

A review supported by the  
Better Regulation Executive  
and National Audit Office

# Effective inspection and enforcement:

implementing the Hampton vision in the Health and Safety Executive

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## Foreword

Philip Hampton's report: *Reducing administrative burdens: effective inspection and enforcement*, published in 2005, is one of the cornerstones of the Government's better regulation agenda. The principles of effective inspection and enforcement set out in the report, putting risk assessment at the heart of regulatory activity, are designed to encourage a modern regulatory system which properly balances protection and prosperity. Since 2005, the Government has established an expectation that regulators will embed these principles in their approach to regulation.

In November 2006, the Chancellor of the Exchequer invited the National Audit Office and the Better Regulation Executive to develop a process of external review to assess how much progress regulators had made in implementing the principles of Hampton.

The first five regulators assessed under the process of 'Hampton Implementation Reviews' are amongst the most significant in this country. The Environment Agency, Financial Services Authority, Food Standards Agency, Health and Safety Executive and Office of Fair Trading regulate millions of businesses, covering some key areas of economic activity, whilst protecting the interests of us all. How they carry out their regulatory activities matters.

Full implementation of Philip Hampton's recommendations is a journey that could take several years. This review is a 'snapshot' in time of the progress of each regulator towards his vision.

Each of the reviews found examples of innovation and initiative by regulators who continue to move the regulatory agenda forward, as well as areas for further improvement.

The assessments were carried out by teams of reviewers with wide-ranging experience and expertise in the field of regulation. Talking to a wide range of stakeholders, to staff at all levels within the regulator's organisation, through visits to business sites and analysis of data and papers, the review teams, supported by staff from the Better Regulation Executive and the National Audit Office, have reached the findings and conclusions set out in this report. The final reports reflect the judgement of these review teams on the basis of the evidence put before them.

We would like to thank all of those who contributed to making these reviews a success. In particular, we are grateful to the regulators and their staff for providing support and making evidence available to the review teams, and to all the organisations that generously gave their time to offer evidence to the reviews.

Finally, we are extremely grateful to all our reviewers, and their employers, for their involvement, enthusiasm and commitment to this project. We hope that, like us, they found it valuable and rewarding.



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## Summary and conclusions

This review is one of a series of reviews of regulatory bodies undertaken at the invitation of HM Treasury and focusing on the assessment of regulatory performance against the Hampton principles and Macrory characteristics of effective inspection and enforcement. It was carried out by a team drawn from the Better Regulation Executive, the National Audit Office (NAO), the Office of Fair Trading and the Local Authority Coordinators of Regulatory Services, supported by staff from the Better Regulation Executive and NAO (see Appendix 1 for review team membership).

The Hampton report<sup>1</sup>, published in 2005, is one of the cornerstones of the Government's better regulation agenda and regulators have been working since to embed his principles in their approach to regulation. This review process is designed to identify where a regulator is on the road to full implementation and the issues each needs to address to become Hampton-compliant.

### What we found

The review team concluded that in most respects, the Health and Safety Executive regulates in accordance with the Hampton principles and Macrory characteristics. We rated it highly on being outcome-focused and generally consistent and proportionate in its approach. The HSE works well with business, including recognising the need to minimise burdens on business. It has made progress in improving its advice and guidance in key outcome areas and in reducing the number of forms it uses. Areas to develop further include better risk-targeting through improved use of

intelligence and communication, improving the quality of guidance more generally, and understanding the extent to which guidance is being received and understood by business.

- **HSE is a transparent and accountable regulator** – this reflects the views of stakeholder bodies we spoke to and our observations of the way HSE staff, including inspectors, interact with businesses and the public more widely.
- **HSE recognises the need to minimise the burden of regulation on business** but could do more to publicise the positive economic benefits of effective health and safety management and to discourage 'over compliance' with regulations.
- **HSE is focused on tackling the key causes of injury and ill health at work** although it has difficulty obtaining convincing evidence of its effectiveness.
- **Whilst many businesses perceive health and safety regulation to be a major burden, businesses we spoke to had a broadly positive view of HSE inspection** – particularly those businesses which have had some interaction with HSE inspectors.
- **Overall, HSE demonstrates high levels of consultation with external stakeholders, including business.** In particular, the HSE has a strong and effective network of advisory committees which are made up of representatives from business, trade unions and other relevant stakeholders.

<sup>1</sup> Reducing administrative burdens: effective inspection and enforcement, Philip Hampton, HM Treasury, March 2005

- **HSE has good processes for designing and implementing new regulation** including robust, well researched Impact Assessments, which set out and quantify the implications of new regulations and policies. It takes a sensible and pragmatic approach to the implementation of European directives.
- **HSE puts a lot of emphasis on providing advice and guidance and has produced some very good examples of clear and concise advice and guidance in key programme areas.** It is particularly effective when it works with business stakeholders to produce advice and guidance.
- **HSE data requests are simple and clear but its record keeping requirements can be both confusing and burdensome.** It is seeking to simplify its requirements and educate businesses better on how they may be fulfilled.
- **HSE's Enforcement Management Model (EMM) encourages a consistent approach to enforcement.** The EMM sets out a decision-making framework for health and safety inspectors to follow when considering formal enforcement action.
- **HSE has greatly increased its engagement with local authorities in recent years to deliver a more joined up and consistent approach.** This, however, is still a work in progress.

## Issues for follow-up

The following table sets out the key issues that the review team believes the HSE needs to address to meet the Hampton criteria more

fully, measured against some of the symptoms<sup>2</sup> we were looking for to provide evidence of Hampton compliance.

| Issue to be addressed  | Hampton symptom  |
|--|--|
| <p><b>Improving use of intelligence</b></p> <p>The review team found:</p> <ul style="list-style-type: none"> <li>• a lack of information and joined up intelligence about the risk posed by individual firms;</li> <li>• a lack of systems locally to make effective use of information gathered from visits; and</li> <li>• the topic-based approach to inspection was not properly integrated with other types of risk.</li> </ul> <p>The HSE should make better use of the intelligence gathered through its various sources (inspections, RIDDOR<sup>3</sup>, Infoline), in order to improve its targeting of business. Better use of information should feed into assessments about individual firms, increase the evidence base on the performance of different types of business and inform the strategy for dealing with large multi-site businesses.</p> <p>The HSE has set in place a number of measures to address this in its Fine Tuning review (see paragraph 8).</p> <p>In addition, more generally the HSE takes health and safety management systems into account as part of its risk-assessment process. However, this is applied on an individual site basis, often after an inspection has taken place. Therefore little or no account appears to be taken of a business' overall systems of managing health and safety risks (for example corporate health and safety systems for multi-site firms).</p> <p>The HSE's risk-assessment process should explore options such as taking a lighter touch approach with firms subscribing to industry health and safety standards. This may enable an increased focus of activity on those businesses that do not adopt such standards.</p> | <ul style="list-style-type: none"> <li>• Compliance records / good performance are taken into account, with good performers visited less frequently</li> <li>• There is good communication between inspectors and those organising the inspection timetable to inform risk assessment and inspection policy</li> </ul> |

<sup>2</sup> From Hampton Implementation Reviews: Guidance for Review Teams, National Audit Office and Better Regulation Executive, May 2007

<sup>3</sup> Reporting of Injuries, Diseases and Dangerous Occurrences regulations 1995 – employers, the self-employed and those in control of premises must report specified workplace incidents.

| Issue to be addressed   | Hampton symptom  |
|---|--|
| <p><b>Improving the focus on businesses less likely to comply with Health and Safety regulations</b></p> <p>There is currently little focus on those businesses ‘outside the system’.</p> <p>The HSE tends to regulate those businesses that are ‘visible’ to it. The principle means of identifying businesses are incident reports and registration with the HSE or with the relevant local authority. However, there is significant under-reporting under all these systems – for example, under-reporting of RIDDOR-reportable injuries is of the order of 50-70%. Those businesses that do comply see the HSE’s lack of oversight of many firms as giving an unfair competitive advantage to ‘rogue’ businesses.</p> <p>The HSE should explore the relative merits of focusing more of their resources on regulating those who fall outside of the system and, perhaps, are less likely to comply with health and safety law in general.</p> | <ul style="list-style-type: none"> <li>• Regular offenders are identified quickly</li> </ul>   |
| <p><b>Understanding and improving the ‘reach’ and influence of advice and guidance</b></p> <p>The HSE does not adequately monitor the effectiveness of its guidance, in terms of its influence. HSE should take steps to understand how its guidance influences health and safety outcomes, including monitoring ‘market penetration’ rates.</p>  | <ul style="list-style-type: none"> <li>• Advice and guidance are accessible and accessed – high levels of market penetration achieved</li> <li>• The majority of businesses benefit from advice and guidance</li> </ul>                                    |
| <p><b>Improving guidance to fully address the needs of the audience</b></p> <p>A significant amount of HSE guidance does not fully address the needs of its audience. The HSE should roll-out the approach it has taken in key outcome areas – i.e. consistently using meaningful illustrative examples in simple easy to understand formats.</p>   | <ul style="list-style-type: none"> <li>• Advice and guidance materials are written in plain English</li> <li>• Guidance includes illustrative examples</li> </ul>  |
| <p><b>Measuring perception and regulatory costs</b></p> <p>The HSE should publish performance against its key outcomes alongside measures of stakeholder perception of the efficiency and effectiveness of regulation, as well as measures of regulatory costs.</p>   | <ul style="list-style-type: none"> <li>• The regulator publishes performance on its achievement of regulatory outcomes, the cost to regulated entities, and business/ stakeholder perceptions of the efficiency and effectiveness of regulation</li> </ul> |

## Introduction

- 1** This review of the Health and Safety Executive (HSE) aims to provide a structured check on performance against the principles and characteristics set out in the Hampton<sup>4</sup> and Macrory<sup>5</sup> reports (see Appendix 2). The team reviewed the HSE against a performance framework<sup>6</sup> developed by the Better Regulation Executive and the NAO which provides a guide for reviewers on the kind of evidence to look for and questions to consider. However, the process is not the same in scope or depth as a full value for money audit of economy, efficiency and effectiveness and the review team's conclusions are based on a combination of evidence and judgement. A brief description of the scope of the review and methods employed is at Appendix 3.
- 2** Occupational health and safety law in Great Britain is enforced by the Health and Safety Executive (HSE) and by local authorities. In addition to its enforcement role, the HSE, on behalf of the Health and Safety Commission, also has a significant input into the development of new regulations. The HSE has an annual budget of some £235 million and, at 01 April 2007, employed around 3,500 staff including policy advisors, inspectors, technologists and scientific and medical advisors.
- 3** To set the work of the HSE in context, in 2006-07 there were around 240 fatalities at work, 28,000 major injuries reported, and 113,000 other injuries causing absences of over 3 days<sup>7</sup>. Additionally, 2.2 million people suffered from an illness they believed to be caused or made worse by their current or past work. In total around 36 million working days were lost, 30 million due to work-related ill health and 6 million due to workplace injury. Around half of all fatalities are caused by falls from a height or being struck by an object or vehicle. The self-employed are at greater risk of fatal injury than employees, whilst the greatest cause of working days lost is stress, depression or anxiety<sup>8</sup>. In the 10 years from 1992-93 to 2002-03, the death rate through injury at work fell 43 per cent from 1.4 fatalities per 100,000 workers to 0.8 but has remained fairly static since.<sup>9</sup>
- 4** The sections that follow set out the review team's findings against the different elements of the performance framework: the Hampton vision; design of regulations; advice and guidance; data requests; inspections; sanctions; focus on outcomes.

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<sup>4</sup> Reducing administrative burdens: effective inspection and enforcement, Philip Hampton, HM Treasury, March 2005

<sup>5</sup> Regulatory Justice: making sanctions effective, Final report, Professor Richard B Macrory, November 2006

<sup>6</sup> Hampton Implementation Reviews: Guidance for Review Teams, National Audit Office and Better Regulation Executive, May 2007

<sup>7</sup> Health and Safety statistics 2006/07, HSC and National Statistics, 11/07

<sup>8</sup> Causing an estimated 13.8 million working days lost in 2005/06. Musculoskeletal disorders caused an estimated 10.7 million working days lost.

<sup>9</sup> Statistics of Fatal Injuries 2006/07, HSC and National Statistics, 7/07, Figure 2

## The Hampton vision

**5** Both the Hampton and Macrory reports are concerned with effective regulation – achieving regulatory outcomes in a way that minimises the burdens imposed on business. Key to this is the notion that regulators should be risk-based and proportionate in their decision-making, transparent and accountable for their actions and should recognise their role in encouraging economic progress.

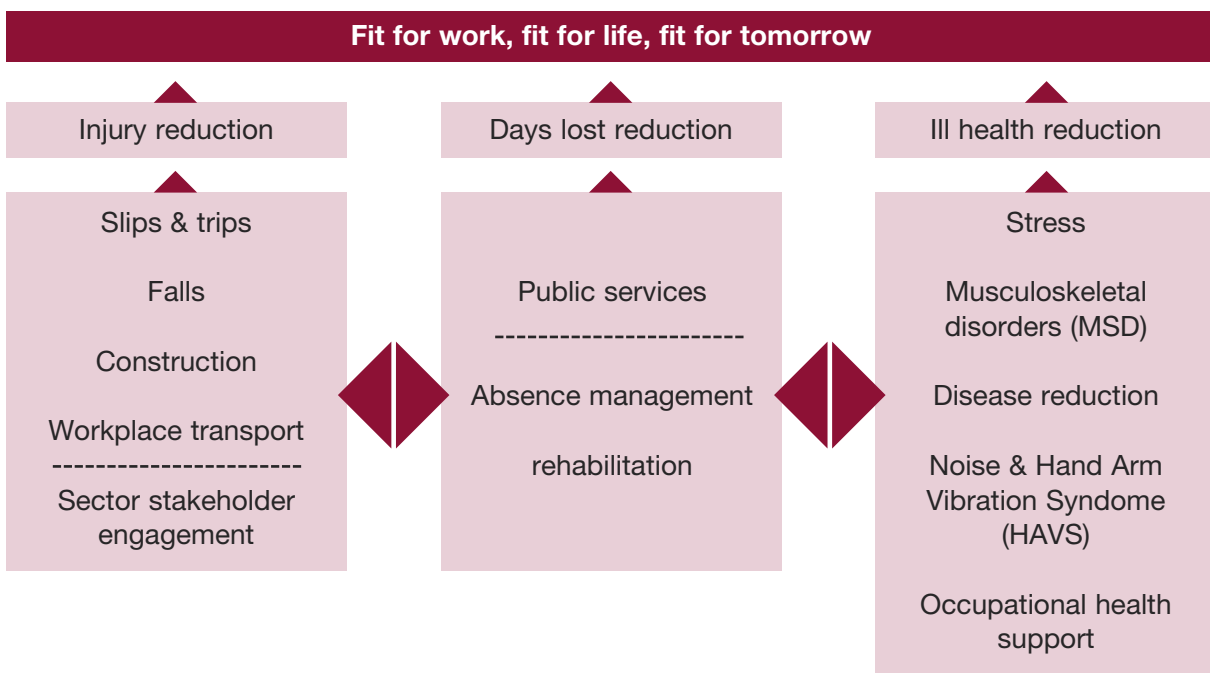
### Risk-based

**6** Through analysing a number of sources of data on the incidence of workplace ill health as well as accident and injury, the HSE has an evidence-based view of the industries and activities that pose the greatest risk to health and safety outcomes in the UK. It has used this data to build a strategic programme to target areas of highest risk. This programme, called Fit for work, Fit for life, Fit for tomorrow (Fit3) (see Figure 1), has changed the way the HSE directs its activity. As part of the strategy,

the HSE has introduced topic-based inspection focusing on particular types of risk, such as ‘slips and trips’ or falls from height. In this way, the Fit3 strategy plays a major role in determining what gets examined during inspection visits.

**7** One of the challenges the HSE faces is to achieve real-time comprehensive information about firms, their activities and their safety culture with which to build a truly risk-based system of inspection. Businesses are required to register their premises with the HSE or with local authorities for the purposes of health and safety. However, many business premises remain unregistered leaving the onus on the HSE to identify businesses, locate premises and assess their health and safety risks. Whilst greatly improved knowledge of its external environment may come at a price the HSE is unable to afford, we believe it does not make the best use of the information and intelligence it already has.

**Figure 1:** HSE’s Fit3 strategy



We found:

- **a lack of information and joined up intelligence about the risk posed by individual firms;**
  - **a lack of systems locally to make effective use of information gathered from visits;**
  - **the topic-based approach is not properly integrated with other types of risk; and**
  - **an apparent disconnect between Headquarters and the ground, so that inspectors' views and initiatives are not being captured effectively by the organisation.**
- 8 The HSE is aware of these issues and, in 2006, started a project – the Fine Tuning review – to improve the targeting of interventions; introduce more discretion at local manager level and to better value non-Fit3 programme high priority work. The project has plans to improve targeting and intelligence by developing a regional intelligence officer role, make better use of information from sources such as complaints from the public and intelligence from local authorities, concentrate more clearly on identifying small and medium-sized enterprises and their risks, and to capture data better. Actions are also under way to improve inspector morale and effectiveness by allowing greater discretion at local level to tackle non-Fit3 programme risks but without returning to the previous less-targeted approach.
- Transparency and accountability**
- 9 In June 2000, the Government and the Health and Safety Commission launched a 10-year strategy to improve health and safety at work<sup>10</sup> containing the first ever targets for Great Britain's health and safety system. They are:
- to reduce the number of working days lost per 100,000 workers from work-related injury by 30% by 2010;
  - reduce the incidence rate of cases of work-related ill health by 20% by 2010; and
  - reduce the incidence rate of fatalities and major injuries by 10% by 2010.
- The Health and Safety Executive was set the challenge of delivering the targets and to report progress annually.
- 10 Drawing on a review of the information the HSE publishes about its activities, the views of stakeholder bodies we spoke to and our observations of the way HSE staff, including inspectors, interact with businesses and the public more widely, we concluded that the HSE is a transparent and accountable regulator.
- Encouraging economic progress**
- 11 The Hampton Report stated that “regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection”<sup>11</sup>. This requires that regulations and their enforcement should be proportionate to the potential for harm and that regulators should be aware of their influence on economic progress. We cover the design of regulations and their enforcement in later sections.
- 12 HSE research shows that the cost to employers of accidents and ill health caused through work is in the range £4 billion – £8 billion a year<sup>12</sup>. Unfortunately, national data which estimates the cost of health and safety improvements each year is not available. However, the HSE publicises on its website case studies carried out by businesses

<sup>10</sup> Revitalising Health and Safety Strategy Statement, Department of the Environment, Transport and the Regions, June 2000

<sup>11</sup> From Hampton principles of inspection and enforcement, Box E2, page 7

<sup>12</sup> Interim update of the “Costs to Britain of Workplace Accidents and Work-related ill health”, HSE's Economic Advisers Unit, June 2004

examining the costs and benefits of improvements in working practices and systems which reduce accidents and ill health. The key benefit identified in most cases is in increased productivity.

- 13** Part of the HSE's overall strategy to improve occupational health is to work in partnership with business and encourage a culture of self-regulation. Many firms recognise the benefits (including cost savings) of avoiding causing harm to their employees but only 37 per cent find it easy to comply with health and safety regulations<sup>13</sup>. Many businesses welcome inspections as an opportunity to improve their health and safety management. Only a small proportion of regulated businesses can receive an HSE inspection each year. As such, the HSE has to find other ways to influence the behaviour of business. The HSE has good means of engagement and relationships with business, particularly larger businesses (perception and satisfaction rates of the Health and Safety Executive are generally favourable) and is working hard to extend its influence with smaller enterprises.
- 14** Negative media coverage around risk averse or disproportionate approaches to the management of health and safety risks – often resulting from actions of public officials or others outside the Health and Safety Executive – can lead to a perception that health and safety regulations are more burdensome than they actually are. The HSE has analysed what concerns business around risk and is seeking to address negative media coverage. However, under the influence of the media, insurers and some consultants, businesses still 'overcomply' with health and safety regulation. A direct response to this issue has been the HSE's Sensible Risk

Management initiative, which seeks to educate business to focus their attention on real risks, rather than driving down levels of risk to zero. Practical elements of this programme have included Five Steps to Risk Assessment and Myth of the Month. At this stage it is not clear how successful the approach will be and whether a shift in perception can be achieved with what appears to be a relatively small scale programme. We recognise that public authorities can find it difficult to justify spending money on campaigning but believe the HSE could do more to publicise the positive economic benefits of effective health and safety management, particularly to smaller enterprises and to focus on how it can support proportionate compliance across the broad range of its activities.

**Overall, we found that the HSE recognises the need to minimise the burden of regulation on business.**

<sup>13</sup> 2007 Survey of Business' Perception of Regulation - Technical Summary, Q5c page 13, National Audit Office, [http://www.nao.org.uk/publications/nao\\_reports/06-07/0607615\\_technical\\_summary.pdf](http://www.nao.org.uk/publications/nao_reports/06-07/0607615_technical_summary.pdf)

## Design of regulations

### Hampton principles

*“All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all parties should be consulted when they are being drafted.”*

*“When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed.”*

## Key findings

- HSE has good internal challenge processes in place
- HSE undertakes robust Impact Assessments
- HSE consults effectively with business groups
- HSE could consult more effectively with its own and local authority inspectors on policy issues
- HSE reviews regulation post-implementation but does not communicate a clear strategy for amending existing regulation
- HSE has some good examples of alternative regulatory approaches

## Background

- 15** The HSE is the body responsible in Great Britain for drafting policies and regulation relating to health and safety issues. However, in practice, most health and safety legislation originates from European directives. As such, much of the HSE’s work in this area is concerned with influencing European policy and with transposing European directives into UK law. The HSE influences European policy directly through its role on the EU’s Advisory Committee on Safety, Hygiene and Health at work which examines specific proposals for legislation or issues of concern in the field of health and safety. It also engages with other member states less formally to influence the European health and safety agenda.
- 16** The HSE has developed a range of internal and external consultation and challenge processes to try to ensure that in transposing European directives into UK

law the requirements are not over implemented or ‘gold-plated’ and that implementation meets business needs. In 2005, in response to the Hampton report, the HSE set up a Better Regulation Challenge Panel bringing together a small number of senior HSE officials and the Health and Safety Commissioner responsible for small business. Its role is to ensure that:

- new domestic proposals are justified;
- HSE engages effectively in relation to emerging EU proposals; and
- best practice on implementation is followed.

The Challenge Panel is supported by the HSE’s Better Regulation Team whose main functions are to engage with policy teams to identify issues and emerging proposals for the Panel to consider, to comment on regulatory Impact Assessments and to spread better regulation practice throughout the organisation.

## Review Findings

### HSE has good internal challenge processes in place

- 17** For the introduction of new policies and the drafting of new legislation, the HSE has appropriate internal challenge processes in place. In particular, the Challenge Panel plays an important role in the design of regulations, ensuring that Impact Assessments are effectively carried out, that small business interests are considered, and that policy is designed in a clear and transparent manner. Since it was established, the panel has improved its scrutiny of new regulation through better horizon scanning and earlier involvement.

### HSE undertakes robust Impact Assessments

- 18** Overall, the review team found that the HSE generates robust, well researched Impact Assessments, which set out and quantify the implications of new regulations and policies. Impact Assessments are usually undertaken early in the process, with the input of research from HSE economists. For example, the Impact Assessment on the proposed EC Globally Harmonised System regulation was completed very early. It was subsequently used effectively to develop and inform the HSE's approach to negotiation with Europe.

### HSE consults effectively with business groups

- 19** The HSE demonstrates high levels of consultation with external stakeholders, including business. In particular, the HSE has a strong and effective network of advisory committees made up of representatives from business, trades unions and other relevant stakeholders. By and large, the advisory committees are organised around sectors or health and safety issues, and are one of the primary methods by which the HSE engages with stakeholders on policy and implementation issues. Examples include the Small

Business Trade Association Forum (SBTAF), Textiles Industry Advisory Committee (TEXIAC), Motor Vehicle Repair Safety Forum and the Construction Industry Advisory Committee (CONIAC).

### Good Practice

#### – The development of the revised Construction, Design and Management (CDM) Regulations 2007

In revising the CDM regulations, the HSE worked very closely with the construction industry, through the Construction Industry Advisory Committee (CONIAC). An industry working group was established to advise on the revision of the regulations. As a result, there is a good deal of industry 'ownership' of the regulations.

Overall, key stakeholders in the construction industry are very positive about their engagement with the HSE and consider they are able to feed into policy development on health and safety issues.

### HSE could consult more effectively with its own and local authority inspectors on policy issues

- 20** Whilst, overall, the HSE engages in high levels of consultation, approaches taken to consult local authority delivery partners and HSE inspectors should be stronger and more systematically embedded. HSE inspectors tend not to feel consulted on the development of new policy initiatives. There is also an absence of a systematic process for gathering qualitative evidence from field inspectors in order to influence and review policy and strategy.
- 21** The HSE has put significant effort into involving local authorities more in the policy development process. In particular, the

Local Authority Strategic Partnership in the HSE has helped improve levels of communication and overall relations between the HSE and local authorities in recent years. However, there were still cases where local authority regulatory staff considered they had not been involved in the policy development process at an early enough stage and that this had led to some policies being designed from an HSE viewpoint. The development of the Large Organisation Partnership Pilot (LOPP) was cited as an example of where late consultation had created some communication problems between the HSE and local authorities. Notably, there is no representative from local authorities on the Better Regulation Challenge Panel.

### **HSE reviews regulation post-implementation but does not communicate a clear strategy for amending existing regulation**

- 22** The HSE usually reviews legislation between 3-5 years after it is implemented, and commissions research into the effectiveness of regulations. An example of this was the research report on the recent Working at Heights regulations. Whilst the HSE is generally very strong at engaging with external stakeholders, there is no apparent routine or systematic process for involving external stakeholders in reviewing and amending policies and regulations. However, where the HSE has carried out a formal and in-depth review, for example the recent Construction, Design and Management revisions, stakeholders have responded positively both to the process and the outcomes.
- 23** More broadly, there is a great deal of health and safety legislation and associated guidance and the HSE has a programme of work aimed at simplifying and amending regulations in the light of its

evaluation of regulatory effectiveness. However, it is unclear to external stakeholders what the HSE's priorities are for this work and how business views are taken into account. For example, the Display Screen Equipment regulations (1992) are widely seen as burdensome and not particularly effective but it is not clear to business when and how the HSE will revise them. In fact, the HSE is part of a current German-led evaluation of the directive which is looking at implementation of the directive, burdens and the potential for simplification. A survey of business carried out for the National Audit Office identified simplifying existing legislation and regulations as the most important factor in improving the regulatory environment.<sup>14</sup>

### **HSE has some good examples of alternative regulatory approaches**

- 24** The HSE actively considers alternative approaches to regulation and inspection. This has included the use of educational campaigns, such as Better Backs, and targeted educational campaigns on Work at Heights. In the case of Work at Heights, the HSE has sought to work with market incentives in order to change the behaviour of businesses, through the Ladder Exchange Initiative.

#### **Good Practice – Ladder Exchange Initiative**

The HSE recently engaged with the tool hire company, Speedy Hire, on an innovative initiative to help remove dangerous ladders from the workplace. Firms were encouraged to get rid of their old, potentially unsafe ladders by bringing them to Speedy Hire on the basis that new safer ladders could be purchased at a discounted price.

<sup>14</sup> NAO 2007 Survey of Business' Perception of Regulation - Technical Summary, Q8 page 25

## Advice and guidance

### Hampton principle

*“Regulators should provide authoritative, accessible advice easily and cheaply.”*

## Key findings

- HSE puts a lot of emphasis on providing advice and guidance
- HSE is most effective when it works with business stakeholders to target specific sectors
- Some HSE guidance does not fully address the needs of its audience
- HSE could do more to understand the ‘reach’ and influence of its advice and guidance
- Charging for guidance publications presents an additional barrier to business
- HSE could have a more overarching strategy on advice and guidance

## Background

**25** HSE provides advice and guidance to business in a number of ways. These include:

- **Written guidance** – on specific regulation-based topics and for particular industrial sectors. Most HSE guidance can be accessed through its website. Shorter publications and research reports are usually provided free of charge. Some longer publications are available in hard copy only and have to be ordered and paid for;
- A free enquiry **contact centre** called *Infoline* – which provides advice on an anonymous basis by text, telephone, email and post. Infoline also provides a web-based and phone service for incident reporting;
- **Inspectors** give advice and guidance during inspections;
- **Health and Safety Awareness Officers** have been employed in regional offices since 2005 to provide advice and guidance, particularly to new and small businesses, by holding seminars/

awareness days and responding to telephone queries. In the South West, for example, HSAOs have sought to improve health and safety on farms by targeting advice at farmers wives; and

- Specific **industry campaigns** and local initiatives – for example, inspectors took part in a national campaign to teach hairdressers about the dangers of contact dermatitis from handling chemicals and, in the North West region, developed a protocol with local authorities and construction firms for erecting and dismantling scaffolding.

## Review Findings

### HSE puts a lot of emphasis on providing advice and guidance

- 26** The HSE has a clear understanding of the fundamental role advice and guidance plays in encouraging better health and safety practice and compliance with regulations. It has developed both a range of routes for delivering advice and guidance and a broad range of products from interpretation of the law to tailored advice to specific trade sectors and businesses to educational campaigns.

- 27** Inspectors see providing advice and guidance as a key part of their role and routinely offer advice where their inspection does not reveal any immediate serious risk requiring formal enforcement action. However, the HSE believes that many businesses avoid asking for advice for fear that such contact may directly lead to enforcement action. On work-based health issues, the HSE has sought to develop a channel of support and advice that can be accessed without fear of enforcement action. This has led to the *Workplace Health Connect* pilot – a service which provides advice on health issues to small businesses. Importantly, the service is funded by but not delivered directly by the HSE. This service is currently being trialled and evaluated.

### **HSE is most effective when it works with business stakeholders to target specific sectors**

- 28** The HSE has taken a number of approaches to engage or target specific business sectors through advice and guidance. It has high levels of engagement with business stakeholder groups, including trade associations and in a few cases has worked with these intermediaries to write guidance or to encourage trade associations to produce industry-specific guidance of their own. Examples include guidance on Work at Heights and the Construction, Design and Management (CDM) Regulations.
- 29** The best examples of written guidance have been recently produced and in key programme areas – where the HSE, understandably, has focused most of its efforts. At best, HSE guidance is concise, informative and makes use of examples that resonate with businesses in particular sectors – i.e. providing examples of approaches to take in particular sectors or specific situations. One particular example of this is “Five Steps to Risk Assessment”.

### **Some HSE guidance does not fully address the needs of its audience**

- 30** Despite this, we found that businesses were frustrated that their expectations of advice and guidance had not been met. Businesses, particularly small businesses, often seek reassurance that they are doing things correctly and there is a high demand for advice tailored to businesses’ specific circumstances and approaches. For example, whilst the HSE’s monitoring of its Infoline service shows high satisfaction rates, some businesses we talked to were disappointed that *Infoline* operators cannot necessarily advise how to interpret the law in their specific circumstances.
- 31** The experience of the review team and the views of businesses suggested that there are cases where advice and guidance has been less effective for one of the following reasons:
- Guidance is too general to be of genuine use to duty holders;
  - Guidance is too technical and detailed – there was a view, both in the HSE and amongst stakeholders that, at times, guidance has been written by experts without enough consideration for the needs of the audience.

A National Audit Office Survey of Business’ Perceptions of Regulation (2007) found that only 40 per cent of respondents agreed that it is straightforward to understand what you are required to do to comply with health and safety regulations with 53 per cent disagreement.

### **HSE could do more to understand the ‘reach’ and influence of its advice and guidance**

- 32** The HSE measures the awareness of some key health and safety issues, following educational campaigns, such as those associated with Work at Heights. However, more generally, little is known about how

the HSE's guidance influences health and safety outcomes, or the extent to which the guidance is used by business, such as through monitoring 'market penetration' rates.

- 33** How most businesses access information and guidance on health and safety is generally unclear, such as the proportion of businesses that will seek advice through Business Link, through consultants, or via the HSE website. Understanding more about business behaviour in this area, including that of small businesses, may enable HSE to target its guidance more effectively.

### **Charging for guidance publications provides an additional barrier to business**

- 34** Much of HSE guidance is free, but the HSE charges for some guidance publications - mainly detailed guidance which addresses specific risks or industries. Whilst the HSE follows Treasury guidelines in charging for "value added" publications, both trade groups and inspectors thought that charging could present a barrier and reduce the take up of guidance. In particular, stakeholders felt that, whilst the price was a barrier, the arrangement of the purchase and the inevitable delay in receiving the right information acted as a further and more significant deterrent<sup>15</sup>. For example, industry bodies in the construction sector were displeased at the decision by the HSE to charge for the new Construction (Design and Management) Regulations Approved Code of Practice, particularly after they had given many hours of advice and guidance to the HSE for free during the drafting process. One trade body also said that they

thought it was fundamentally unfair to impose law backed by the threat of prosecution, and then charge for the information on how to comply with it.

### **HSE could have a more overarching strategy on advice and guidance**

- 35** In summary, despite all the good work the HSE has put in, we felt that it could have a more overarching strategy on advice and guidance which takes into account the following:
- Ensuring that the approaches taken in the best examples of written guidance are rolled out to cover Health and Safety outside the HSE's key outcomes - where businesses will still be seeking effective guidance on how to comply with the law;
  - So far as possible, routinely making the distinction between legislative requirements and 'good practice';
  - Ensuring guidance is regularly reviewed, using the views of guidance users;
  - Consideration of when it is appropriate to charge for guidance publications;
  - Surveys on the effectiveness of HSE guidance and measurement of market penetration; and
  - The overall allocation of resources towards advice and guidance – i.e. to what extent should the HSE's resources be focused towards education and advice mechanisms, as opposed to inspection and enforcement.

<sup>15</sup> The Work & Pensions Select Committee recommended that all key HSE publications should be made free of charge on the internet (Fourth Report, HC456-I, 2003-04).

## Data requests

### Hampton principle

*“Businesses should not have to give unnecessary information or give the same piece of information twice.”*

## Key findings

- HSE has rationalised the data returns that it requires from business
- HSE should go further with e-enablement of its stock of existing forms
- The major burden for business from HSE is not due to forms, but due to record keeping

## Background

- 36** The HSE requires businesses to record information for two main purposes:
- to inform the HSE of particular types of risk or incident: for example notification of a construction project, report of a dangerous gas fitting, notice of occupation, incident reporting (RIDDOR)<sup>16</sup>; and
  - to be retained by businesses to demonstrate their compliance with regulations: for example risk assessment and risk policy, gas safety records, examination of lifting equipment, emergency asbestos procedures.

- 38** The HSE has a forms team which performs an internal gate-keeping function – challenging and questioning the introduction of new forms. In practice, there have been few new forms introduced in recent years. The forms we reviewed appeared simple and easy to complete and had clear guidance notes.

### **HSE should go further with e-enablement of its stock of existing forms**

- 39** All forms are available on the HSE’s website and most can be saved and submitted to the HSE by email. However, some forms have to be printed out and posted. Other forms have to be printed out and sent to the regional HSE office or Local Authority. Firms would benefit from a more streamlined system (for example, fully enabled web-interaction, making use of pre-population) particularly for higher volume forms. An example of this is the F10 form (notification of a construction site), where the same companies and same individuals will frequently be completing the same form.

## Review Findings

### **HSE has rationalised the data returns that it requires from business**

- 37** The HSE currently has 54 different forms for collecting information from businesses. This has reduced from 127 following a recent internal review of forms. A further 9 forms are currently being considered for removal.

<sup>16</sup> Reporting of Injuries, Diseases and Dangerous Occurrences regulations 1995 – employers, the self-employed and those in control of premises must report specified workplace incidents.

- 40** By the end of 2008, the HSE intends that the majority of the most frequently used forms will be fully interactive with pre-populated information, so that businesses will simply be required to update their details and submit online.

**The major burden for business from HSE is not due to forms, but due to record keeping**

- 41** Businesses we spoke to did not consider the HSE's forms or information demands burdensome. Its record keeping requirements, however, were felt to create unnecessary work and confusion, particularly for small businesses. The HSE is aware of the costs imposed through record keeping requirements and has a Simplification Plan which includes initiatives to merge and rationalise requirements where there is duplication. One example is the simplification of the requirement to undertake different risk assessments for different issues and circumstances.
- 42** The HSE is also seeking to better educate businesses about how health and safety requirements can be reasonably fulfilled. For example, the HSE has recently published example risk assessments on its website for businesses to use to gain an understanding of what is required.

## Inspections

### Hampton principle

*“No inspection should take place without a reason.”*

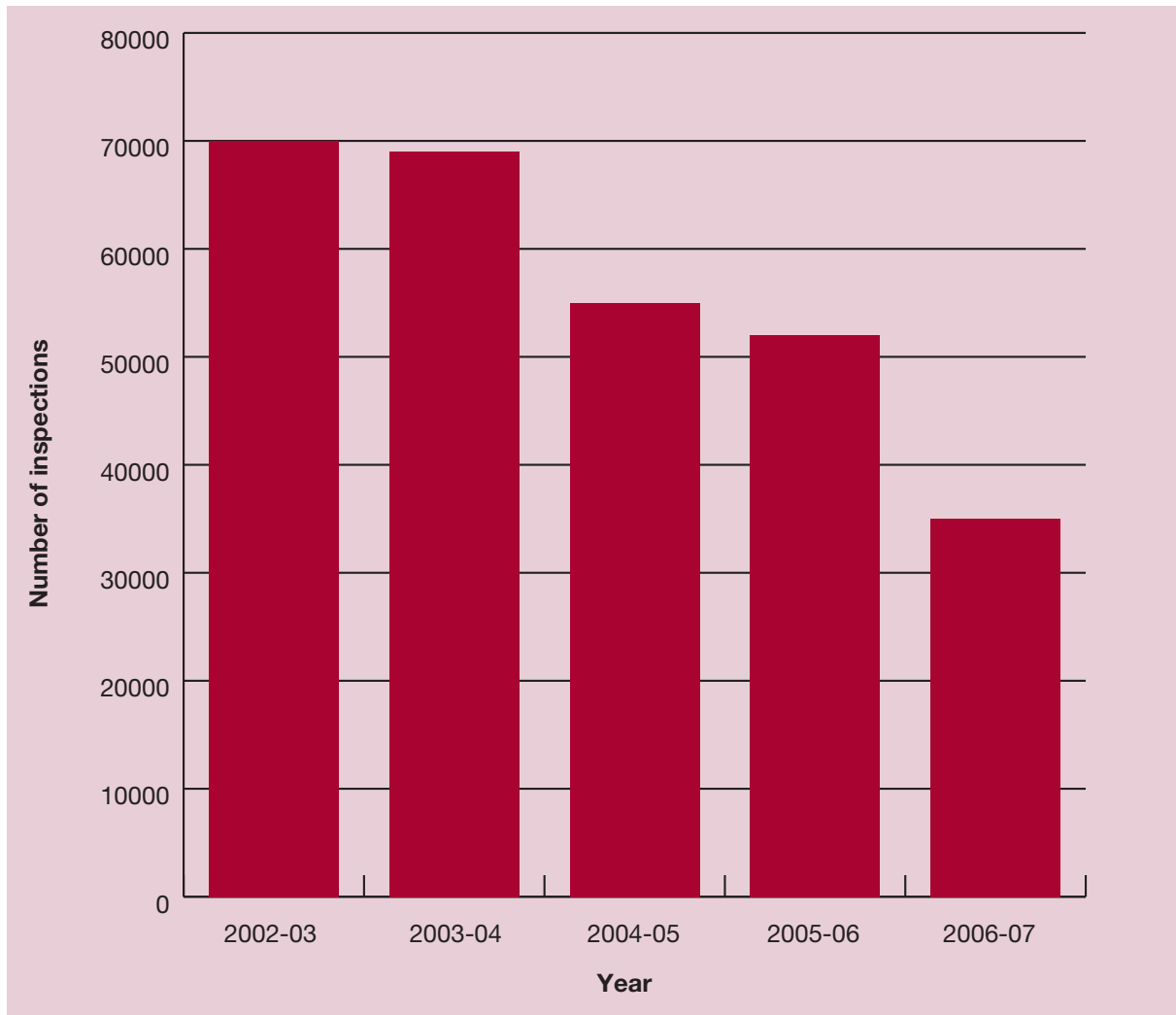
### Key findings

- **Business has a positive view of HSE inspection**
- **Overall HSE focuses on areas of high risk but past performance and other factors are not considered adequately**
- **Systems to gather and utilise intelligence about firms are weak**
- **There is a lack of focus on those ‘outside the system’**
- **There have been problems communicating strategy and policy priorities to frontline inspectors**
- **Partnership working with local authority Health & Safety inspectors is good but opportunities to work more closely with other regulators could be exploited more**

### Background

- 36** The HSE is responsible for enforcing health and safety legislation in construction, agriculture, general manufacturing, engineering, food and drink, quarries, entertainment, education, health services, local and central government and domestic gas safety. Local authorities are the principal enforcing authority for retailing, wholesale distribution, warehousing, hotel and catering premises, offices, and the consumer/leisure industries, regulating more than 1.1 million premises.
- 44** The ‘Fit3’ strategy (see Introduction) is used to prioritise and plan inspector activity. To help guide and focus inspections on areas of high hazard, the HSE has developed topic inspection packs based on the Fit3 priorities – falls from height, workplace transport, musculoskeletal disorders, stress, slips and trips. These topic packs serve as a framework for inspectors’ visits on health and safety issues. The strategy also recognises that there are particular sectors that account for much of the injury and ill health. These include construction, public services (for ill health/stress) and others such as the paper industry and glass and ceramics manufacturers.
- 45** The HSE has two main processes for determining where it focuses its inspector activity, and these are targeted on high-risk areas/topics.
- **Through the Fit3 strategy** – The HSE focuses on sectors where Fit3 topics are significant – i.e. where such incidents mostly occur.
  - **Through the risk-assessment process** – The HSE’s risk rating process consists of evaluating four elements: competence and attitude of management; safety compliance and actual risk; health compliance and actual risk; welfare compliance gap. A risk rating is applied following an inspection visit.
- 46** Over a five-year period, the number of HSE inspections has declined. However, although they are inspecting less,

**Figure 2: Five year trend in inspections carried out by the HSE**



inspectors are spending significantly more time per inspection with business. Overall, the HSE is responsible for regulating

around 2 million business premises in Great Britain.

<sup>17</sup> <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070604/text/70604w0007.htm>

<sup>18</sup> Figures for the total number of inspections in 2005-06 and 2006-07 may not be directly comparable with earlier years as there was a change to arrangements for recording the number of inspections.

## Review Findings

### Business has a positive view of HSE inspection

- 47** Business stakeholders consulted by this review were positive about engagement with HSE inspectors. In particular, they valued the approach taken by inspectors and the advice they offered. This view is supported by the HSE's surveys of business, for example MORI surveys of attitudes towards health and safety<sup>19</sup> found that 90% of CEOs and 89% of employers who have had contact with the HSE in their job agreed that the HSE is a helpful organisation. Additionally, a CBI survey of business views of the HSE/HSC found that business regards fair enforcement as the principal focus of the HSE and is generally satisfied with the quality of service provided by the HSE<sup>20</sup>.

### Overall HSE focuses on areas of high risk but past performance and other factors are not considered adequately

- 48** The HSE's overall strategy, including its approach to planning inspections, is based on a high-level assessment of risk. Through its Fit3 programme, the HSE has clearly identified the sectors of industry where the most damaging accidents and ill health occur – in terms of those which cause most deaths, major injuries and ill health – and has built an inspection strategy accordingly.
- 49** However, the review found that, in terms of deciding who to inspect, the assessment of risk tended to go little further than the analysis of at risk sectors and the types of accidents that occur in such sectors. In other words, for many inspection visits, consideration of the individual firm's past

performance on health and safety or the 'type' of business beyond the sector (e.g. whether the firm is a small or large business) appeared to play little part in the consideration of whether or not to inspect. We believe this is partly linked to a weakness in the gathering and dissemination of intelligence within the HSE (see below).

- 50** Overall, we perceived a lack of clarity around how the risk-rating process fits with the Fit3 inspection strategy. Each operational region of inspectors is expected to spend a specified amount of time on high risk 'Fit3' issues – for example work at heights, or slips and trips. It is also expected that all high risk premises (as determined locally by previous inspections) are inspected. However, how these two elements contribute to the decision around whether to inspect a site or not, and on what topic, is not transparent.

### Systems to gather and utilise intelligence about firms are weak

- 51** Due to the relatively small number of inspections undertaken by the HSE, it may frequently be the case that the HSE has little or no information on past performance of an individual firm. However, in other cases, such as in its dealings with large and medium multi-site companies, it is likely that a company may have a history of HSE inspections across the country. The review team found little evidence to suggest that intelligence and information gathered by inspectors across different regions is being systematically used to engage with larger companies in a strategic way. To try to address this, the HSE established the Large Organisation Partnership Pilot (LOPP) in 2005 to identify ways to build more effective relationships between the health and safety regulatory

<sup>19</sup> <http://www.hse.gov.uk/risk/attitudes.htm>

<sup>20</sup> CBI Survey 2002

[http://www.cbi.org.uk/ndbs/positiondoc.nsf/1f08ec61711f29768025672a0055f7a8/7814B721C966690080256E1D00347D55/\\$file/hsesumm160104.pdf](http://www.cbi.org.uk/ndbs/positiondoc.nsf/1f08ec61711f29768025672a0055f7a8/7814B721C966690080256E1D00347D55/$file/hsesumm160104.pdf)

authorities and large organisations. The pilot involves 13 organisations with 10,000 or more staff from a wide range of industry sectors (both HSE and local authority enforced). The HSE has commissioned external consultants to undertake a 'lessons learned' study of the pilot and make recommendations for future activity.

- 52** Overall, the intelligence that the HSE gathers could be used more effectively. For example, intelligence that is picked up locally by HSE inspectors is not easily accessible to other inspectors or policy colleagues outside that geographical area. As a result, inspections, particularly those based on Fit3 priorities, appear to be regularly undertaken on the basis that a firm falls within a high hazard sector (e.g. construction on 'work at heights' or warehouse on 'workplace transport'), with little consideration of other issues. This approach has led to an increase in repeat inspections for some businesses.
- 53** Similarly, other information and intelligence sources are not systematically used by inspectors to feed into the risk-rating system. This includes data, such as information on complaints, information held by Infoline, and accident data from RIDDOR returns. Whilst the HSE has begun to examine potential areas where it could make use of other regulators' information and data, there is currently little or no use made of information held by other organisations information on business, such as data held by local authorities or the Environment Agency.
- There is a lack of focus on those 'outside the system'**
- 54** At the local level, HSE data sources are not able to identify with any confidence the number and location of HSE-enforced premises within a specific area. As such, the HSE is not strong at identifying 'rogue businesses' or those businesses that have failed to notify the HSE of their existence.
- 55** This was reflected in a view expressed by business that more could be done to inspect those who operate in the informal economy and who are elusive and transient. Such operators are seen by business as gaining an unfair economic advantage by not adhering to health and safety regulations.
- 56** The HSE is aware of many of the issues around intelligence and is conducting a 'Fine Tuning' review (see paragraph 8). The review is seeking to improve the use of intelligence within the HSE and has set a number of actions in train to achieve this.
- 57** In summary, the review concluded that greater use of intelligence would enable the HSE to be more risk-based and Hampton compliant. However, we also recognise that there is an issue around costs and benefits – that the HSE will need to consider the costs and benefits of investing in improving its intelligence systems, taking into account other demands on its resources.
- There have been problems communicating strategy and policy priorities to frontline inspectors**
- 58** The introduction of topic packs for inspectors, which focus inspector activity on high-hazard and priority areas, has not been without its problems. Issues of communication initially led to a misunderstanding amongst inspectors which led them to inspect only on the basis of topics. The HSE has sought to address this misunderstanding.
- 59** There is a question about whether this misunderstanding is indicative of a wider issue around internal communication between policy and operations staff. There are some clear examples of very good approaches to communicating with inspectors. This has included the use of focus groups with inspectors as part of the Fit3 strategy. Overall, however, there appears to be a difficulty within the HSE in

effectively communicating strategy priorities to frontline inspectors.

- 60** In order to run a more targeted inspection regime, the HSE invariably ends up not focusing on particular areas that some inspectors may prefer to examine if they had greater discretion. However, it is the view of the review team that the HSE must strike a balance between encouraging, rewarding and supporting the expertise and judgement of its highly trained cadre of inspectors; and its legitimate aim to coordinate and channel their efforts in a strategic and centrally-guided manner. During our review, it was clear that the HSE is seeking to navigate a coherent path through these challenging issues, and to some extent we saw a work-in-progress: a clear desire to guide and assist inspectors, while at times struggling to be clear about the extent of local autonomy. The HSE has set in place a number of measures to address this in its Fine Tuning review. Again, the issue of greater use of intelligence is relevant. By placing the appropriate intelligence in the hands of inspectors, the HSE can reinforce its priorities by guiding them more effectively towards areas where they can make a difference.

**Partnership working with local authority Health & Safety inspectors is good but opportunities to work more closely with other regulatory services could be exploited more**

- 61** A key element of the HSC 2004 strategy has been to ensure that local authorities and the HSE work more closely together, and that local authority work on health and safety, typically the responsibility of Environmental Health departments, is prioritised around the Fit3 strategic programme. This has been a starting point for a greater amount of joint working between the two enforcing authorities. The HSE is taking a more proactive approach to

local authority inspections and enforcement, providing a focus for local authority activity and attempting to co-ordinate the delivery of health and safety enforcement as a whole. As a result, local authorities are now working in closer partnership with the HSE. The perception of the local authority representatives interviewed by the review team showed that the HSE was regarded as the best of the national regulators that use local authority delivery partners at genuine partnership working.

- 62** The HSE has put a lot of resource and senior-level commitment into the partnership approach – key elements here are joint working between local authority and HSE inspectors through a re-energised HELA (Health and Safety Executive/Local Authority) committee providing greater clarity and cohesion and developing closer links with the HSE Partnership Managers and Partnership Liaison Officers seconded from local authorities. The HSE is also making more of its own operational guidance and information available to local authorities.
- 63** The HSE and local authorities are involved in various initiatives which aim to bring a more joined up approach and allow greater flexibility in resourcing. These include the Large Organisation Partnership Pilot (LOPP), Lead Authority Partnership Scheme (LAPS) and flexible warrants (see below). However, links with other regulators, such as local authority Building Control and Planning departments in the construction sector and the Environment Agency in the agriculture and waste sectors could be improved. For example, in the construction sector, an independent report commissioned by the HSE found that because of the fragmented nature of regulation that applies to construction, regulatory specialists tended to operate in silos within their own fields “like Planning, Building Regulations or Health and Safety,

having little in depth appreciation of the other regimes and how they impact on a single site”<sup>21</sup>. The HSE is aware of this issue and has committed itself to work with Communities and Local Government (CLG) on the scope for better integration of the CDM and the Building Control and Planning regimes.

- 64** Additionally, the HSE would benefit from increased intelligence sharing. For example, the HSE estimates that there are around 500,000 building sites in the UK per year. Of these, the HSE will only know of the 160,000-200,000 that submit F10 notifications<sup>22</sup>. The projects that it will not know about are likely to be carried out by self-employed and contractors employing less than 15 employees. These are a particularly at-risk group, as the HSE estimates that this group “face a disproportionately high-risk (roughly double) of injury and ill health than those who work for larger employers”<sup>23</sup>. Many of the construction projects that the HSE is not aware of will be registered with and in some cases inspected by Local Authority Building Control and Planning Departments.

### **The overall allocation of inspection resources at the national level may not be fully risk-based**

- 65** The original division of responsibilities was set up with, essentially, the HSE inspecting high risk areas and local authorities covering lower risk premises. However, the effect of this is to create a ‘double peak’ of inspection activity. In other words, those businesses that are rated as ‘high risk’ by local authorities are likely to be visited regularly by local authority inspectors. However, those sectors that are rated as low risk by the HSE will be unlikely to be inspected, even though they may be higher

risk than those inspected by local authorities. As such, the overall the health and safety system in the UK is not fully risk-based. However, it should be noted that the situation becomes more complex when health issues are considered. For example, stress is prevalent in premises traditionally considered as low risk, such as offices.

- 66** Aside from the question of risk, the enforcing authority regulations have the potential to create delays in the smooth running of enforcement (e.g. currently 7.5% of incidents are reallocated at least once) and can be a frustration for business. The HSC 2004 strategy noted that there was “*no lasting logic to the current arrangements. They are complex, confusing and based on boundaries and approaches that suit more the convenience of the regulator than the needs of business or the workforce*”<sup>24</sup>.
- 67** The HSE is currently piloting an approach called ‘flexible warranting’ whereby the HSE can appoint suitably qualified local authority staff to undertake work within the HSE’s field of responsibility and vice versa. This allows the HSE and local authority inspectors to exercise their powers in each other’s premises or spheres of activity. The flexible warrant system has the potential to alleviate a number of problems created by the current division of responsibilities. For example, there may be potential for the HSE to engage in agreements (or memoranda of understanding) with local authorities, in order to use local authority inspector resource in higher risk premises traditionally the responsibility of (but not usually inspected by) the HSE.

<sup>21</sup> “The Construction (Design and Management) Regulations 2006: small business and one-off/occasional clients responsibilities” Tim Kind April 2006.

<sup>22</sup> Statutory requirement to submit details of construction activities that involve over 30 days or over 500 man days on site

<sup>23</sup> <http://www.hse.gov.uk/aboutus/hsc/meetings/2007/090107/c16.pdf>

<sup>24</sup> A strategy for workplace health and safety in Great Britain to 2010 and beyond, Health and Safety Commission, 2004, page 6

## Sanctions

### Hampton & Macrory principles

*“The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions.”*

*“Regulators should be transparent in the way in which they apply and determine administrative penalties.”*

*“Regulators should avoid perverse incentives that might influence the choice of sanctioning response.”*

*“Regulators should follow up enforcement actions where appropriate.”*

## Key findings

- HSE has developed tools and policies which encourage a consistent approach to enforcement
- Business generally views HSE enforcement as fair
- Levels of prosecution are generally low
- In terms of an effective sanctioning regime for health and safety, levels of fines for health and safety offences are low
- The current incident reporting system does not incentivise most businesses to report instances of injury and ill health
- HSE finds it difficult to enforce on health issues
- HSE may not be capturing those who are less inclined to comply with health and safety legislation

### Background

**68** Health and Safety inspectors are statutory appointees under Section 19 of the Health and Safety at Work etc Act 1974. Under the Act, inspectors have wide powers backed up by a variety of criminal penalties. These range from informal verbal advice, letters of advice through to improvement and prohibition notices<sup>25</sup> (Enforcement Notices) to formal prosecution.

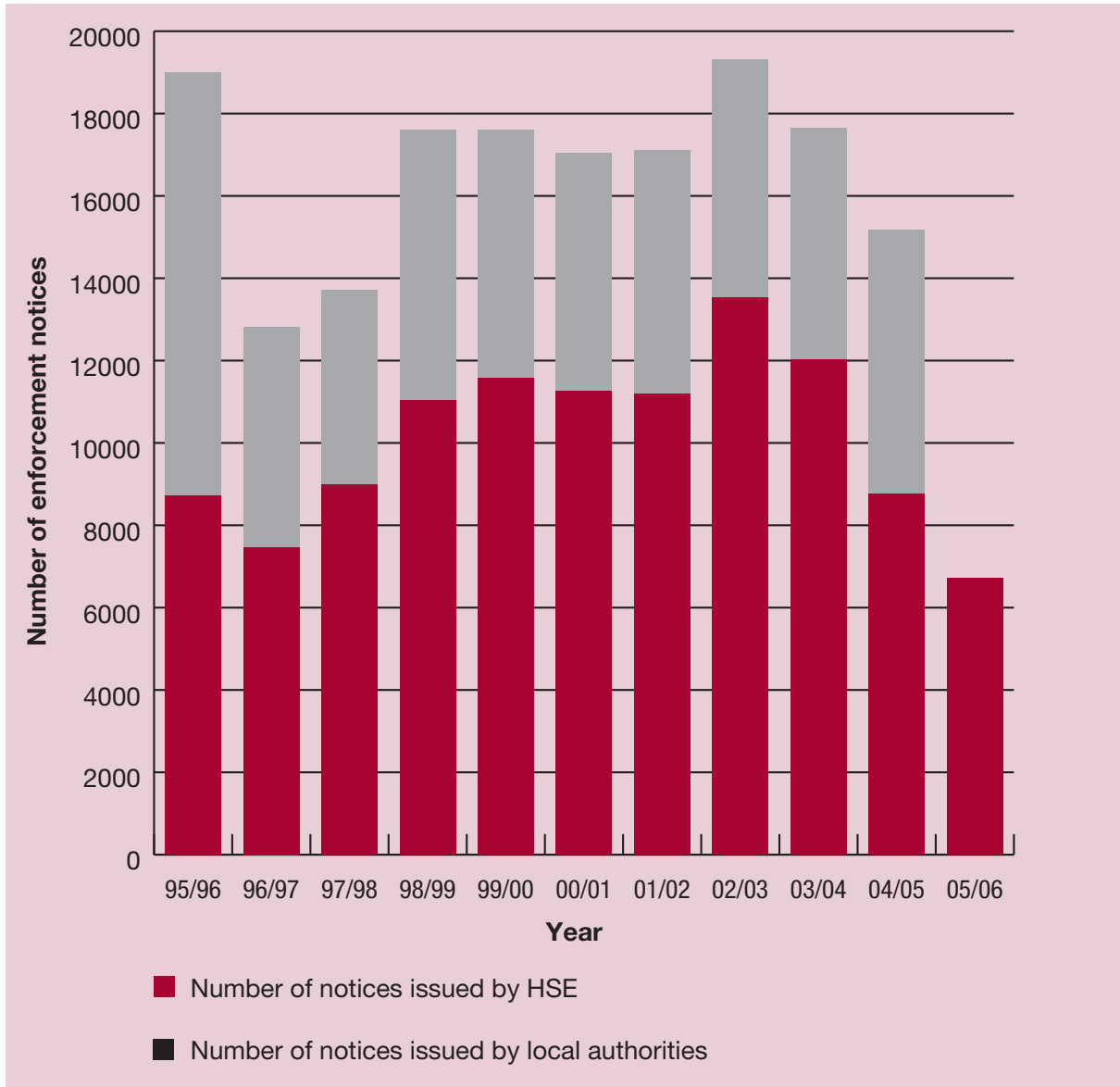
**69** There has been a downward trend in the

number of improvement and prohibition notices the HSE has served since 2002/03. However, this trend is not true for local authorities, which have slightly increased the number of notices served over the same period.

**70** The HSE prosecuted 1012 offences in 2005/06, which represents a decrease of 23% on 2004/05 and is part of a general downward trend which has seen the number of prosecutions halve in the last five years.

<sup>25</sup> Improvement Notice – a statutory notice requiring the recipient to carry out remedial action within a given time but the business can continue. Prohibition Notice – a statutory notice requiring an activity to be stopped immediately.

**Figure 3: Number of enforcement notices issued by all enforcing authorities 1995/96-2005/06**



## Review Findings

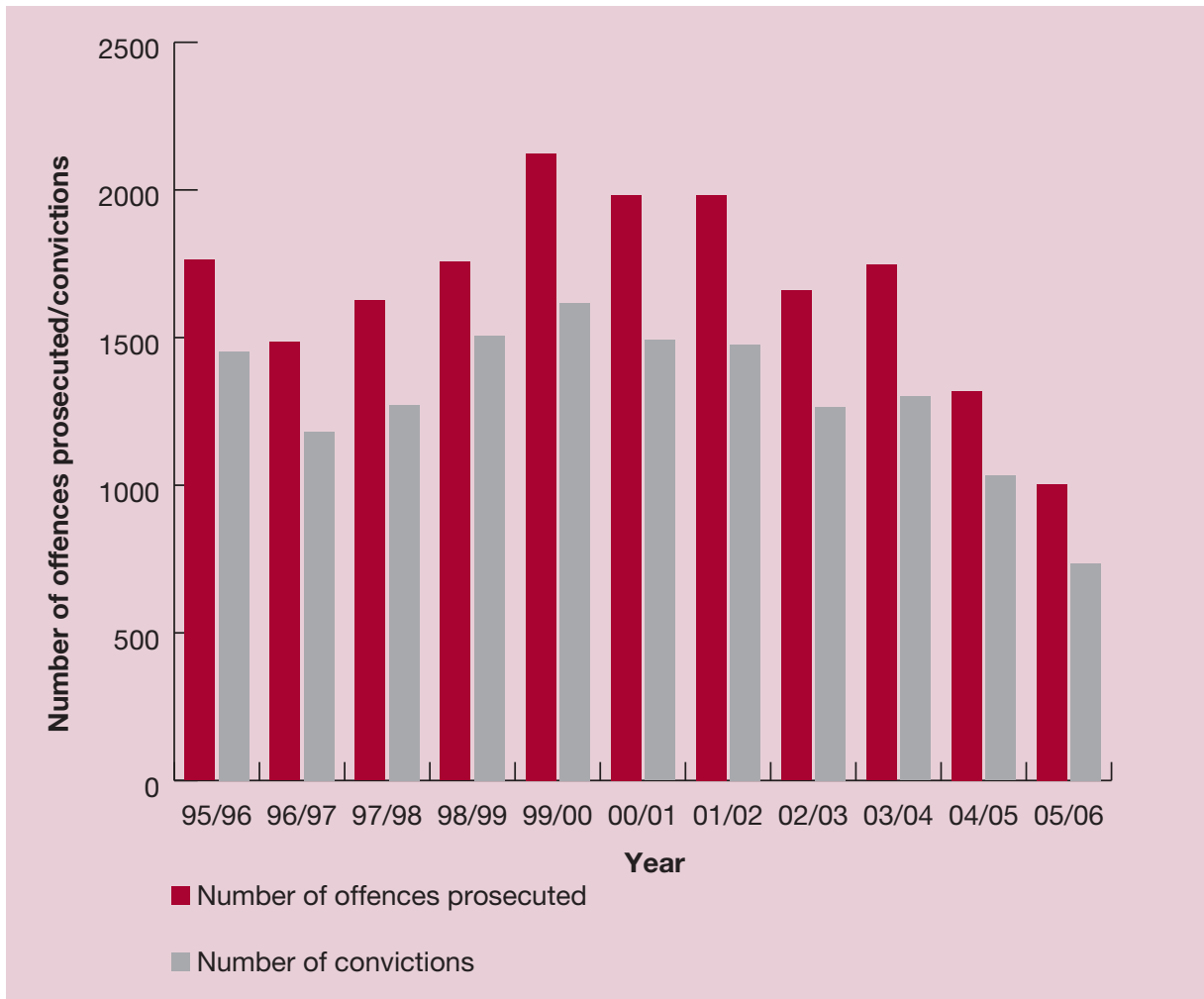
### HSE has developed tools and policies which encourage a consistent approach to enforcement

**71** The framework within which the HSE and local authority inspectors operate is set out in a number of documents. The key

document is the Health and Safety Commission’s Enforcement Policy Statement<sup>26</sup> (EPS) which states that enforcement should be proportionate, consistent, targeted, transparent and accountable. Regard must also be had for the Enforcement Concordat and, because health and safety is criminal law, the Code for Crown Prosecutors.

<sup>26</sup> The Health and Safety Commission is ultimately responsible for health and safety regulation in Great Britain. The Commission is advised and assisted by the Health and Safety Executive which has statutory responsibilities to make adequate arrangements for the enforcement of health and safety law in relation to specified work activities. Local authorities also enforce health and safety law in workplaces allocated to them.

**Figure 4:** Number of offences prosecuted by the HSE and convictions 1995/96 – 2005/06



Source: Health and Safety Executive

**72** The EPS sets out the general principles and approach which the Health and Safety Commission expects the health and safety enforcing authorities (mainly HSE and local authorities) to follow. All local authority and HSE staff who make enforcement decisions are required to follow the EPS, which has been subject to stakeholder consultation. It is publicly available and will be reviewed again this year in light of the introduction of the new Regulatory Enforcement and Sanctions (RES) Bill and the Regulators' Compliance Code.

**73** To encourage a consistent approach to enforcement, the HSE has also developed the Enforcement Management Model (EMM). The EMM sets out a decision-making framework for health and safety inspectors to follow when considering formal enforcement action.

### Good Practice – the Enforcement Management Model (EMM)

All health and safety enforcement officers, including local authority inspectors are expected to follow the Enforcement Policy Statement (EPS) and the Enforcement Management Model (EMM). The EMM has been devised by the HSE as a tool to assist inspectors to make enforcement decisions in line with the principles of the EPS.

The EMM guides an inspector to:

- Take a proportionality test – to determine the ‘risk gap’ between set standards and the actual risk at a premise.
- Factor in information about the dutyholder – such as confidence in management. Are they rogues, or is this a blip?
- Take account of strategic and public interest considerations.

Independent research commissioned by the HSE found that, with a few exceptions, “the EMM has helped achieve the principles of proportionality, transparency/accountability and consistency, especially amongst local authorities – with most enforcement perceived as proportionate and fair by dutyholders”<sup>27</sup>.

#### Business generally views HSE enforcement as fair

- 74** A CBI survey of business views of the HSE/HSC conducted in 2004<sup>28</sup> found that “*business regards fair enforcement as the principle focus of the HSE and is generally satisfied with the quality of service provided by HSE, rating enforcement highest and administration lowest*”.

Generally, businesses thought that the EPS and the EMM were clear, transparent and encouraged consistency. Most businesses noted no significant change in enforcement activity (in the 5 years to 2002), 22% reported that enforcement had become more rigorous and 10% reported an increase in enforcement activity.

- 75** However, other research<sup>29</sup> commissioned by the HSE shows that businesses are unsure why enforcement action has been taken, with 25% of duty holders not sure the prosecution was fair. This may suggest that the HSE could do more to explain to duty holders precisely why they are being prosecuted.

- 76** Businesses also expressed the view that during an inspection visit, inspectors were generally seen to be taking a reasonable and pragmatic approach to health and safety. However, this approach is seen to change following the occurrence of an accident. Some businesses took the view that inspectors undertaking investigations applied Health and Safety requirements much more stringently than they would during a normal inspection, including an increased focus on record-keeping systems. Such a perception may be understandable, as the nature of a criminal investigation will be different from that of an inspection.

#### Levels of prosecution are generally low

- 77** The overall scale of formal prosecution undertaken by the HSE is relatively small. Furthermore, proportionately, local authorities undertake very few prosecutions.
- 78** In recent years there has been a marked reduction in the number of prosecutions by

<sup>27</sup> Evaluation of EPS and enforcement action HSE Research Report 519, 2006, Greenstreet Berman Ltd. <http://www.hse.gov.uk/research/rrhtm/rr519.htm>

<sup>28</sup> *ibid*

<sup>29</sup> Greenstreet Berman, 2006

the HSE. There was a view amongst HSE officials that this may be due, in part at least, to the increased emphasis that the HSE has placed on other forms of achieving compliance, such as advice and guidance. However, concerned that the number of enforcement actions may have become too low, a subsequent communication from the HSE to its inspectors has increased the expectation that a certain number of enforcement notices should be issued. Enforcement levels are expected to be higher than 2004/05 levels as a result.

- 79** Whilst the HSE does not set targets for the number of inspections, a Regional Work Plan for the year allocates enforcement expectations based on historical rates. Inspectors are aware of these expectations and there was a view amongst inspectors that we talked to that questions would be asked if an individual inspector, or particular region, were issuing too few enforcement notices relative to the number of visits made. There was some concern regarding this ‘cultural expectation’ around levels of enforcement, which is linked to the inherent difficulty in measuring the success of individual inspectors.

### **In terms of an effective sanctioning regime for health and safety, levels of fines for health and safety offences are low**

- 80** The average penalty per conviction in 2005/06 was £29,997. This figure includes 13 fines in excess of £100,000 which, when removed, gives an average of £6,219. Whilst HSE has no direct influence on the scale of the punishment handed out by the courts, it can indirectly influence the courts by providing details of a company’s history and willingness to comply. The HSC/E would like to see levels of fines increased for health and safety offences. Whilst the HSE has undertaken a number of initiatives to try to effect this change, little has happened because it is limited by

its role and its remit. The HSE and industry recognise this as a problem for the deterrence value of its sanctioning regime.

### **The current incident reporting system does not incentivise most businesses to report instances of injury and ill health**

- 81** There is currently a severe underreporting of incidents by businesses under RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations) – the HSE currently estimates around 50% of incidents are reported. Other research suggests that levels of reporting may be as low as 30% overall. This may suggest that the rare number of prosecutions taken for non-reporting has resulted in there being little incentive to report. Businesses expressed the view that firms tend to weigh the risks of reporting against not reporting and frequently decide it is not in the business’s interest to report an incident, or they may downplay the seriousness of an incident. As a result, the RIDDOR system is currently more burdensome for those businesses that seek to be fully compliant.
- 82** In 2006, the HSC carried out an extensive review of the regulations. It decided that a radical overhaul of the regulations was not a priority as, whilst not perfect, the regulations do enable the health and safety system to operate. The HSC decided that improvements to process and communications should be made instead. The effect of these improvements is not yet known.

### **HSE finds it difficult to enforce on health issues**

- 83** Stress, musculoskeletal disorders (MSD) and other health issues are priority areas which the HSE asks its inspectors to focus on. However, levels of prosecution for health issues are markedly lower than for safety issues. A research report commissioned by the HSE noted that:

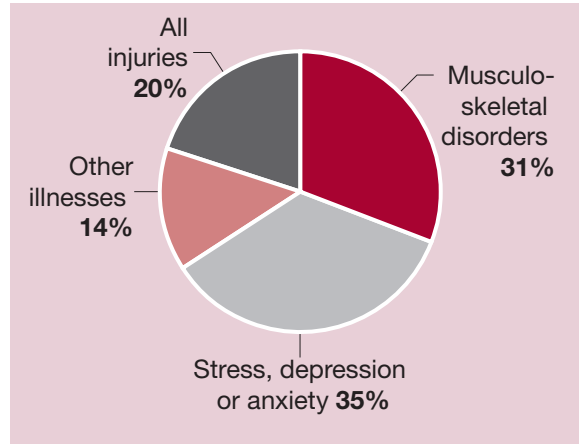
- “20% of HSE improvement notices definitely cover health versus 55% on safety
- 3.2% of HSE prosecutions are definitely health related while 79% are safety related.”<sup>30</sup>

This is likely to be due to the fact that causal factors are more difficult to prove in health areas. There may also be some reluctance on the part of inspectors who are more comfortable in dealing with safety issues. However, in terms of working days lost, incidences of stress and MSDs far outweigh those of workplace injury.

**HSE may not be capturing those less inclined to comply with health and safety legislation**

**84** A general concern of business was that the HSE tended to target those companies who were ‘visible’ by operating in accordance with the rules (for example submitting RIDDOR returns) and were not capturing a significant group of businesses who had less intention to comply. There was some concern about the lack of incentives within the health and safety system to play by the rules. In particular, the construction industry representatives stated that they would like to applaud and reward compliant businesses. For example, working more closely with the insurance industry in order to lower insurance premiums could be a good driver for compliance.

**Figure 5: Working days lost by cause**



Source: Health and Safety Executive

<sup>30</sup> Greenstreet Berman, page 32, 2006

## Focus on Outcomes

### Hampton principle

*“Regulators should measure outcomes and not just outputs.”*

## Key findings

- **HSE has outcome-focused PSA targets**
- **HSE works in partnership to deliver its outcomes**
- **HSE does not publish performance data on the perception of health and safety regulation and regulatory costs**
- **HSE has difficulty in fully evaluating the effect of its interventions**
- **There is particular concern about whether inspections and enforcement are an effective way of influencing outcomes on health**

## Background

**85** In 2000, the Health and Safety Commission, set goals and targets for the health and safety system in Great Britain. The HSE adopted these goals and set targets for its own work through its Public Service Agreements (PSA).

monitored regularly by the HSE. If a particular sub-programme does not appear to be delivering the expected reduction in injuries, for example the slips and trips programme, the HSE attempts to tackle this by refocusing its resources and campaigns.

## Review Findings

### **HSE has outcome-focused PSA targets**

**86** The HSE’s current PSA targets are by 2007-08, against a baseline of 2004-05, to reduce:

- the incidence rate of fatal and major injury by 3 per cent;
- the incidence rate of work-related ill health by 6 per cent; and
- the number of days lost due to work-related injuries and ill health by 9 per cent.

**87** The HSE aims to deliver its PSA targets by tackling the key sources and causes of injury and ill health through its Fit3 programme (see paragraph 6, Introduction). Each element of the overall programme is

### **HSE works in partnership to deliver its outcomes**

**88** The HSE is aware that it cannot deliver its PSA targets on its own. Whilst it can seek to influence individual businesses directly through its advice, guidance and inspections, it can, arguably, have more impact by working through others. It has, therefore, developed a plan which identifies ways of influencing its key stakeholders including business and trade sector groups, trades unions, policy makers and local authorities. Over the last five years it has greatly strengthened its partnership with local authorities and is seeking to align local authority health and safety work with the Fit3 agenda. It has also successfully persuaded trade organisations in some of the most dangerous industry sectors to adopt their own injury and ill health reduction targets.

### **HSE does not publish performance data on the perception of health and safety regulation and regulatory costs.**

- 89** The HSE measures and publishes data on its regulatory outcomes in terms of its performance against its PSA targets. However, it does not publish data on the perception of the health and safety regulatory regime amongst business and other stakeholders, alongside information on the costs of regulation.

### **HSE has difficulty in evaluating the effect of its interventions**

- 90** Overall however, the HSE has difficulty obtaining hard evidence on the effectiveness of its interventions. The Fit3 strategy is based on an analysis of the available evidence on the types and causes of injury and ill health and the circumstances in which they occur. Some of the data sources used are less than perfect, for example the HSE knows that that businesses tend to substantially under-report the incidence and seriousness of accidents at work under the RIDDOR reporting regulations. However, the most serious gap is in understanding what works in trying to prevent accidents and ill health. There are a number of separate issues:

- it can be difficult to assess the impact of specific interventions, particularly in the areas of health (as opposed to safety);
- there is poor capture of information from the HSE's inspectors about their initiatives; and
- there is poor capture of information from local authorities about their actions and initiatives.

- 91** More fundamentally, the HSE cannot say with any confidence how effective its interventions are or the relative effectiveness of inspections versus advice

and guidance. Whilst the Fit3 strategy seeks to provide a co-ordinated package of activity, the HSE cannot be certain that it has the right balance between inspection and targeted campaigning work to achieve maximum impact. Research commissioned for the HSE has found that, although rates of workplace injury have declined, there is a question as to how much of this is due to the regulatory regime and how much due to structural changes in the workplace. The research notes that it is difficult to “identify the separate and additional contribution of the HSE against a background of varying economic conditions and a continually evolving labour market”<sup>31</sup>.

- 92** In addition, the HSE has identified that it needs to make better use of the information it already holds about the success of different approaches to improving health and safety management and practice. Currently much of this material is not accessible to its staff or others. The HSE has plans to remedy this by putting more research material on its website.

### **There is particular concern about whether inspections and enforcement are an effective way of influencing outcomes on health**

- 93** To meet its target to reduce working days lost through ill health, the HSE is targeting the common causes of work-related ill health, such as musculo-skeletal disorders and stress. However, there is concern both within HSE and externally about how effective the HSE can be in tackling health issues such as stress. In particular, there is a question about whether inspection and enforcement are an effective means of intervention, given that health issues are more difficult for inspectors to diagnose compared with safety issues.

<sup>31</sup> 'Trends and context to rates of workplace injury' – Warwick Institute for Employment Research, 2005, <http://www.hse.gov.uk/research/rrpdf/rr386.pdf>

## Appendix 1: Review team membership

**Derek Allen** is Executive Director of Local Authority Co-ordinators of Regulatory Services – the local government central body that supports councils to deliver excellence in a range of environmental health, trading standards and licensing services, including their role in delivering health and safety enforcement and advice services. Derek has been in post since March 2002 and prior to this was Head of Regulatory services at Thurrock Council.

**John Dodds**, Managing Director of Regulatory Reform, Better Regulation Executive, Department for Business, Enterprise and Regulatory Reform. John has been in this role since March 2006 and is responsible for the Better Regulation Executive's work with Government departments and Regulators on the stock and flow of regulation. Before joining the Better Regulation Executive he worked in a range of roles in HM Treasury.

**Ed Humpherson**, Assistant Auditor General, National Audit Office. Ed is responsible for the NAO's private finance and economic regulation work amongst other responsibilities.

**Christine Wade**, Assistant Chief Executive, Consumer Advice and Trading Standards, Office of Fair Trading. Christine was appointed Director of OFT Consumer Enforcement Division in July 2003. Prior to this, she was Director of Co-regulation and Co-ordination within the division. Before moving to the OFT she was Head of Essex Trading Standards and was awarded the MBE for her services to trading standards in Essex in the 2002 New Year's Honours.

## Appendix 2: Conclusions of the Hampton and Macrory reviews

### Hampton principles of inspection and enforcement

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most
- No inspection should take place without a reason
- Regulators should provide authoritative, accessible advice easily and cheaply
- All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted
- Businesses should not have to give unnecessary information, nor give the same piece of information twice
- The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions
- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take
- Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work
- When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed

Source: Hampton Report, Box E2 page 7

## Macrory's principles and characteristics of an appropriate sanctioning regime

A sanction should:

1. Aim to change the behaviour of the offender;
2. Aim to eliminate any financial gain or benefit from non-compliance;
3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
4. Be proportionate to the nature of the offence and the harm caused;
5. Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
6. Aim to deter future non-compliance.

Regulators should:

1. Publish an enforcement policy;
2. Measure outcomes not just outputs;
3. Justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament;
4. Follow up enforcement actions where appropriate;
5. Enforce in a transparent manner;
6. Be transparent in the way in which they apply and determine administrative penalties; and
7. Avoid perverse incentives that might influence the choice of sanctioning response.

Source: Macrory Report, Box E1 page 10

## Appendix 3: Review scope and methodology

The review looked at all aspects of the HSE's work except its inspection of the highest hazard sectors – the work of the Hazardous Installations Directorate (HID) and Nuclear Directorate (ND). This was excluded because the HSE's work on major hazards involves a relationship between the regulator and the industry which is atypical:- due to the relatively small number of businesses in such sectors, a close and continuous relationship exists in a manner that is not possible (or necessary) in other parts of industry.

The work outside HID and ND covers the majority (95%) of premises that are enforced by the HSE.

Due to the wide scope of health and safety regulations and the great variety of businesses which the HSE regulates, we decided to use case studies as a means of exploring the HSE's performance. The case studies used were:

- Construction (Design and Management) regulations
- Working at Heights regulations
- Musculo-skeletal diseases (incorporating the Display Screen Equipment (DSE) regulations)

The review also looked at the HSE's high level strategies and plans, including its influence with local authorities.

Our methods included:

- interviews with a wide range of HSE staff including senior managers;
- interviews with other stakeholders including the Health and Safety Commission, trade bodies in the construction sector and local authorities;
- focus groups of HSE policy officials, inspectors and businesses;
- observational visits including inspections; and
- document review.

The review process is described in *Hampton Implementation Reviews: Guidance for Review Teams*. It is not the same as a full value for money audit of economy, efficiency and effectiveness and the review team's conclusions are both evidence and judgement-based. These judgements, however, have been made drawing on a range of evidence from different sources, including those described above. Judgements have not been based on evidence from a single source – the review team has sought to bring together evidence from a number of different businesses or organisations, and from HSE front-line staff, policy officials and senior managers.

The organisations that we spoke to included:

Arun District Council  
Babergh District Council  
Brighton and Hove City Council  
Chartered Institute of Environmental Health  
(CIEH)  
Construction Clients' Group (CCG)  
Construction Confederation  
Construction Industry Advisory Committee  
(CONIAC)  
Construction Skills  
Engineering Construction Industry Association  
Federation of Master Builders (FMB)  
Health and Safety Commission  
Health and Safety Executive  
Local Authorities Coordinators of Regulatory  
Services (LACORS)  
Leeds City Council  
London Borough of Richmond upon Thames  
Manchester Chamber of Commerce  
Tower Hamlets London Borough Council  
Union of Construction, Allied Trades and  
Technicians  
Wakefield Metropolitan District Council

Better Regulation Executive  
Department for Business, Enterprise and Regulatory Reform  
3rd Floor  
1 Victoria Street  
London SW1H 0ET

Website: [www.berr.gov.uk/bre](http://www.berr.gov.uk/bre)

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