

BERR

Department for Business
Enterprise & Regulatory Reform

**IMPROVING OUTCOMES FROM
HEALTH AND SAFETY: A CALL
FOR EVIDENCE**

NOVEMBER 2007

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BETTER
REGULATION
EXECUTIVE

Key information about this call for evidence

- Target audience:** Anyone with an interest in the health and safety system, either through professional involvement or experience of being regulated or affected by it.
- Duration:** From 27 November 2007 to 31 January 2008.
- Enquiries to:** Ben Davison, on +44 (0)207 215 0278 or ben.davison@berr.gsi.gov.uk.
- How to respond:** We are keen to gather all views on the subject of improving health and safety, and any supporting evidence. You should not feel constrained by the specific questions or feel obliged to offer responses to all of them. Concentrate on those in which you have most interest. It would be helpful if you could describe your views, suggestions and experiences when responding, rather than giving yes/no answers.

Although some hypotheses are presented here, our conclusions are not fixed. Feel free to challenge any suggestions with which you disagree and suggest alternative routes of enquiry.

By email: ben.davison@berr.gsi.gov.uk

In writing: Review of Health and Safety
Better Regulation Executive,
BERR, 1 Victoria Street, 3136,
London SW1H 0ET

Individual contributions will not be acknowledged unless specifically requested.

The legal position regarding the confidentiality of information provided is set out the back of this document.

- Your details:** Representative groups may wish to give a summary of the people and organisations they represent, and where relevant how they consulted in reaching their conclusions.

You may wish to include:

- contact details for follow-up (e.g. name, phone number, email address); and
- special requests regarding publishing and sharing your response.

Unless you state otherwise (and an automatic disclaimer generated by your IT system will not be taken as such), we will assume you are happy for us to publish your response and to share it with other Government officials.

- Additional ways to feed in your views:** Regional events will be arranged to discuss these issues. If you are interested in participating, please contact Ben Davison via the address or phone number above.

- Next Steps** The Government intends to publish the final report of the health and safety review using the information gathered in this call for evidence in Spring 2008.

Finally, thank you for taking the time to read this document and respond.

Contents

	Page no
Summary	5
Introduction	9
A. Health and safety protections are fundamental to civilised society	9
B. The UK situation in context	9
C. The health and safety system	10
Influences on employers	10
The roles of DWP, HSC, HSE and Local Authorities	11
D. Origins of the current system and issues around self-regulation	13
E. Challenges for the system – and questions for this review	13
Evidence and questions	17
General issues	18
Perceptions of health and safety	21
Drivers for better health and safety	23
Information and advice	26
Health and emerging risks	29
The impact of regulatory structures on outcomes	31
References	35

Summary

This review is considering how the health and safety regime affects small employers and employers whose overall risk is relatively low. Its objective is to find ways to make compliance easier for these organisations, improve health and safety outcomes for their employees, and maintain the confidence of the public in the health and safety system as a whole. This call for evidence paper sets out some key issues and questions and invites interested parties to submit their views and evidence by 31 January 2008.

Summary of questions asked in the call for evidence

- 1 Do you believe the British health and safety system achieves **the right balance** between protecting workers, and the demands it places on employers and others?

We are particularly interested in your views and evidence about:

- how the system works and could be improved for **small and low risk employers and workers** in such firms;
- what you think about attempts to **communicate all legal requirements on particular types of employer in one document** (e.g. via businesslink.gov.uk) if you are aware of these, and if you feel there would be any additional advantage from actually **consolidating regulations**, that is reducing the number of sets of legal rules;
- if it would be helpful if employers could demonstrate they meet obligations by completing a **checklist or being accredited to a standard**;
- whether you know of **initiatives** that offer lessons in how to improve outcomes and reduce burdens (that you have not mentioned elsewhere); and
- HSC and HSEs programme to reduce burdens on employers – this is described in their '**Simplification Plan**'.¹

- 2 Are legal **duties applying to the charitable and voluntary sectors sufficiently clear** to support charitable and voluntary activities whilst protecting the people affected by them?

- 3 Do you think **the way the health and safety system is perceived** by employers, workers and the wider public in Britain **has a significant impact**, e.g. on accident rates, or on the way employers act?

We are particularly interested in your views and evidence about:

- the **key drivers of perceptions** about the health and safety system;
- whether you feel that **other regulatory requirements affect perceptions** about health and safety, such as those on food safety, fire safety and building control;
- the **effects of perceptions** on other things, for example accident rates, ill-health rates, employer or employee behaviour;
- how health and safety systems in other countries are perceived, and if there are any differences from the UK experience; and
- how **perceptions** might be **improved**.

- 4 How can **good health and safety management best be encouraged and recognised**?

We are particularly interested in your views and evidence about:

- the **factors that are most effective in motivating employers** to improve health and safety in their workplaces;
- whether discounts on **insurance premiums** for good health and safety management could significantly change behaviour, and how small employers' standards could be verified in a reliable and cost-effective way; and
- whether **procurement processes, or customer-supplier relationships** represent a good way of ensuring employers manage health and safety adequately.

- 5 Do you believe **fear of compensation claims** has any influence on the way in which health and safety is managed? If so, how?

We are particularly interested in your views and evidence about:

- whether employers act because of fear of being sued, and if so what sort of actions they take; and
- whether employers have an accurate understanding of what they might have to pay.

- 6 What more, if anything, do you believe Government should do to ensure employers have **access to affordable, authoritative information and advice** on health and safety?

We are particularly interested in your views and evidence about:

- whether there are **specific issues** on which you feel there is insufficient clear written guidance or advice;
- **examples of good (and, if you have received it, bad) information** and its source;
- your views on the **'Example Risk Assessments'** published on the HSE website if you have read them. These are examples of short 'good enough' records of a health and safety risk assessment;
- whether particular advisors are more trusted and if authoritative **advice given by a regulator** is especially desirable;
- whether and how Government should ensure **tailored advice** about health and safety is accessible to employers with limited resources, and how this could best be provided for those with difficulties in using written information; and
- whether you feel there is sufficient information on health and safety available for people other than employers (for example **workers** including volunteers, **charitable/voluntary** sector organisations)?

- 7 How can regulators best ensure that employers **minimise ill-health that is caused or made worse by work**?

We are particularly interested in your views and evidence about:

- whether regulators should promote a risk assessment and control approach for **health risks with multiple causes**, and if so how;
- whether you have any concerns regarding any **new or emerging risks** to health and safety at work, and your proposed solution; and
- what regulators should do (if anything) to promote **occupational health advice including on rehabilitation, and general healthy living messages**?

- 8 (Question for specialists) Do you feel that regulators' targeting methods adequately reflect the risks of work in terms of ill-health, as well as injury?

9 What improvements could be made to help HSE and Local Authority inspectors **target rogue employers**?

We are particularly interested in your views on how regulators should target their efforts on employers who present the greatest risks. You may, for example, feel they should use information about business sector, occupation of employees, size of employer or attitudes or skills of managers.

10 (Question for specialists) Could **further flexibility** in whether HSE or a Local Authority regulates in a particular case improve outcomes?

By 'further flexibility', we mean flexibility in addition to the current arrangements allowing workplaces to be allocated to a different regulator than is usual for their sector (which are rarely used), and in addition to the pilot schemes on flexible warranting and in Peterborough.

We are particularly interested in your views on whether **the current split** of responsibilities between HSE and Local Authorities represents the **most effective use of resources**. And, if you feel change is needed, we would like to hear your views about:

- how **responsibilities should be allocated** instead;
- if health and safety activities could be **better joined-up** with other services (regulatory or other) delivered by Local Authorities, such as Building Control;
- the role of national and local regulators in **Local Strategic Partnerships** and delivery of **Local Area Agreement** outcomes; and
- whether special arrangements would be appropriate in **two-tier Local Authorities**.

We are holding several discussion events around the country in addition to seeking views through this document. Please telephone 020 7215 0278 for details.

Introduction

This section explains the reasons for carrying out this review and the process we intend to follow, and describes the many influences on health and safety and the role played by Government bodies.

A. Health and safety protections are fundamental to civilised society

1. Health and safety protections are absolutely paramount to the UK's position as a fair and decent society. They prevent injuries and illness to workers and other people affected by work activities, and where problems occur offer a way of putting things right.
2. Outcomes in the United Kingdom have improved significantly since 1974. Work fatalities are down 76% and serious injuries down 68%.²

B. The UK situation in context

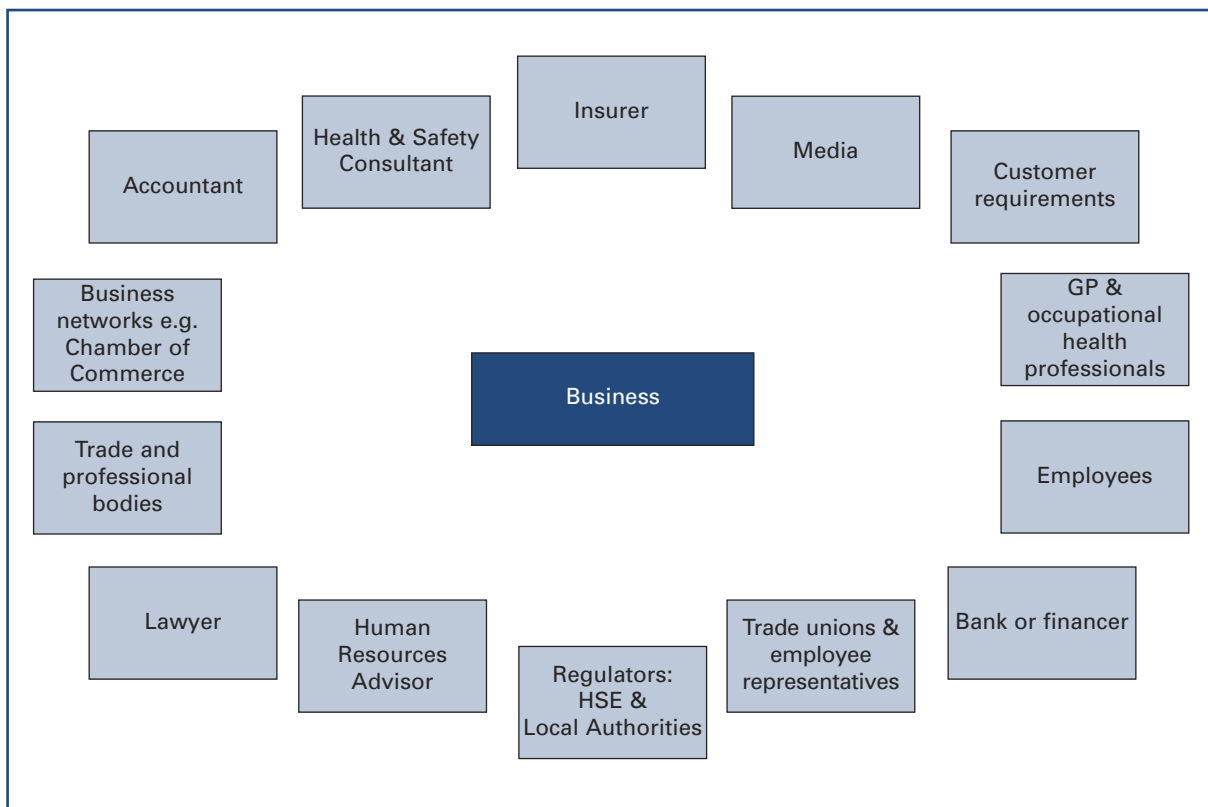
3. By international standards the British health and safety regime has been especially successful in achieving its primary aims. The UK consistently has among the lowest rates of work-related deaths and injuries in the developed world, including the lowest rate of deaths in Europe when industrial structure is taken into account.³
4. But life inevitably involves some risk. Ill-health and injury still occur with damaging and sometimes devastating consequences. 241 workers and 90 members of the public were killed by accidents arising from work in 2006/07 (more if railway suicides and accidents are counted).⁴ HSE estimate work-related injury and ill-health led to around 30 million working days lost in 2005/06.⁵ The cost to society of work-related injury and ill health may be as much as between £24 billion and £38 billion annually.⁶
5. Employers recognise the human and financial costs of injury and ill health at work. Recent research concluded that *'health and safety in the workplace was a key issue for the majority of businesses...They all felt that they had a duty, as employers, to protect their employees'* (p65).⁷
6. Yet businesses, especially small firms in low risk sectors, have become increasingly concerned by the burden of health and safety regulation. While they understand that protecting the health and safety of their workforce is crucial, they are concerned that some of the paperwork involved is overly complex. The administrative cost across UK industry of complying with health and safety law is estimated at over £2 billion per year.⁸
7. Many initiatives have already been taken by the Health and Safety Commission and Health and Safety Executive to simplify compliance and reduce unnecessary administrative burdens on business, and they have committed to reduce the administrative cost of complying with health and safety law by 25%. This review is considering what more can be done to deliver strong health and safety outcomes in a modern working environment while minimising the burden on business and maintaining the confidence of society.⁹

C. The health and safety system

Influences on employers

8. There are many influences on how employers manage, and how they feel about, health and safety. These extend beyond Government activity. Some of the most important are illustrated in figure 1. The views of employees and their representatives are important. Trade and professional bodies, business networking groups, and the views of other businesses can play a key role too. Specialist and general media serve as both sources of information and significant shapers of opinion. Health and safety consultants and experts, lawyers and occupational health professionals all assist employers to follow the rules. Others, like insurers, customers who make good health and safety management a condition of contracts, or colleges who do checks before sending students on work placements, can impose health and safety standards of their own.

Figure 1: Influences on workplace health and safety



9. As figure 2 shows non-regulators may be of considerable importance in shaping how employers understand health and safety.

Risk assessment – a definition

Risk assessment means a process of systematically looking for risks, evaluating whether enough precautions are being taken and deciding what actions are needed, if any. It is required by health and safety law, and employers with five or more employees must record the significant findings.

Figure 2: Estimates of annual contacts with employers by selected influencers

Influencer	Estimated contacts per year
HSE information	Over 1.5 million visits to HSE website ¹⁰ 525,000 items bought by 87,000 customers from HSE books ¹¹ 250,000 calls or written enquiries to HSE Infoline ¹²
Education providers	Over 1 million checks prior to placing students ¹³
HSE advice	4,000+ calls and 1,000+ visits from Workplace Health Connect advisors ¹⁴
Local Authority inspectors	222,000 visits to premises ¹⁵
HSE inspectors	53,000 inspections ¹⁶
Media	Around 48,000 stories mentioning 'health and safety' ¹⁷
Insurers	At least 40,000 visits by risk advisors ¹⁸ – may be far higher
Procurers, through pre-qualification schemes	At least 3,000 ¹⁹ – may be far higher

The roles of DWP, HSC, HSE and Local Authorities

10. In Government, the Department of Work and Pensions (DWP) leads on health and safety policy. It sponsors the Health and Safety Commission (HSC) and Health and Safety Executive (HSE), which work closely together. HSC's primary function is to ensure everyone in Great Britain is protected from risks to health and safety arising out of work activities, including by proposing new law and standards to Ministers. HSE is a delivery organisation, directed by HSC.

11. The regulators responsible for enforcing health and safety law are the HSE and Local Authorities. The Health and Safety (Enforcing Authority) Regulations 1998 allocate enforcement duties between Local Authorities and HSE depending on the main activity of a workplace. The HSE's responsibilities include agriculture, mining and utilities, manufacturing and construction. Local Authorities' responsibilities lie mainly in the "services sector" e.g. distribution, retail, offices, leisure and catering.²⁰ All regulators carry out inspections, some as part of a planned programme and others in response to accidents or complaints, and these may lead to advice or formal enforcement action (legal notices or prosecutions, used in defined circumstances). All regulators also provide further advice and information. For HSE, this includes through many publications, an extensive website, a phone/email information service called Infoline, visiting 'awareness' officers, campaigns and events. Local authorities differ from each other in the ways they provide advice and information, but many offer advice over the phone, provide publications, run training or awareness events and campaigns. They may work with other local services, whether within or outside their council, to proactively deliver advice for example to newly set-up businesses. Through the HSE/Local Authority Partnership (described on page 33), the organisations work together, for example on campaigns and by targeting inspections on priority topics.

'Low risk' and small employers

We are not using a precise definition of 'low risk'. Our focus is on employers who feel their workplaces are, on the whole, at relatively low risk of accidents and occupational diseases arising directly from work (e.g. those caused by hazardous substances, loud noise or strong vibration).

This is likely to include organisations in the industrial sectors of:

- wholesale and retail trade;
- hotels and restaurants;
- communications;
- banking, finance and business services;
- public administration and education; and
- leisure.

Local authorities are responsible for enforcement in all of these sectors except 'public administration and education'.

We recognise that in some of these sectors there are particular risks of other health problems, such as stress, musculo-skeletal disorders including back pain and those related to the threat of violence.

Opinions are sought on how the system could be improved to benefit small and medium sized enterprises ('SMEs'), employing less than 250 people. We are particularly interested in changes to assist organisations with 0-9 employees ('micro-businesses') or with 0-49 employees ('small businesses').

SMEs represent 99% of enterprises, 59% of private sector employment (and 48% of employment overall, including public and third sectors), and over half of business turnover.²¹

D. Origins of the current system and issues around self-regulation

12. The UK has a tradition of health and safety regulation going back over 150 years. The current system is based on the principle that businesses should self-regulate, consulting their employees and seeking competent advice as needed. It is rooted in the 1974 Health and Safety at Work Act, which states “it shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees”²² but does not set out in detail what actions this requires. Several sets of regulations complement the Act and most also set outcome-focused duties rather than prescriptive rules. This contrasts with the pre-1974 regime and some other countries’ approaches. A self-regulation approach has been adopted in Europe in the EU Framework Directive on health and safety.
13. Key advantages of specifying outcomes are that the regulations are less likely to become outdated as technologies change, and those employers who have leading edge practices are not hampered by detailed specifications. This also encourages employers to take ownership of the issue.
14. There is evidence, though, that regulation and especially self-regulation regimes are particularly challenging for small employers.²³ Small firms often have limited resources both in terms of time and money. They may not be aware of their responsibilities or give priority to finding out about them. They often prefer specific advice that requires no interpretation²⁴ and may struggle to translate general duties into specific actions for their organisation. This has led some business representative bodies to call for greater clarity and simplification.²⁵ Some small firms may lack resources to obtain external advice, or not know who to ask. And some are wary of seeking advice from private consultants who they feel may not give accurate advice and may be primarily interested in their own profits.²⁶ Research has also shown that the costs of implementing certain health and safety regulations are disproportionately high for small firms when considered on a per employee basis.²⁷ In addition, some small business owners may not find it natural to make written records of their assessments of health and safety risks, especially if they have limited office systems.

E. Challenges for the system – and questions for this review

15. The evidence that small employers find self-regulation difficult and that many are dissatisfied with health and safety regulation raises the key question for this review: are there new or better ways to help employers meet their health and safety responsibilities more easily that will also improve protection for their employees?
16. To help answer this question we have already started to explore practical experience from abroad (Australia, the USA, Germany, the Netherlands and Spain), as well as recent HSE-led local projects, some Local Authority projects, and academic and other research.

17. Over the next few months we want to build a far stronger evidence base, drawing on the experiences of businesses, public sector and charitable/voluntary sector organisations, their workers and volunteers, and the professionals and others affected by the health and safety system. This call for evidence highlights key questions that currently interest us. But we are, of course, interested in hearing any views you want to share.
18. Our questions are grouped around the following six themes:
 - **general issues;**
 - **perceptions of health and safety;**
 - **drivers for better health and safety;**
 - **information and advice;**
 - **health and emerging risks; and**
 - **the impact of regulatory structures.**
19. This review is exploring how the health and safety regime as a whole affects small and low risk employers. We are interested in the broad range of influences on how these employers perceive and respond to health and safety requirements. It is not, therefore, narrowly focused only on the activities of the HSE and Local Authorities.
20. This review supplements, but is distinct from, the work carried out as part of the Hampton Implementation Review of the Health and Safety Executive. The Hampton Implementation Review's remit differed from this review, specifically considering the HSE's performance against a set of criteria based on the principles set out in the Hampton report, including whether the HSE takes a proportionate approach to regulatory enforcement based on risk. The HSE Hampton Implementation Review report will be published early in 2008, along with Hampton Implementation Reviews of the Food Standards Agency, Financial Services Authority, Office of Fair Trading and the Environment Agency.

Our terms of reference

Delivering Health and Safety outcomes in low risk workplaces

To deliver strong regulatory outcomes in a modern working environment while minimising the burden on business and maintaining the confidence of society, the review should:

- explore from the perspective of low risk businesses (especially SMEs) how the health and safety regulatory regime cumulatively impacts on them; what costs and burdens it places on them, including international comparisons with regimes in other jurisdictions; what behaviour changes it has driven; what benefits they and their employees perceive; and what particular difficulties they face in complying. This should in particular draw out any practical relationship with linked requirements (for example, building regulations, environmental, fire and food safety);
- investigate how the health and safety regulatory regime (including both the regulators and other drivers such as insurance) deals with new and emerging risks, especially health risks;
- assess the relative importance of key drivers of the main costs/burdens (regulatory requirements, regulator behaviour, insurance demands, business advisers etc); and in the light of this
- make recommendations of priority areas for action to minimise burdens without compromising Health and Safety. These should take account of any recommendations on regulator behaviour made by the Hampton Implementation Review of HSE being undertaken in parallel by Better Regulation Executive/NAO.

The Review was announced by Government in Next Steps on Regulatory Reform²⁸ alongside a series of other measures to improve regulation and the way it is perceived.

Evidence and questions

21. This section is grouped into six themes:

- general issues;
- perceptions of health and safety;
- drivers for better health and safety;
- information and advice;
- health and emerging risks; and
- the impact of regulatory structures on outcomes.

For each theme, we present some of the reasons why we believe it might be possible to improve health and safety in small and low risk employers and/or maintain confidence in the system by making changes. We also outline the current situation and some of the initiatives already underway. This evidence is followed by questions that particularly interest us, although we are interested in all views. Details of how to respond are given in the inside front cover.

General issues

22. Evidence **suggests that some businesses struggle** to meet all of their legal obligations around health and safety, and that smaller employers may find this hardest.
23. A survey of firms for HSE found that 71% of small businesses had formal health and safety systems, compared to 84% of large firms.²⁹ Another study found that small workplaces were less likely to have completed risk assessments (a key legal requirement) – only 91% of small, one-site firms (5-49 employees) in comparison to 100% of large workplaces.³⁰ It was also estimated that good occupational health support (including health monitoring) was available in only 2% of micro (0-10 worker) firms but 44% of large firms.³¹
24. There is a low level of awareness of health and safety legislation in British small businesses (63% are unable to identify specific regulations relevant to them).³²
25. Statistics about outcomes are hard to interpret.³³ In the UK, self-employed people have a rate of fatal injury around twice that of employees.³⁴ The EU prioritises SMEs, saying *“small and medium-sized enterprises are particularly exposed, accounting for 82% of all occupational injuries and 90% of all fatal accidents”*³⁵, although the share of employment in SMEs is not stated.
26. The HSC and the HSE have launched a variety of recent initiatives to try to address this, targeting, in particular, smaller employers. Yet, in spite of this activity, and even though the flow of new health and safety regulation has diminished significantly in recent years, business representatives have been critical of the UK health and safety system. Negative views appear to be particularly strong among small businesses, for example:
- “When asked what they would chose if they could scrap a single piece of ‘red tape’ or a regulation, more small business owners cited health and safety than any other regulation including VAT and corporation tax.”*³⁶
Survey of 1,000 owners/senior executives of businesses with an annual turnover of up to £1 million.
- “In general all H&S requirements have become overly complicated and difficult to administer for a small company. The cost of complying is prohibitive to most small businesses. Quite often the regulations are one-size fits all which adds to the complexity for a small business.”*³⁷
Federation of Small Businesses, 2007. Based on a survey of 1,700 firms.
27. Some firms struggle with **‘risk assessment’** – this is a process of systematically looking for risks, evaluating them and deciding what to do.

*“There are mixed feelings around the risk assessment process; a good proportion of members actually finding it ‘straightforward’ (32%) but still many finding it ‘quite difficult’ (39%) or even ‘very difficult’ (21%) to deal with.”*³⁸ Federation of Small Businesses, as above.

*“We want to work with you...just tell us exactly what to do and we’ll get it sorted.”*³⁹ Micro-business owner to HSE inspector, July 2007.

28. Making it easier for employers to meet health and safety requirements has wider benefits. For example, researchers who surveyed firms’ performance concluded:

*“taken together, our performance results, across a range of measures, strongly suggest that spending on health & safety (or making a strategic commitment) does no harm to a business and most certainly is associated with tangible improvements in employee related aspects of the business, which in turn can feed through into measurably better bottom line outcomes.”*⁴⁰

29. There may be better ways to help employers meet the requirements. It is interesting to consider practical experience outside the UK national system. In the **USA**, businesses with less than 10 employees can access free, advice-only workplace visits and seminars.⁴¹ In **Australia**, several states have developed schemes to provide SMEs with good quality, free advice on occupational health issues.⁴²

1. Current initiatives – simplifying compliance with health and safety law

Many initiatives have already been taken by the Health and Safety Commission and Health and Safety Executive to simplify compliance and reduce unnecessary administrative burdens on business.

HSC/E’s 2007 simplification plan outlines what HSE has achieved since publication of its first plan in October 2006, progress on ongoing work and new initiatives added this year.

It focuses on activities that are expected to make a real difference to businesses, aiming to maintain or improve health and safety outcomes whilst reducing administrative costs. There has been wide consultation on the new plan with stakeholders, including business and small business representatives, trades unions and Local Authorities. It has received positive feedback throughout its development.

www.hse.gov.uk/simplification

2. Current initiatives – identifying and listing regulations

HSE’s legislation webpages list all current and planned workplace health and safety regulations, which can be sorted by sector and have links to most statutory instruments and relevant HSE webpages.

www.hse.gov.uk/legislation

Businesses can also create a personalised regulation checklist, which includes health and safety laws, or browse key legislation and licenses that apply to specific business categories through the businesslink.gov.uk website.

www.businesslink.gov.uk

Questions about general issues

- 1 Do you believe the British health and safety system achieves **the right balance** between protecting workers, and the demands it places on employers and others?

We are particularly interested in your views and evidence about:

- how the system works and could be improved for **small and low risk employers and workers** in such firms;
- what you think about attempts to **communicate all legal requirements on particular types of employer in one document** (e.g. via businesslink.gov.uk) if you are aware of these, and if you feel there would be any additional advantage from actually **consolidating regulations**, that is reducing the number of sets of legal rules;
- if it would be helpful if employers could demonstrate they meet obligations by completing a **checklist or being accredited to a standard**;
- whether you know of **initiatives** that offer lessons in how to improve outcomes and reduce burdens (that you have not mentioned elsewhere); and
- HSC and HSEs programme to reduce burdens on employers – this is described in their **‘Simplification Plan’**.⁴³

- 2 Are legal **duties applying to the charitable and voluntary sectors sufficiently clear** to support charitable and voluntary activities whilst protecting the people affected by them?

Perceptions of health and safety

30. There is overwhelming consensus that **protecting workers and the public is very important**. For example, in recent qualitative research, health and safety emerged as a priority area for action, both for businesses⁴⁴ and for citizens.⁴⁵

31. There is also considerable respect for HSE as an institution among the business community, the general public and in the media. The Federation of Small Businesses cited broadly positive views from those businesses inspected by the regime – 80% of those subject to inspection were satisfied with it.⁴⁶ Another stakeholder stated:

“they are aware of what they are doing you know and they are respected...”⁴⁷

32. Yet, as the section on ‘general issues’ shows, business representative groups have publicly criticised the health and safety system in recent years. The views of individual employers obviously vary, but there appears to be a pattern of **complaints about over-complexity**.⁴⁸

33. In addition, media coverage about the whole subject of ‘health and safety’ appears largely negative.

34. Some articles are notable for the strength of criticism. Figure 3 presents example headlines.

Figure 3: Examples of negative media stories



35. Some media coverage is misleading or factually inaccurate. HSE writes one response about each issue that is misleadingly presented, sometimes in several articles. It issued 14 responses in 2007 (up to 16 October), 31 in 2006, 23 in 2005 and 27 in 2004.⁵²

36. As well as correcting factual errors, other activity is already undertaken to influence perceptions. This includes the HSE ‘Myth of Month’ campaign which responds to enduring and diverse myths about health and safety in the public arena.

37. It is difficult to know how this apparent contradiction should be interpreted – between on the one hand, support for the aims of health and safety regulation and respect for its key overseer, and on the other, considerable criticism.
38. One possibility is that there is a disconnection between perceptions and reality. A sign that this might be the case is the popular belief that the level of health and safety regulation is increasing dramatically. In fact, the flow of new health and safety regulation has diminished significantly in recent years. In addition, some complaints made about health and safety actually relate to other areas of regulation like fire safety.⁵³ Other complaints are not about the actions of regulators at all but about other players in the system.
39. We are attempting to find out how far ‘pure’ health and safety regulations – defined as those rules that HSC oversees – shape business views and media stories.
40. Perceptions of the system may be important for Government to take into account, if it can be shown that they have an influence on behaviour and hence may influence levels of work-related injury or ill-health.

Questions about perceptions of health and safety

- 3 Do you think **the way the health and safety system is perceived** by employers, workers and the wider public in Britain **has a significant impact**, e.g. on accident rates, or on the way employers act?

We are particularly interested in your views and evidence about:

- the **key drivers of perceptions** about the health and safety system;
- whether you feel that **other regulatory requirements affect perceptions** about health and safety, such as those on food safety, fire safety and building control;
- the **effects of perceptions** on other things, for example accident rates, ill-health rates, employer or employee behaviour;
- how health and safety systems in other countries are perceived, and if there are any differences from the UK experience; and
- how **perceptions** might be **improved**.

Drivers for better health and safety

41. A key question for this review is ‘what factors are most effective in motivating employers to manage health and safety in their workplaces?’
42. Research for the HSE⁵⁴ suggests that the **key drivers of good health and safety management** are the moral case, reputational risk, fear of enforcement, business incentives and the cost of accidents. The **three key reasons for rule-breaking** are other business demands dominating company management time; the number and complexity of regulations and the cost and affordability of making improvements.

The study states:

“The financial incentive provided by insurance premiums has grown; the fear of enforcement is intertwined with fear of reputational damage as well as business disruption; there is also evidence that the moral case remains a driver, especially in SMEs where you may know or be related to your colleagues. In larger firms the moral case is expressed in terms of societal values....”

Insurance

43. All private employers are required to have Employers Liability Compulsory Insurance (ELCI) by law. Many organisations also take out Public and/or Product Liability Insurance (these are not compulsory by law).
44. In principle **insurance should encourage health and safety activity** through providing lower insurance premiums for employers with better systems and health and safety records. In practice, while large firms have benefited from premium reductions, small firms rarely receive these because insurers have not found a reliable way of determining an employer’s performance without visiting them. Insurers claim visits are prohibitively expensive.
45. When deciding on insurance premiums for low value policies, insurers generally make assessments using a ‘book rate system’. An SME with good health and safety systems may therefore not get recognition of this in the form of a reduced premium because it is grouped with the rest of its sector.
46. Research suggests that the size of any discount on premiums needs to be substantial in monetary terms if it is to drive firms to improve their health and safety systems.⁵⁵

Other factors

47. Organisations bidding for contracts through **public procurement** exercises are often required to provide evidence that their organisation actively promotes and manages health and safety.
48. We believe health and safety **requirements set by customers and suppliers** may be an important influence on how many small businesses manage health and safety but we have not found evidence to confirm this.

Compensation

49. While studies have concluded that the UK does not have a **compensation culture**, there is evidence that suggests some feel litigation is becoming more common.
50. Several public reports⁵⁶ have investigated the issue of compensation claims. In all cases, they, and the associated Government responses have argued strongly that there is no compensation culture, relative either to the historical level of claims in this country or the level of claims in other countries. Accident claims data, as shown in figure 4, reveal no clear pattern.
51. In spite of this, the Association of British Insurers has for example recently referred to “an increasingly litigious culture”.⁵⁷ This is attributed to increases in the number of personal injury claims companies and to recent research showing increases in the average amount paid out for claims of up to 10% per year.⁵⁸

Figure 4: Number of accident claims notified to DWP Compensation Recovery Unit⁵⁹

Year	Total (inc. medical, public and motor claims)	Accident claim on employer	Accidents – other claims	Disease claim on employer	Disease – other claims
2000/1	735,931	97,675	514,445	121,508	2,303
2001/2	688,315	97,004	517,122	73,550	639
2002/3	706,697	92,915	522,631	90,427	724
2003/4	770,243	79,286	477,900	211,924*	1,133
2004/5	755,875	77,765	501,517	175,737*	866

* 2004 was the final cut off date for claims to be made under the Coal Health Compensation Scheme

Questions about drivers for better health and safety

4 How can **good health and safety management best be encouraged and recognised?**

We are particularly interested in your views and evidence about:

- the **factors that are most effective in motivating employers** to improve health and safety in their workplaces;
- whether discounts on **insurance premiums** for good health and safety management could significantly change behaviour, and how small employers' standards could be verified in a reliable and cost-effective way; and
- whether **procurement processes, or customer-supplier relationships** represent a good way of ensuring employers manage health and safety adequately.

5 Do you believe **fear of compensation claims** has any influence on the way in which health and safety is managed? If so, how?

We are particularly interested in your views and evidence about:

- whether employers act because of fear of being sued, and if so what sort of actions they take; and
- whether employers have an accurate understanding of what they might have to pay.

Information and advice

52. Businesses can access a wide range of information, guidance and advice on health and safety issues. This includes written information from regulators, business associations and others; telephone support from sources like HSE Infoline; and tailored advice from inspectors, consultants or advisors such as those from schemes like Scotland's Safe and Healthy Working. In recent years, regulators have also increasingly delivered information via the internet, sometimes with interactive features or attractive design.
53. Much of this support is targeted at small businesses and / or specific business sectors. HSE, for example, has launched a variety of initiatives targeting smaller employers through schemes such as those highlighted in boxes three and four.
54. We are keen to develop a deeper understanding of which channels and type of support are most effective for different types of businesses and for different business sectors.
55. There are certain issues we know it is important to bear in mind.
56. Some employers avoid turning to a regulator for support for fear that it could lead to enforcement action.⁶⁰ Other businesses may want more direction than they feel a regulator will provide:

*"...sometimes it's easier to find companies who...give clear and precise information" Small business owner*⁶¹
57. Regardless of its source, SMEs respond best to sector-specific information that uses simple language.⁶²
58. And, for those that use it, personal advice appears popular. 85% of employers reported being "very satisfied" with the advice visits received through the Workplace Health Connect pilot, a project funding free visits by independent advisors to small firms. But it is expensive to provide and evidence, including from the USA and Australia, suggests that reaching significant numbers of businesses in this way is challenging.

3. Current initiatives – practical help for SMEs with risk assessments using industry specific examples

HSC/E recognises that many, particularly small, businesses find risk assessment challenging. It wants to encourage a sensible, proportionate approach that helps businesses focus on the risks that really matter in their workplaces – the ones that could cause real harm.

A key element of HSE's simplification plan is the publication and promotion of a range of example risk assessments to help businesses understand what a risk assessment record might look like. They cover different types of business and work activity, such as a hairdresser, motor vehicle repair shop or general office cleaning. Developed with industry, each example uses short bullet points, designed to show that a risk assessment should be about identifying practical actions to protect people, not a bureaucratic experience.

The first four examples were published in July 2006 and HSE expects to have published fifteen by the end of 2007.

See HSE's Risk Management website for HSE's sensible risk principles, guidance on 5 Steps to Risk Assessment and Example Risk Assessments.

www.hse.gov.uk/risk

4. Current initiatives – helping businesses understand what they need to do and highlighting key health and safety responsibilities

There is a range of health and safety information and guidance available for business managers. For example, HSE's website allows users to search by topic or by industry to find the information they need. Health and safety information is also provided through businesslink.gov.uk, the one stop shop for businesses wanting information from government on all aspects of setting up and running a business.

www.hse.gov.uk

www.businesslink.gov.uk

For smaller businesses, understanding what they must do is likely to be particularly important. To help organisations easily find their key, generic health and safety duties, HSE also provides an on-line list of the 10 key things businesses must do, such as writing a policy or reporting work-related incidents and accidents. Each bullet links to practical guidance and tools.

<http://www.hse.gov.uk/smallbusinesses/must.htm>

Questions about information and advice

- 6 What more, if anything, do you believe Government should do to ensure employers have **access to affordable, authoritative information and advice** on health and safety?

We are particularly interested in your views and evidence about:

- whether there are **specific issues** on which you feel there is insufficient clear written guidance or advice;
- **examples of good (and, if you have received it, bad) information** and its source;
- your views on the **'Example Risk Assessments'** published on the HSE website if you have read them. These are examples of short 'good enough' records of a health and safety risk assessment;
- whether particular advisors are more trusted and if authoritative **advice given by a regulator** is especially desirable;
- whether and how Government should ensure **tailored advice** about health and safety is accessible to employers with limited resources, and how this could best be provided for those with difficulties in using written information; and
- whether you feel there is sufficient information on health and safety available for people other than employers (for example **workers** including volunteers, **charitable/voluntary** sector organisations)?

Health and emerging risks

59. A significant proportion of all sickness absences are likely to be 'work-related', where the problem is either caused or made worse by work.
60. Each year there are **more cases of work-related illness than injury**. In terms of work-related health absences, 80%⁶⁴ of days lost are due to illness rather than injury, according to a survey of workers. Stress and musculo-skeletal disorders (MSDs, e.g. back pain) are by far the largest sources of new cases, but MSDs are the largest source of all on-going problems.
61. Some **question how well the proven 'safety approach' of assessing and controlling risks works for preventing ill-health which does not directly arise from work**.⁶⁵ This approach is recognised as a good way to deal with occupational diseases (e.g. those caused by hazardous substances, loud noise or strong vibration). However, it is less well accepted for preventing problems with multiple causes, particularly stress, anxiety and depression.
62. **Sickness absence is a serious concern**. Employers link it to productivity. Government has a further interest in the management of long-term absence, as the longer absence lasts the less likely the employee is to return to work. Preventing ill-health can contribute to reducing absence levels, although other factors are also important.
63. CBI/AXA estimate that absence amounted to 3.3% of working time in 2006, at a direct cost of £13.4bn to the UK economy.⁶⁶ The Office for National Statistics found workers were absent for 1.7% of scheduled working days due to sickness or injury.⁶⁷
64. Only 6% of absences are for 20 days or more but they account for 43% of working time lost.⁶⁸ One fifth of those absent at the sixth week of Statutory Sick Pay remain absent and eventually leave work.⁶⁹
65. Incapacity-related benefits account for over a third of spending on benefits for working-age people.⁷⁰ There are 2.7 million claimants.⁷¹

Questions about health and emerging risks

The Black Review on the health of the working-age population

Dame Carol Black, the National Director for Health and Work, is currently leading a wide-ranging Review on the health of the working age population. She is considering topics including: how the workplace can be used to promote health, how people who develop health problems can be assisted to remain in or return to work and how effective occupational health provision can be made available to all. Details are available at www.workingforhealth.gov.uk.

These questions focus on the role **regulators** can best play with regard to health, as the Black Review is considering other influences.

7 How can regulators best ensure that employers **minimise ill-health that is caused or made worse by work?**

We are particularly interested in your views and evidence about:

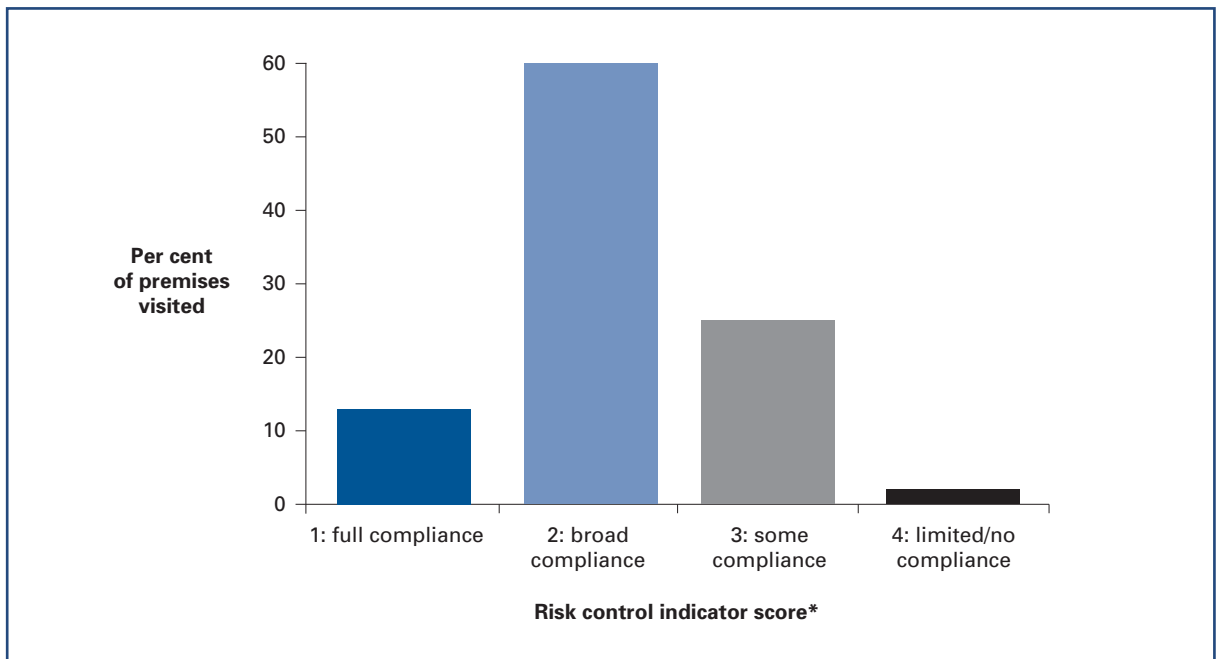
- whether regulators should promote a risk assessment and control approach for **health risks with multiple causes**, and if so how;
- whether you have any concerns regarding any **new or emerging risks** to health and safety at work, and your proposed solution; and
- what regulators should do (if anything) to promote **occupational health advice including on rehabilitation, and general healthy living messages?**

8 (Question for specialists) Do you feel that regulators' targeting methods adequately reflect the risks of work in terms of ill-health, as well as injury?

The impact of regulatory structures on outcomes

- 66. There may be scope to **target enforcement effort even more strongly** on employers most able to benefit, or most likely to endanger their workers or the public.

Figure 5: HSE inspectors' compliance ratings of premises visited, 2005/06



- 67. A considerable degree of targeting already takes place. HSE and Local Authority front-line staff spend a substantial proportion of their time on work relating to HSC priorities ('Fit3' programme which focuses on topics such as 'falls from a height', 'slips and trips'). Both HSE and local authorities also "rate" premises on a scoring system and use the results to prioritise inspections (slightly different approaches are used by each). Local authorities are estimated to have visited 59% of workplaces rated as 'high hazard', 35% of those rated as higher intermediate hazard (B1, B2) and 7% of the other premises⁷² in 2005/06.
- 68. Regulatory responsibilities are **split between HSE and Local Authorities** on the basis of the main activity undertaken at a workplace. One body undertakes all regulatory functions for each workplace. Some multi-site employers must deal with multiple regulators, HSE and one or more Local Authorities.

69. There were 1,140 full-time equivalent (FTE) staff in Local Authorities with health and safety powers in 2004/05⁷³, while HSE's Field Operations Directorate⁷⁴ had 503 FTE front-line inspectors⁷⁵ in the same year. Local Authorities (LAs) do around four times more inspection visits than HSE, as figure 2 shows. In 2005/06, there were similar levels of non-fatal injuries in LA-enforced sectors as in HSE-enforced sectors (LA: 810 per 100,000, HSE: 960 per 100,000) although there were far fewer fatal injuries in LA-enforced sectors (LA: 22 deaths, HSE: 190).⁷⁶

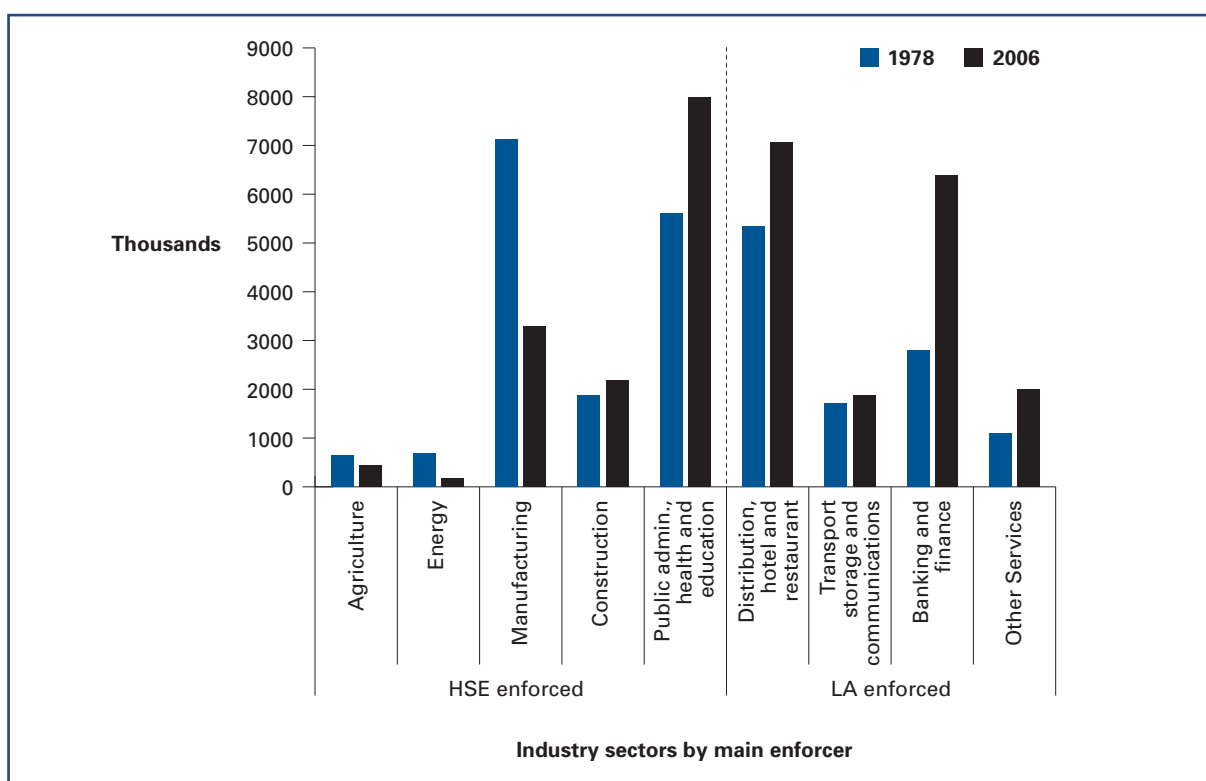
70. **The current split of responsibilities is the result of historical circumstances.** Before 1974, the principal legislation on workplace health and safety was in two parts: the Offices, Shops and Railway Premises Act 1963 enforced by Local Authorities, and the Factories Act 1961 enforced by government inspectorates that came to make up the Health and Safety Executive. This split was transferred with little alteration into the arrangements for enforcement of the 1974 Act.

"We have looked closely at the current division of enforcement responsibility between LAs and HSE...there is no lasting logic to the current arrangements. They are complex, confusing." HSC, 2004⁷⁷

"local authorities should...have a greater rather than a lesser share of work in this field." Robens, 1974⁷⁸

71. The structure of the UK economy has altered markedly since 1974. Substantial growth in the service sector means that far more jobs are now in industries regulated by Local Authorities, from 41% in 1978 to 55% in 2006.

Figure 6: Workforce jobs by industry sector



Source: OFFICE FOR NATIONAL STATISTICS, Workforce Jobs by Industry (LMS5). Accessed at www.statistics.gov.uk/STATBASE/tsdataset.asp?vlink=495

72. **HSE and Local Authorities have different strengths** which may affect their ability to help particular types of employers. Government plans to increase the power of Local Authorities as they have a key role in local partnerships.

“we now need to give local authorities and their partners more freedom and powers to meet the needs of their citizens and communities ... we will encourage greater service collaboration between councils and across all public bodies ... LAAs [Local Area Agreements] will then form the central delivery contract between central Government and local government and its partners.” Communities and Local Government⁷⁹

73. Initiatives to increase flexibility around enforcement allocations are being tested. HSE and Local Authorities are collaborating on the **“Flexible Warrants”** pilot, where inspectors are empowered to act in either the premises allocated to the other enforcing authority or in premises in a different Local Authority.
74. **HSE and Peterborough City Council** conducted a pilot project to test the potential for giving Local Authorities responsibility for higher risk premises. HSE transferred responsibility for dry-cleaning and motor vehicle repair businesses to the City Council. Independent evaluation concluded that this delivered a more effective use of both HSE and local authority resource and businesses reported preferring the ready accessibility of a local expert.⁸⁰

5. Current initiatives – the HSE/LA partnership

HSE gave a new impetus to its partnership with local authorities in delivering the HSC’s objectives in 2004. HSE resources are allocated to coordinating and developing closer joint working initiatives on the front line and in policy making. Local authorities have said they feel this initiative is a best practice model for the way central and local government can work together.

Questions about the impact of regulatory structures on outcomes

- 9 What improvements could be made to help HSE and Local Authority inspectors **target rogue employers**?

We are particularly interested in your views on how regulators should target their efforts on employers who present the greatest risks. You may, for example, feel they should use information about business sector, occupation of employees, size of employer or attitudes or skills of managers.

- 10 (Question for specialists) Could **further flexibility** in whether HSE or a Local Authority regulates in a particular case improve outcomes?

By 'further flexibility', we mean flexibility in addition to the current arrangements allowing workplaces to be allocated to a different regulator than is usual for their sector (which are rarely used), and in addition to the pilot schemes on flexible warranting and in Peterborough.

We are particularly interested in your views on whether **the current split** of responsibilities between HSE and Local Authorities represents the **most effective use of resources**. And, if you feel change is needed, we would like to hear your views about:

- how **responsibilities should be allocated** instead;
- if health and safety activities could be **better joined-up** with other services (regulatory or other) delivered by Local Authorities, such as Building Control;
- the role of national and local regulators in **Local Strategic Partnerships** and delivery of **Local Area Agreement** outcomes; and
- whether special arrangements would be appropriate in **two-tier Local Authorities**.

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