American VPP experience, there are several examples from around the world of non-governmental systems to secure compliance with health and safety standards. And of course non-governmental agencies such as major clients, insurers and so on, can and do promote H&S compliance.

Up to now RoSPA has not taken a view about the costs and benefits of VPP type enforcement options. In general, RoSPA has valued our existing enforcement arrangements in the UK – with HSE in the lead, backed by its local authority partners. However, in our response to the HSE strategy consultation last year we also proposed

the creation of a 'new dynamic' between HSE and other health and safety system players to help deliver overall performance improvement.

While RoSPA fully supports the need for HSE to concentrate on poorer performers with higher risk profiles, we do not favour 'inspection holidays'. Instead we feel strongly that companies should be required to make greater use of third party performance benchmarks and put their audit findings/achievement levels in the public domain – not just for HSE's benefit (helping them prioritise their proactive enforcement effort) – but to meet the information needs of many other key stakeholders (see my recent *Parting Shot* 'Hallmark of Capability' *OS&H* October 2009 and www.gopop.org.uk). This is all positive pressure and helps to raise standards but it is important not to mix up such internal/external auditing of H&S management systems with enforcement.

In recent years, HSE has moved in this direction with various initiatives designed to co-ordinate their approach to large, multi-site organisations. But applying a VPP style approach in higher risk but fragmented sectors like the UK construction industry would pose quite a challenge.

Despite the positive supply chain reach of major clients and contractors, the sector is highly diverse with many small contractors, new build, fit out and refurbishment works and a shifting mix of employed and self-employed workers.

Accidents

Opponents of an earned autonomy (EA) approach tend to argue that there is a very direct link between numbers of inspections and lower accident rates. Cutting HSE inspections they say would mean more accidents. But while inspection is clearly important (and arguably there needs to be more of it), its impact depends very much on its focus. For example, in RoSPA, we think HSE needs to be much tougher on insisting on minimum standards for management systems (not just site level risk control measures) and on competence generally, including health and safety competence of directors.

On the other side of the argument, those who argue for self-regulatory options and the curbing of HSE powers highlight the need for companies to be able to tailor their own approaches to health and safety and to monitor themselves. However, what this argument tends to overlook is that under existing law, firms should of course be monitoring themselves, and they are likely

already to be subject to third party audit as well, for example, by clients, insurers, health and safety organisations etc. What is not so clear is whether this activity should (or could) ever be an adequate substitute for HSE scrutiny.

That is not to say that on occasions such forms of monitoring or review should not be required by HSE as part of their enforcement response. For example, in RoSPA's response to the HSE strategy we said that there might, on occasions, be a case for 'monitored self investigation' overseen by HSE appointed experts, which the company would have to pay for. But we made clear that this would not be as a substitute to HSE investigation of accidents, particularly where the current Enforcement Policy Statement (EPS) suggests this is appropriate. And, the other big question in all this is the extent to which enforcement standards in UK health and safety law can be relaxed given our EU and other international obligations.

Value

At present, despite the prognostications of various think tanks, there is still little or no pressure from within UK industry for an earned autonomy approach. Our impression in RoSPA is that, notwithstanding the occasional difference of view with an inspector, companies actually value their contacts with HSE quite highly. They like HSE input, especially HSE confirmation of good practice. And on occasions the hard pressed health and safety adviser may actually welcome an enforcement notice or two just to remind his or her senior colleagues about the importance of the whole subject area.

At the other end of the scale, lower performers who might say they would like the EA option (and who are more likely to be anti-pathetic to health and safety anyway) would have to do so much extra work to catch up that they would be bound to complain about the additional cost. Also, our experience of market led health and safety compliance schemes is that they tend to be even more bureaucratic than anything devised by civil servants!

To summarise in a nutshell, the trouble in RoSPA's view with earned autonomy is that generally speaking those organisations that might deserve it do not want it. And those that want it do not, for the most part, deserve it.

Readers' views are welcome.
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Fees and fairness?

► **RoSPA's occupational safety adviser Roger Bibbings** examines HSE's fee-for-intervention plans.

The consultation period on HSE's plans to recover the costs of its interventions from businesses that are found to be in material breach of health and safety law ends this month.

Under 'fee-for-intervention' (FFI), costs would be recovered from the start of the intervention where a material breach of duty was identified up to the point where HSE's intervention in supporting the business in putting matters right had concluded. No costs would apply for purely technical breaches and compliant dutyholders would pay nothing.

The Government has agreed the underlying principles of FFI and the new scheme could apply as early as April 2012 – if it proves feasible. As ministers have already made up their minds on the policy, the consultation does not seek views on the basic approach but rather on how best to implement it.

For example, the questions posed in the consultation document (CD) include: What would dutyholders pay for? What is the likely level of costs and how will this figure be calculated? How would HSE recover costs from dutyholders? How would fee-for-intervention apply to principals and agents? Would fee-for-intervention apply to employees? How would HSE deal with queries and disputes regarding costs to be recovered? What is the likely impact of the proposed legislative changes?

Historically there have been cost recovery arrangements in place for much of HSE's major hazards, nuclear and offshore work but the need to now extend these to meet the costs of HSE's basic inspection work has been made necessary by the 35% cut in its funding by the Treasury.

All departments have had to bear their share of cuts in government expenditure

but we in RoSPA have argued strongly from a wider public health perspective – and compared with many other official bodies – that the case for the Government maintaining its investment in HSE has an overwhelmingly powerful 'spend-to-save' logic. Accidents and ill health cost the UK over £30 billion annually, or over two per cent of GDP, and more people are dying from work-related harms (especially asbestos linked disease, occupational cancer, work-related respiratory conditions etc) than in accidents in all other areas.

All that said, the reality for the moment is that fee-for-intervention is going ahead so it will be necessary for everyone involved with health and safety to try to make it work, if only to safeguard the future of a vital but underfunded regulator.

For FFI to be delivered successfully, it is important that it takes account of some



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of the concerns that have been expressed so far. Is it fair? Will it distort perceptions and relationships as well as HSE's operational priorities? Will it be seen just as a way of HSE earning revenue? (To take a parallel example, despite the Government providing detailed evidence to the contrary, speed cameras continue to be portrayed in sections of the press as moneymakers for HMG. It is important that HSE does not suffer the same fate.)

So what can be done about all this?

FFI needs to be seen alongside the way HSE is now operating following DWP minister Chris Grayling's announcement about the future of health and safety in April (*Good health and safety: good for everyone* – www.dwp.gov.uk/docs/good-health-and-safety.pdf). It has been decided as a matter of policy that HSE should henceforth be much more reactive and that in future it should restrict its proactive inspection to higher hazard/risk areas such as construction, waste and higher risk manufacturing. So although HSE will still be responding to intelligence about poor health and safety because of an organisation's previously bad record, complaints or serious RIDDOR events across all sectors, in practice the majority of HSE enforced employers will be out of scope of routine inspection and thus also the possibility of charging for any related enforcement action.

Natural justice?

The justification for FFI is the widely accepted 'polluter pays' principle under which it is seen as just and fair that failing employers should bear the cost of remediation rather than the taxpayer. This has a ring of natural justice about it but it needs to be remembered that those businesses outside the scope of proactive inspection are still likely to have serious problems (for example, around occupational health risks). The fact that HSE will now no longer have routine contact with them – coupled with the fact that FFI will not necessarily apply to local authority (LA) enforced businesses – means that very few poorly performing businesses in these areas will contribute towards HSE's costs.

In effect it will be those businesses which have accidents in a small number of higher hazard sectors who will face charging, while less dramatic but more costly 'polluters' (for example, those contributing to longer term work-related ill health) will not really contribute to funding the overall enforcement effort. In addition, if FFI is to be seen as fair then arguably it should at least apply to LA as well as HSE enforced organisations.

In April, DWP minister Chris Grayling

seemed to be suggesting that FFI would provide an additional disincentive to bad practice. Certainly there is a powerful logic to making accidents – or even unsafe working conditions, even more expensive than they are already. And bad publicity around enforcement is a powerful driver too. But all this needs to be kept in perspective.

Firstly, for many poor performers who do not stop to think about the costs of health and safety failure, the existing business case for good risk management does not seem strong enough to make better performance self-evidently attractive. (And remember, in recession it should be even more so since the costs of losses – including the much bigger problem of non-injury incidents – cannot be made good through increased sales and turnover.) HSE research suggests that already employers can lose up to 36 times more in accidents than they recover through insurance. To support Chris Grayling's idea of FFI as a disincentive to bad practice perhaps HSE will need to publicise the kinds of costs which typically will be recovered following detection by inspectors of material breaches. To be successful it will be very important to explain to everyone that FFI is not a fine, merely cost covering. Fines will still be imposed by the courts following successful prosecutions for offences.

Secondly, it needs to be remembered that the majority of costs of H&S failure are actually borne by the wider society. Costs to employers are estimated at £11 billion per annum, meaning the remainder – over £19 billion – is met by others. Given that the sums raised in cost recovery will only be a tiny fraction of this, it could be argued that the charging structure should include some element to cover these wider social costs, if not the costs of publicity, information provision and awareness raising which, in addition to enforcement, are so vital to stimulating improved performance.

Preventative education

Not only have proactive inspections been cut back but HSE outreach generally has been reduced, with fewer events such as Safety and Health Awareness Days (SHADs), no more Infoline, no more H&S awareness advertising around issues like slips and trips and asbestos and so on.

Yet the case for investing in prevention education is as strong as ever. We have argued that since HSE is under pressure to concentrate on core enforcement, it makes even more sense than ever to deliver awareness raising activities by working with and through safety organisations such as

ourselves, trade associations, safety groups and many others who are 'batting on HSE's crease'. A small premium on FFI to help fund such outreach and information work would make real sense and help to pump prime value-for-money programmes delivered, for example, by the voluntary sector.

Other options

My greatest fear is that, the new regime is likely to inflame working relationships particularly at the SME level – and give rise to more appeals if not general disgruntlement. Inspectors who often have to struggle to convince some SME owners/managers that they are actually friendly and approachable, are going to have all that thrown back in their faces when they explain that an invoice will follow. This is why it will be so important for FFI to be seen to be fair and transparent and for it to be well insulated administratively and in time from the inspector/dutyholder interface. Also, ministers need to have the wisdom to commit to revisiting the way the system is working in the light of results from early trials and if it does not work, they need to be prepared to change tack.

There are, after all, other options that could be used to make failing employers contribute more towards the cost of enforcement, if not prevention generally. Already the NHS's Cost Recovery Unit, for example, 'top slices' common law settlements for work-related accidents and ill health claims to help pay hospital and treatment costs. (This has been established practice for many years with road traffic accident insurance settlements.)

If it was felt that an enhanced employer financial contribution to health and safety should be spread more widely, this might be achieved, for example, via a levy at sector level (possibly risk and performance adjusted) or as a proportion of employers' compulsory liability insurance premia paid directly to HSE by insurers. Or there might even be a case for hypothecation of fines imposed for health and safety offences.

The political appetite for any of these options may not be that great at present but we should not close our eyes to other sorts of health and safety funding regimes such as those used successfully in other EU member states.

The FFI consultation closes 14 October, see: www.hse.gov.uk/consult/condocs/cd235.htm

Comments are welcome.
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Preserving pillars of wisdom

► **RoSPA's occupational safety adviser Roger Bibbings** argues that vigilance is needed to ensure that any changes that flow from the current review of HSE guidance actually enhance the impact of this important body of published knowledge and don't weaken what is one of the most important pillars of our health and safety system.

As I mentioned in my July *Parting Shot*, in its attempt to reduce 'burdens on business' the Government has put in place a number of 'simplification' initiatives.

At present, following on from Lord Young's review, all eyes are focused on the impending outcome of the review of health and safety regulations being undertaken by Professor Ragnar Löfstedt and an independent team (www.dwp.gov.uk/docs/lofstedt-tor.pdf). Commissioned by DWP minister, Chris Grayling, Löfstedt has been asked to advise on what regulations made under the *Health and Safety at Work Act etc 1974* (HSW Act) might be merged or scrapped. What is not clear however is how this exercise links with two other initiatives that have been running at the same time.

The first has been a special focus on health and safety as part of the Government's web-based invitation to the wider public to suggest ways of cutting 'red tape' burdens

– 'The Red Tape Challenge' (RTC) (www.redtapechallenge.cabinetoffice.gov.uk/themehome/health-and-safety-spotlight/). The second – and in some ways more important initiative – has been a wider project by the Health and Safety Executive (HSE) which has been asked by the minister to look at how it brigades its overall range of guidance, including its guidance on health and safety management. The review, which encompasses over 1,300 documents, is intended to meet a number of objectives but particularly to ensure that this massive inventory of authoritative material is clear and fit-for-purpose.

With these initiatives all running at the same time, there is a real danger of confusion here. For those of us whose day jobs involve tracking government policy it has been hard enough to see how all these 'simplification' threads are supposed to fit together. For the uninitiated who are being invited to participate online, it is likely to be

even more confusing. Indeed, there is some evidence that non-specialists are not taking part in the RTC because they feel unable to match the technical knowledge of OS&H professionals who are putting up posts (often refuting ill-founded criticisms), and they are reluctant to express an opinion for fear of being contradicted. If the aim was to bring ordinary citizens into the debate, then arguably the whole process should have been made much clearer and easier to engage with.

What concerns RoSPA most however about the regulatory review is that it is being conducted at a time when the previous consensus of "good health and safety management is good for business" seems to be breaking down in favour of a view that health and safety is a red tape burden hindering profitability and competitiveness.

RoSPA has urged Professor Löfstedt to take a broad and evidence-based approach to his review of regulation and we have cautioned



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against reducing the number of regulations by merger for purely cosmetic reasons or political expediency – something which, in any case, would be easily seen through. We have also advised against making ad hoc – and possibly haphazard – changes to carefully crafted legislation without full consideration of the consequences.

The real challenge we believe is how to help businesses – particularly smaller ones – meet their health and safety duties easily, cheaply and with a minimum of bureaucracy.

Logically, both the RTC and work to restructure HSE's massive guidance lexicon might have been better informed if this had followed the outcome of the Löfstedt Review. And if one were to be even more logical, arguably the Löfstedt team itself should have started by looking at guidance rather than at regulations. As we have said to the professor and his colleagues, there may well be a case for better regulatory housekeeping – particularly to help lawyers, advisers and trainers (for whom neatness and legal clarity make their work easier) – but when it comes to small firms especially (few of whom read raw, undigested law), if there is any confusion about what needs to be done, then this is far more likely to arise from weaknesses in guidance (or lack of guidance altogether) rather than in the law itself.

We have urged the Löfstedt team to take time out to examine many of the ideas about the future of health and safety regulation that were set out in the Robens report of 1972. This included the idea that, in preference to detailed regulatory prescription, reliance in future should be placed on codes of practice and guidance in order to spell out what was needed to comply with the duties set out in new style goal-setting legislation of the HSW Act.

Robens

What Robens envisaged was the evolution of an inventory of authoritative guidance that was to be shared between HSE and other bodies such as technical organisations, trade associations, joint industry committees etc. It was accepted at that time that the newly created HSE could not be expected to produce detailed guidance on every hazard or risk management issue. The detail was too great and the volume of material that could have been produced virtually without limit. Furthermore, the detailed knowledge about hazard, risk and control lay not with inspectors but with those who created and worked with these issues at ground level. Development of industry guidance therefore was seen as more technically efficient and

also more likely to give rise to ownership by dutyholders.

Needless to say, while much sector and industry based guidance has been produced over the last three decades, the balance of authorship and ownership of key documents has swung ever more in HSE's favour. There has been a degree of collusion here. The desire by HSE itself to own key documents (which it uses as a source of advice – and in extremis in enforcement and prosecutions) and a belief by dutyholders and their advisers in the totemic power of the HSE logo have combined together. Quite simply, any publication which carries the HSE's imprimatur – even jointly with other bodies – is seen as carrying much more weight than one from a trade association or a professional body. There are notable exceptions of course but no one can deny that, generally speaking, documents that carrying the HSE brand – even quite simple introductory leaflets – are seen as trumping similar materials, however technically sound.

Guidance about key aspects of the law, including guidance in many core Approved Codes of Practice (ACoPs) obviously needs to be owned and managed by HSE as the lead regulator. On the other hand, there could be a very strong case for HSE to now agree to pass ownership of large parts of its guidance inventory back to other bodies. This might include, for example, many of the key documents produced by joint and tripartite bodies such as industry advisory committees. Often these documents are produced following extensive informal consultation and represent powerful statements of best practice that are supported not just by HSE inspectors but by employers, unions, professionals etc. Ownership is shared and thus it ought to be questioned whether, in pursuit of the current government's desire to pare back all guidance to a minimal, reasonably practicable level, HSE actually has the right to assert total ownership and revise these documents as it sees fit.

This is not about asserting the right of industry bodies to 'gold plate' but understanding the powerful effect which many of these documents (which are in effect agreements about standards) actually have in helping to save lives, reduce injuries and safeguard health. Recent reductions in fatal and serious injuries in sectors such as construction and waste – to name but two – owe much to the ability of key players in these higher risk settings to raise the bar just a little bit higher than HSE might otherwise have been prepared to do.

One of the underlying reasons for requiring

HSE to revise all its guidance materials is undoubtedly the Government's desire to respond to the perception that H&S documents (especially those bearing an HSE logo) represent 'regulation by the back door'. Guidance however – even when it is delivered in the form of an ACoP – is only guidance, yet few if any dutyholders or their professional advisers feel comfortable in adopting 'as-good-as' standards as an alternative.

Principles

If the current review of guidance is not just to be a watering down exercise but a real effort to bring order and logic to a library of HSE publications that has continued to grow 'like Topsy', then it does need to establish a set of principles for the future which can be used not just by HSE but by all purveyors of authoritative advice about health and safety. This should include advice on: establishing effective flow and conceptual consistency between 'capstone doctrines' like HSG65 and the subsidiary of surrounding guidance; differentiation between advice and supporting arguments; clarity of language; consultation and consensus; ease of navigation and so on. This might be addressed by developing a set of consensus principles for the development and maintenance of health and safety guidance that could be used by all parties, not just HSE. An interesting parallel here might be the emerging NHS/DH information standard (<http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/Healthcare/PatientChoice/BetterInformationChoicesHealth/Informationstandard/index.htm>) which seeks to quality assure information being given out by health related bodies.

All that said, there can be no doubt that HSE's guidance materials are an enormous asset that is widely respected, including internationally. Recent efforts to make them more accessible, such as the Wiki style navigation being adopted for various families of guidance, is very much to be welcomed. Vigilance will be needed however to ensure that any changes that flow from the review actually enhance the impact of this important body of published knowledge and do not result in any weakening of what is one of the most important pillars of our health and safety system.

**Readers' views are welcome.
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Ragnar reregulates!

► **RoSPA's occupational safety adviser Roger Bibbings** shares his initial thoughts on the findings of the Löfstedt review of health and safety legislation.

After eight months' intensive work, the independent review of health and safety legislation by Professor Ragnar E. Löfstedt was published at the end of November together with the Government's response (See www.dwp.gov.uk/docs/lofstedt-report.pdf & www.dwp.gov.uk/docs/lofstedt-report-response.pdf).

Asked in March 2011 by DWP minister Chris Grayling to "...look into the scope for reducing the burden of health and safety regulation on business whilst maintaining the progress that has been made in health and safety outcomes", the professor, together with an independent advisory panel, has studied over 200 submissions, visited work-sites and has spoken with numerous representatives and experts.

Despite all this activity few clues leaked out as to what conclusions Löfstedt might reach. With rhetoric about 'burdens' and 'red tape' being ramped up on all sides and accusations abounding that health and safety was inhibiting economic recovery, there was real concern in the H&S community that the review would be a pretext for cutting swathes through the carefully crafted architecture of

H&S law which has been evolved in this country over generations. There was a great sense of relief therefore when it became clear that, far from advocating wholesale deregulation, Professor Löfstedt was confirming that the UK's legal architecture for health and safety – based as it is on goal-setting duties qualified by reasonable practicability and informed by risk assessment – was still broadly fit-for-purpose.

He has, however, made a number of detailed recommendations for regulatory change and consolidation. These include merging several sets of regulations, abolishing others and exempting the "low risk" self-employed from H&S law. Other significant changes include shifting control of local authority H&S enforcement to the Health and Safety Executive (HSE) and curbing the need for excessive record keeping by employers to defend civil claims.

There are many other detailed recommendations for review and research, including the case for amalgamating core H&S regulations into a single statute. He has also thrown out a challenge to the EU to be much more risk and evidence based in its approach to H&S law making. And very significantly he has called on the House of Lords Science and Technology

Select Committee and the government chief scientist to lead the way forward in engaging society in a discussion about risk.

On reflection, had we been seeing things in perspective, it would have been clear that there were no real grounds for believing that the outcome of the review would have been other than that which has now emerged.

Firstly, the 'all party' (non-party political) approach to health and safety is still firmly shared between industry and the trade unions; secondly, those who have been arguing that H&S law is a 'burden' have not really been able to articulate their case in sufficient detail; and thirdly, as a first class academic (and in contrast to Lord Young whose approach to reviewing H&S was much more impressionistic) Löfstedt has insisted on a disciplined and evidence based approach.

A further clue to the likely outcome should have been seen in the very similar conclusions reached in over half a dozen other major reviews of H&S regulation commissioned by governments since the HSW Act was introduced in 1974. Of all social legislation, quite why H&S law should have had to prove its continuing relevance so many times is hard to fathom. What is heartening though is



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that, even on those occasions when those commissioned to review it were initially sceptical about (if not hostile to) the case for comprehensive H&S law, the result has always been the same, namely a positive endorsement of our very practical (and British) approach to managing risk in a balanced and proportionate way.

Of course, times change, ministers change, as does the world of work. The fact that all regulatory regimes have to be prepared to account for themselves in a fast moving social and political environment keeps us all on our toes. What the Löfstedt team have had to confirm however is that, notwithstanding the case for what one might term better regulatory housekeeping, not only have we got the law in this area about right but we have a great deal to be proud of.

Costs

In RoSPA we are particularly pleased that Löfstedt seems to have taken on board many of the key points which we highlighted in our submission of evidence (www.rospa.com/occupational-safety-policy/lofstedt.aspx), including the importance of retaining the key principle of 'so far as is reasonably practicable' (see my *Parting Shot* in September OS&H) and simplification of the Woolf records issue (a massive paper chase in many businesses). We are also pleased he has recognised the need for a strategic approach to the enhancement of risk literacy. And we very much welcome his charting of not just industry's estimates of the administrative costs of health and safety management but the very much bigger costs of health and safety failure to businesses – and indeed to UK society as a whole – which he says are "...estimated to be up to a staggering £20 billion a year". He concludes, "the potential benefits of regulation are therefore significant".

On the other hand, because his terms of reference were focused on regulation, Professor Löfstedt did not have the opportunity to point the way ahead in identifying what more is needed to help UK plc to deliver better and more cost-effective health and safety performance.

He has pointed quite correctly to the very significant influence which third party 'semi-regulators' such as insurers, clients and funders can have on dutyholders, and I think he accepts that often this is helpful. However, he says, on occasions, it can also increase bureaucracy unnecessarily. In my question to both him and the minister at the launch of the review's findings I asked whether more work was needed to map all these influencers (who together make up most of the 'H&S system')

and to provide more help to those which have a positive effect (in helping small firms particularly) while at the same time bearing down more heavily on those who are unhelpful. Both the minister and the professor agreed, so this is something which will need to be followed up.

I also think that Löfstedt accepts the point which we made in our submission that regulatory consolidation and tidying by itself will not help small firms directly. With a few possible exceptions SMEs do not read raw, undigested law but depend instead on good guidance. In this respect, continuing HSE efforts to produce even better 'essentials' type guidance material are very welcome. ('Boiling down' not 'dumbing down' as HSE chief executive Geoffrey Podger said at a recent RoSPA event.)

Tidying the law by consolidating requirements may well help lawyers and perhaps trainers who have to explain it to delegates on courses. In practice though it will not actually reduce the extent of what needs to be done at the workplace to ensure that systems of work are safe and risks to health are properly controlled. In this sense I was concerned when Chris Grayling went out of his way to say that the changes would reduce the number of separate regulations by 35%. To the uninformed listener this might sound like cutting red tape (and in this sense it might well be shrewd politics) but in reality what is being undertaken is actually not deregulation but reregulation.

Self-employed

As mentioned earlier, one of the apparently big changes being proposed is a move to exempt altogether from H&S law the genuinely self-employed who are working alone in low hazard environments. This seems sensible. On the other hand, not only RoSPA and IOSH but the TUC and many others have sounded a note of caution. Exemption may be fine for IT workers based at home but it could be difficult where the self-employed person is working in a very high risk setting, even if they are on their own.

Löfstedt seems to accept that the proposed approach cannot extend to the nominally self-employed who are in practice working as employees. And it cannot include the self-employed whose actions can affect the health and safety of others (including the public). Löfstedt's logic is that removing about one million very low risk workers from the scope of H&S law will "...help reduce the perception that health and safety law is inappropriately applied". But if it is not handled properly the proposal could be

misunderstood and give the green light to cowboy elements in high risk settings. At best, the proposal will still leave the conscientious self-employed who are working at the margins of significant risk having to make some sort of risk assessment (which they are supposed to do now anyway) about whether they are inside or outside the terms of exemption. HSE will need to craft some good guidance here.

Discussion

Some commentators have also questioned whether all the legal and technical regulatory consolidation work – as well as the accompanying public consultation that will have to be carried out – will actually achieve very much in practice in terms of saving lives, reducing injuries and safeguarding health.

The revision work will obviously soak up a lot of HSE staff resource at a time when they are under pressure due to budgetary cuts, but it may not be such a distraction from the wider strategic challenges as some are alleging. There will be plenty of opportunities for people to feed in their views as well as briefings and discussions on the legal changes which are coming and inevitably these events will provide a platform for getting people to think about the bigger issues too.

What I find most positive about Löfstedt's review is that he has confirmed the fundamental importance of sticking to a proportionate, risk-based approach to health and safety assurance.

Essentially what he is saying is that optimising safety has to be about thinking and exercising good judgement rather than blind and inflexible obedience to prescriptive rules. Larger businesses which invest in training and in competent advice can not only cope well with this approach but they value the flexibility it provides. Many SMEs, however, end up accepting 'over-the-top' advice uncritically. This surely points to the need for such firms to get effective diagnosis and signposting so they can access the information, training and advice they need to manage their H&S problems effectively. Reductions in HSE resources, including the closure of the HSE Infoline, plus other cuts such as the winding up of the health and safety team at the Skills Funding Agency mean that expertise in this area will be at a premium. Other players in the system, including the third sector, are going to have to step up to the mark and show the way forward.

Readers' views are welcome.
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Guidance not consolidation

► **Rather than adopting a very minimalist approach to ACoPs, HSE should be selling them hard as the UK's way of both preserving and adapting our unique approach to regulation, says RoSPA's occupational safety adviser *Roger Bibbings*.**

As part of his 2011 review of health and safety legislation, Professor Ragnar Löfstedt recommended that HSE should commission research "...to help decide if the core set of health and safety regulations could be consolidated in such a way that would provide clarity and savings for businesses...".

In part this recommendation was a response to comments Löfstedt had received from sections of the business community (and which were also voiced in the Government's online Red Tape Challenge) that there seemed to be just too many health and safety regulations and that having fewer would make things easier for business.

HSE commissioned the research and in December 2012 Richard Matthews QC – who is well versed in health and safety issues – published his report, *Consolidation: The practicability and effects of the options for consolidating health and safety regulations* (see www.hse.gov.uk/legislation/assets/docs/consolidation-report-2012.pdf). It is a very comprehensive piece of work

examining the various options for consolidation that were put forward by Löfstedt.

Readers should be warned that, because it is legally thorough, it is not a particularly easy read. It examines a range of possibilities, from wholesale amalgamation of all H&S statutes, to just those ones enforced by HSE, down to sector and hazard specific consolidations. Matthews in the end comes down against consolidation. Both he and HSE seem to be suggesting that, for a number of reasons, this is not really worth the candle.

While it might be possible to create neatness for lawyers, consolidation would create several monstrously long sets of regulations with numerous schedules attached. At present there might well be 208 statutory instruments but the Herculean task of reducing them to 150 would actually achieve little for most businesses, most of which only need to know about a relatively small number of key requirements relevant to their sector/activity. The work involved would be considerable with a significant opportunity cost attached for HSE. They would have to withdraw already scarce resources from other work without

any certainty about affecting outcomes.

In January, along with a range of industry and departmental representatives, I attended a workshop meeting to discuss the Matthews report, at which Richard Matthews stressed that, in whichever way it was approached, consolidation was likely to produce a series of regulatory Leviathans which would be hideously complex for even lawyers to understand, let alone busy SME managers.

This looks like a sensible conclusion but I was disappointed that neither he nor Löfstedt had taken time to stand back and look at the evolution of our regulatory regime and in particular to compare where we have arrived at to date with the radical vision of a simplified regulatory architecture of H&S law that was set out in 1972 in the Robens Report (Chapter 5). This novel approach, which set out the Robens Committee's thinking about the future of regulation, provided a framework to overhaul the piecemeal and prescriptive patchwork of law that had evolved up to that point. It proposed an overarching set of general duties of care in an enabling Act, elaborated in more detail in subsidiary goal-

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setting regulations dealing with specific hazards and activities, with these supported in turn by Approved Codes of Practice (ACoPs) and guidance. And it did indeed set the pattern for UK health and safety legislation very successfully until overtaken in the 1990s by the EU 'six pack' of regulations and numerous subsequent piecemeal EU directives.

Nevertheless, despite the dense thicket of regulations and guidance that now smothers the original Robens vision, it is arguably still highly valuable and relevant. Although the possibility of returning to Robens' original regulatory renewal plan is now virtually zero (because so much EU prescriptive regulatory water has since flowed under the bridge) we still need to hang on to its essence because it is a proven and uniquely British approach based on risk and 'reasonable practicability'.

Equally we should not forget our constructive influence in Europe, given that many of the more positive EU measures such as the H&S Framework Directive (*EC Directive 89/391*) were in fact very much inspired by the UK's and the HSE's approach.

The main point I tried to get across during the workshop discussion was that the model of the architecture of UK H&S law in the Löfstedt review (and also on page 13 of the Matthews report) is wrong (or at least not quite right). The *Health and Safety at Work etc Act 1974* with its general duties is the capstone text; the *Management of Health and Safety at Work Regulations* (MHSWR) forms a single supporting pillar underneath; and the inventory of activity and hazard based regulations (CoSHH, Noise, LOLER, PUWER, CDM etc, etc) are the base. ACoPs and guidance are not (as shown) a further foundation layer beneath these; they actually comprise a separate and highly practical parallel structure in their own right. My suggestion was that, following the HSE's review of ACoPs and guidance, they needed to commend to ministers the idea of re-launching this revised canon of guidance as the UK's way of explaining in everyday language exactly what our health and safety laws mean in practice.

EU review

Of course, EU law trumps national legislation but while some member states have simply copied out directives, we have worked hard in this country to try to make them fit our system. Obviously, because of our treaty obligations we have no choice but to transpose the requirements of EU directives into our law but perhaps we should avoid pursuing a separate consolidation exercise in the UK until it is perfectly clear what direction a proposed EU regulatory review exercise will be taking.

Given Löfstedt's view about embracing Europe it would be better to try to influence that exercise from within rather than without.

Clearly, if it is agreed as a result of the review that there is a case for simplifying and rationalising EU H&S law, then this needs to be accepted not just as a technical matter but as a high level political challenge which ministers need to take up in earnest with their opposite numbers at a European level. The challenge will be to see if the European Commission now recognises that it is unhelpful to go on regulating endlessly hazard by hazard, activity by activity. That is why it is so important to revisit and revalue the Robens vision to see if it can be used as a model to help guide the EU exercise. And surely that will depend on the UK's advocacy.

Löfstedt says he sees the EU review as a "great opportunity" to ensure that the 'so far as is reasonably practicable' (SFAIRP) principle remains at the centre of UK health and safety law and Matthews too agrees strongly with that. But equally the European Commission may well regard the EU review as a great opportunity to reopen their challenge to the UK's use of SFAIRP and to question the way in which we have adapted some EU law to fit the UK's legal approach. SFAIRP is certainly not at the centre of EU law. Most EU member states seem perfectly content with absolute duties but have ways of treating these flexibly in their courts.

Ours, however, is a much older common law and judge based approach (going back to master and servant duties set down by Alfred the Great). It is not based, as are most continental systems, on the Napoleonic Code. (Richard Matthews observed wryly in the meeting that if Napoleon had been tactically more adroit at Waterloo, we might not be having this argument now!)

On the other hand, I think it would be very unwise for HSE to respond to concerns, such as those expressed during the Red Tape Challenge, by simply saying consolidation would be too difficult. They need to explain obviously that Löfstedt's first recommendation is pie in the sky – you might just as well tear up the 1974 Act and start all over again the work of the last forty years. Reducing somewhat the sheer number of separate directive-led regulations might meet the political demand for fewer titles (it shouldn't be too difficult to merge hardware regulations like LOLER and PUWER) but as Matthews says, it is likely to result in a colossal bundle of underpinning technical guidance, as demonstrated, some would say, by the recent Irish consolidation exercise.

What is certain is that in both business and

politics it is bad practice (and dangerous too) to offer only problems and not solutions. HSE will need to demonstrate that it is indeed doing something to respond to the concerns that lie behind Löfstedt's consolidation recommendations. It would be disastrous if Richard Matthews' highly competent report was seen as HSE engaging a suitably qualified lawyer to lose a Löfstedt recommendation in the legal long grass.

ACoPs

My personal view is that, in the short term, while it may not be feasible to purge and reorder the existing regulatory inventory, this ought to be taken as an opportunity for revaluing a revitalised set of ACoPs and guidance as the most practical way to explain to managers etc how the various duties flow into and connect with one another. So rather than adopting a very minimalist approach to ACoPs HSE should actually be selling them hard as the UK's way of both preserving and adapting our unique approach to regulation. Instead of ditching it (as proposed by Löfstedt) HSE needs to advance again the case for a revitalised MHSW Regs ACoP as the capstone document in a rationalised HSE guidance hierarchy. This would create in effect a 'Highway Code' for good health and safety risk management that was scaleable to businesses of all kinds. In the spirit of Robens this simplified approach to authoritative guidance ought to be brought back centre stage and the actual regulatory texts with their EU based imperfections allowed to sit for the time being in the background.

There was wide agreement around the table at the workshop in January that SMEs particularly do not read law but they may study guidance and seek information from the web as well as advice from outside advisers. From this point of view a more logical and transparent guidance architecture would provide a much better way of showing busy managers and safety reps, particularly during H&S training, the general logic and flow of duties in H&S law. It would be far more easily understandable than monster regulations designed simply to reduce the number of titles. Encouragingly, everyone, including the small firms' organisations present, seemed agreed about the numbers point since, while superficially this might satisfy the ideologically driven de-regulators, it would do nothing to help business, in fact the very reverse.

**Readers' views are welcome.
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