



House of Commons

Work and Pensions Committee

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# **The role of the Health and Safety Commission and the Health and Safety Executive in regulating workplace health and safety**

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Third Report of Session 2007–08

*Volume I*





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*Volume I*

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## The Work and Pensions Committee

The Work and Pensions Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Work and Pensions and its associated public bodies.

### Current membership

Terry Rooney MP (*Labour, Bradford North*) (Chairman)  
Anne Begg MP (*Labour, Aberdeen South*)  
Harry Cohen MP (*Labour, Leyton and Wanstead*)  
Michael Jabez Foster MP (*Labour, Hastings and Rye*)  
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Mark Pritchard MP (*Conservative, The Wrekin*)  
Jenny Willott MP (*Liberal Democrat, Cardiff Central*)

The following Members were also members of the Committee during the Parliament:

Philip Dunne MP (*Conservative, Ludlow*)  
Natascha Engel MP (*Labour, North East Derbyshire*)  
Justine Greening MP (*Conservative, Putney*)

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The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/parliamentary\\_committees/work\\_and\\_pensions\\_committee.cfm](http://www.parliament.uk/parliamentary_committees/work_and_pensions_committee.cfm). A list of Reports of the Committee in the present Parliament is at the back of this volume.

### Committee staff

The current staff of the Committee are James Rhys (Clerk), Emma Graham (Second Clerk), Amy Sweeney and Hanna Haas (Committee Specialists), Laura Humble (Committee Media Adviser), Louise Whitley (Committee Assistant), Emily Gregory (Committee Secretary) and John Kittle (Senior Office Clerk).

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## Summary

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The Health and Safety Commission (HSC) and the Health and Safety Executive (HSE) are the two Department for Work and Pensions (DWP) agencies responsible for health and safety in Great Britain. They are to be merged and moved to a single headquarters in Bootle, Merseyside. The Committee is satisfied that the merger is a sensible proposal but is concerned that the move to Bootle could lead to a huge loss of experienced HSE staff, who are unwilling to relocate.

We have found that the original legislative framework governing workplace health and safety is proportionate but that partly due to some lack of legal clarity, employers can be over-cautious in their interpretation of its provisions, increasing the compliance burden on themselves. Over-zealous health and safety “consultants” contribute to this problem and we call for a system of accreditation of consultants and advisers. We hope that HSE’s Risk and Regulation Advisory Council will be tasked with addressing this.

Many who submitted evidence to our inquiry believed that HSE does not have sufficient resources to fulfil its remit. HSE aims to meet a 60:40 ratio of proactive and reactive work, however we heard that not only are businesses likely to have an HSE inspection just once every 14.5 years but that also accident investigations are being scaled back. Academic research has highlighted the influence of the number of inspections on levels of compliance with health and safety obligations. We believe that an under resourced health and safety inspectorate has an impact upon employer compliance and accident rates. In view of the total lack of clarity in financial information supplied, it is not clear to us whether additional inspections can be financed from within the Comprehensive Spending Review 2007 settlement or whether further resources will be required.

In addition to the lack of inspections, we conclude that current levels of fines for health and safety offences are too low and do not provide a sufficient deterrent to ensure duty holders comply with their obligations. We would also like to see more innovative penalties to encourage compliance among employers.

The Health and Safety at Work Act 1974 is clear that as well as duty holders, employees must take responsibility for health and safety in the workplace. We examined the role of safety representatives and measures to increase employees’ involvement in non-unionised workforces. We believe that the HSE should do more to promote worker involvement in health and safety.

The increase in the number of fatalities in the construction industry; the offshore oil industry’s failure to meet its major hazard sub targets, and health and safety risks to migrant workers are key areas of concern for HSE. We commend the work that HSE has done on the Construction Forum, its review of North Sea assets and its planned research on migrant workers but we question whether these actions are enough to rectify the problems.

We are concerned that HSE is struggling to cope with its occupational health remit. It admits to basing its occupational health policy on an incomplete data source and is failing

to meet its occupational ill health targets.

During this inquiry Dame Carol Black published a review of the health of Britain's working age population. Her report stressed the need for a fully developed occupational health service which we endorse but we do not believe that this provision should be within HSE. We also believe that there may be a need for financial incentives for employers to engage in rehabilitation programmes for injured or sick employees.

HSE needs to concentrate on its core remit and measures to extend its responsibilities into other areas places an excessive strain on its resources and risks diverting its focus.

# 1 Introduction

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1. The Health and Safety Executive (HSE) and the Health and Safety Commission (HSC) are the two Department for Work and Pensions (DWP) agencies responsible for health and safety in Great Britain.
2. The non-executive Commission works to ensure that relevant legislation is appropriate and understood by conducting and sponsoring research; providing training; providing an information and advisory service; and submitting proposals for new or revised regulations and approved codes of practice. It also has the specific duty to maintain the Employment Medical Advisory Service (EMAS), which provides advice on occupational health matters. The Commission is made up of nine commissioners appointed following consultation with representative groups to create a tripartite system that represents trade unions, employers and Government.
3. The Executive is the operating arm of the Commission. It advises and assists the Commission in its functions and has specific responsibility, shared with local authorities, for enforcing health and safety law .
4. Our predecessor Work and Pensions Committee undertook an inquiry into the work of the Health and Safety Commission and Executive in 2004.<sup>1</sup> The Committee recommended proposals for change including the introduction of a Bill to reform the law on corporate killing, which will be largely addressed by the Corporate Manslaughter and Corporate Homicide Act 2007, coming into force in April 2008.<sup>2</sup> The Committee also recommended that the Government give higher priority to the development of national occupational health services.<sup>3</sup> Dame Carol Black's appointment as National Director for Health and Work and her review of the health of Britain's working age population has raised the profile of occupational health. She has recommended that the Government should develop a "Fit for work" service so that all employees have access to some sort of occupational health support.<sup>4</sup>
5. The Committee highlighted a considerable number of areas where the HSC and HSE should be doing more to improve their respective operations and called on the Government to re-examine whether HSC and HSE are still able to cover their full remit within limited financial resources.
6. The current Work and Pensions Committee held a one-off evidence session with Ms Judith Hackitt, the Chair of HSC, and Mr Geoffrey Podger, the Chief Executive of HSE, in November 2007. The Committee received written evidence in advance of this session and found that many of the concerns raised by the previous Committee were still valid.

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<sup>1</sup> Work and Pensions Committee, Fourth Report of Session 2003-04, *The work of the Health and Safety Commission and Executive*, HC 456

<sup>2</sup> Work and Pensions Committee, Fourth Report of Session 2003-04, *The work of the Health and Safety Commission and Executive*, HC 456, Summary

<sup>3</sup> Work and Pensions Committee, Fourth Report of Session 2003-04, *The work of the Health and Safety Commission and Executive*, HC 456, Summary

<sup>4</sup> Dame Carol Black's *Review of the health of Britain's working age population: Working for a healthier tomorrow*, March 2008

7. Stakeholders highlighted the continued paucity of HSE's resources, its expanding remit and the impact this has had on its capabilities. Poor progress towards its Public Service Agreement (PSA) targets for ill health and days lost per worker was cited as evidence that HSE was spreading itself too thinly. The debate about statutory duties for directors, first raised during the 2004 inquiry, remained an issue for a number of respondents and the need for greater investment in inspections within the hazardous industries continued to create concern among many who submitted evidence.

8. New issues were also raised during the November evidence session, which were not apparent at the time of the previous inquiry. The alarming rise in deaths in the construction industry in recent years was emphasised as a key issue, as was the response of HSC and HSE. The proposed merger of HSC and HSE and the planned relocation of operations to Bootle were also suggested as areas that the Committee should examine further.

9. Given that there appeared to be a number of persistent and unresolved issues for HSC and HSE, alongside planned changes to the organisations' composition and location, the Committee decided to launch a full inquiry into the work of the two agencies.

10. The Committee announced its inquiry on 4 December 2007. Following the initial call for evidence, 46 memoranda were received from a wide range of organisations and individuals.

11. We took oral evidence from Professor Frank Wright; Martin Bare, Association of Personal Injury Lawyers (APIL); Chris Jackson, Solicitor Advocate; Dr Janet Asherson, Confederation of Business and Industry (CBI); Louise Ward, EEF; Richard Diment, Federation of Master Builders (FMB); Michael MacDonald, Prospect; Jim Kennedy, Union of Construction Allied Trades and Technicians (UCATT); Tom Wilson, Trades Union Congress (TUC); Daniel Shears, GMB; Steve Bailey, British Occupational Hygiene Society (BOHS); Nick Starling, Association of British Insurers (ABI); Kim Sunley, Royal College of Nursing (RCN); Ray Hurst, Ian Waldram and Richard Jones, Institution of Occupational Safety and Health (IOSH); Derek Allan, Local Authority Coordinators of Regulatory Services (LACORS); Lord McKenzie of Luton, Parliamentary Under-Secretary of State at DWP; Judith Hackitt, Chair of HSC; Geoffrey Podger, Chief Executive of HSE; and Dame Carol Black, National Director for Health and Work.

12. As part of our inquiry, the Committee travelled to Buxton to visit the Health and Safety Laboratory (HSL) to see how its research informs the work of HSC/E. We visited the Olympic site in Stratford to examine the Olympic Delivery Authority's approach to health and safety. We also held a private meeting with HSE inspectors, of which no official record was kept. The Committee would like to thank all those who contributed to this inquiry by submitting oral and written evidence and those who assisted the Committee in undertaking its valuable visits and meetings.

13. The Committee is also very grateful for the assistance of its Specialist Advisers, Professor Phillip James and Dr Alex Grieve, who advised the Committee on the wide range of issues covered by the remit of the inquiry and provided ongoing support to both Members and the Committee staff.

## 2 Proposals for change

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### The proposed merger of HSC and HSE

14. On 8 August 2007, the Government announced a Ministerial Consultation on the proposed merger of HSC and HSE. The consultation document proposed the idea of merging the Commission and the Executive into a new unitary body and bringing together their powers and functions.

15. The merger aims to update the business practices of the agency and its governing structure, which the consultation document described as “outdated” and “not as effective” as it should be in managing the finance and performance of the two bodies.<sup>5</sup> The draft Legislative Reform (Health and Safety Executive) Order 2008 would abolish HSC and the current HSE and transfer their functions to a new, unitary body, which would retain the name “Health and Safety Executive”. The Regulatory Reform Committee recently reported on the draft Order and concluded that it retained necessary protection and was proportionate to its policy objectives.<sup>6</sup>

16. In November 2007, the Chair of HSC, Ms Judith Hackitt, told the Committee that in addition to improving internal operations, the merger will improve external stakeholders’ understanding of HSC and HSE business.<sup>7</sup>

17. The proposed merger of HSC and HSE was supported by most respondents, although a number of organisations, including the Trades Union Congress (TUC), emphasised the need to maintain the tripartite system representing unions, employers and the Government in the new body.<sup>8</sup> The tripartite system operates at the Commission level, where the unions, employers and Government are represented by non-executive Commissioners who sit on the HSC Board.

18. The Police Federation were also in support of the merger but feared that the emergency services would not be sufficiently represented on the new body.<sup>9</sup>

19. Local Authority Co-ordinators of Regulatory Services (LACORS) expressed its concern that the new merged body, with control of both policy and enforcement, could create conflict in terms of its interface with local authorities:

“By creating a body that, while overseeing itself, is both the operational partner of local authorities and their statutory master, the proposal to merge the HSE and HSC

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<sup>5</sup> DWP Report following the Ministerial Consultation on the proposed merger of the Health and Safety Commission (HSC) and the Health and Safety Executive (HSE), December 2007

<sup>6</sup> Select Committee on Regulatory Reform, Second Report, Session 2007-08, *Draft Legislative Reform (Health and Safety Executive) Order 2008*, HC398

<sup>7</sup> Q 13 (28.11.07)

<sup>8</sup> Ev 184

<sup>9</sup> Ev 144

risks unbalancing a system that has a proven record of success as the best in Europe.”<sup>10</sup>

20. LACORS concluded that if the merger is to go ahead, organisations representing local government should be consulted on the appointment of at least two members of the new board.<sup>11</sup> LACORS also raised these concerns in its response to HSC’s consultation document. In December 2007, DWP published the Government response to the consultation, which concluded that “the key to continuing the development of this relationship [between HSE and local authorities] lies not in constitutional matters but in working practices and effective communications in the field at local, regional and national level.”<sup>12</sup>

**21. The Committee supports the Government’s proposals to merge the Health and Safety Commission (HSC) and the Health and Safety Executive (HSE) but believes that the new body must include appropriate representation of stakeholders on its board. We ask that HSC demonstrates how it will ensure that the new unitary body is not only representative, but also maintains the principles of tripartism in its approach to health and safety.**

## Relocation to Bootle

22. In 2006, HSE’s Board established the “How and Where We Work” (HWWW) Programme to examine ways to work more collaboratively, create greater flexibility, improve career structures, improve the working environment and reduce the costs of its estate.<sup>13</sup> In November 2007, HSC endorsed HWWW’s proposal to create a single headquarters for HSE based in its Redgrave Court building in Bootle, Merseyside. It estimated that the relocation would realise gross savings of between £55 million and £67 million over ten years. There would be potentially around 320 posts in scope for relocation out of London to Bootle, from a total organisational head count of approximately 3500.<sup>14</sup>

23. A number of organisations expressed their concern that the relocation of HSE HQ from Rose Court, London could seriously impact upon the agency’s operations. Prospect acknowledged HSE’s savings estimate but was concerned that the move was motivated simply by a desire to reduce costs, but would be at the expense of efficiency.<sup>15</sup>

24. There was agreement between the unions that the move will lead to a significant loss of knowledge in HSE, particularly in terms of its policy expertise. According to FDA’s calculations, relocating will result in “the loss of virtually all HSE’s policy and litigation legal staff within two years”.<sup>16</sup> Prospect’s Negotiations Officer, Mr Mike MacDonald,

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<sup>10</sup> Ev 162

<sup>11</sup> Ev 162

<sup>12</sup> DWP Report following the Ministerial Consultation on the proposed merger of the Health and Safety Commission (HSC) and the Health and Safety Executive (HSE), December 2007, para 6

<sup>13</sup> Details of which can be found in - *Meeting the Challenges: Health and Safety Commission Annual Report, Health and Safety Commission / Executive Accounts 2006/07*

<sup>14</sup> HSE press release, *Single HQ for Health and Safety Executive in Bootle*, 6 November 2007 <http://www.hse.gov.uk/press/2007/e07042.htm>

<sup>15</sup> Q 85

<sup>16</sup> Ev 265

estimated that “fewer than five per cent of team leaders in the policy section are prepared to move”,<sup>17</sup> the TUC predicted that relocation would lead to a loss of around 80% of HSE’s London-based staff<sup>18</sup> and a survey by Public and Commercial Services Union (PCS) found that just 12 people would be prepared to move.<sup>19</sup>

25. The Committee raised these concerns with Lord McKenzie of Luton, Parliamentary Under Secretary of State at DWP, who said:

“I think that we need to recognise that the estates costs for the HSE is something like ten per cent of its total costs and obviously any savings that can be made on that can help support the frontline and we should welcome that [...] It is absolutely right to say that, on the basis of the work that has been done to date, very few of the staff [from London] have indicated that they will go [to Bootle] [...] There is a transition and the hope is to get the new arrangements in place by the first quarter of 2010 but there is scope to extend that a bit within these arrangements.”<sup>20</sup>

**26. The Committee accepts that HSE must make savings in order to release more money to fund frontline services but is concerned that the relocation to Bootle could lead to a significant loss of experienced staff. We are not satisfied that HSE has explained how it will ensure that the closure of its London headquarters will not create a gap in its expertise, particularly in the areas of policy and litigation. We ask that HSE explains this and clarifies how savings made from the relocation will be re-allocated.**

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<sup>17</sup> Q 82

<sup>18</sup> Ev 184

<sup>19</sup> Ev 223

<sup>20</sup> Q 254

## 3 The legislative framework

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27. The Health and Safety at Work etc Act (HSWA) 1974 established the framework for health and safety regulation in Great Britain. It places an obligation upon all employers to ensure, “so far as is reasonably practicable, the health, safety and welfare of their employees” whilst at work and any other persons affected by their business activities.<sup>21</sup> Employees also have a duty to ensure that they take reasonable care for their own safety and the safety of others and, so far as necessary, support their employer in creating a safe workplace.

### Proportionality of legislation

28. There was consensus among the unions, legal experts and the business community that the general principles of health and safety law remained relevant over thirty years after the HSWA was introduced. Chris Jackson praised the Act’s “sensible” structure, which incorporates general duties for employers and an accompanying list of specific requirements.<sup>22</sup> CBI’s Head of Health and Safety, Dr Janet Asherson agreed that the framework was:

“complex but comprehensive and very adaptable and flexible to a fairly rapidly changing work contractorisation and employment situation.”<sup>23</sup>

29. In 2005, the HSC and HSE set a target to reduce the administrative burdens on business caused by health and safety regulation by 25 per cent from 2005 levels by 2010. In November 2007, HSC/E’s Second Simplification Plan set out the agency’s achievements so far, which included the discontinuation of over 50% of HSE’s forms, the launch of websites listing all of HSC/E’s stock of primary and secondary legislation and new simplified reporting of accidents and incidents.<sup>24</sup>

30. There have been criticisms that HSE’s 25 per cent target is arbitrary and open to interpretation as deregulation, rather than better regulation.<sup>25</sup> The calculation of the £2.03 billion baseline annual costs of the administrative burden in 2005 and the estimated annual savings of £508 million that would arise from a 25 per cent cut are, by HSC/E’s admission, “not statistically robust”.<sup>26</sup>

31. The complexity of the legislation, in terms of its application, was one of the few concerns that witnesses raised when endorsing the existing health and safety framework. For small and medium enterprises (SMEs) in particular, the implementation of the law can be a daunting task. Richard Diment of the Federation of Master Builders (FMB) told the Committee:

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<sup>21</sup> Part I, Section 2, Health and Safety at Work Act 1974

<sup>22</sup> Q 1

<sup>23</sup> Q 45

<sup>24</sup> HSE/C *Second Simplification Plan*, November 2007

<sup>25</sup> Fidderman, H (2008), *Health and Safety Bulletin*, January/February 2008

<sup>26</sup> HSE/C *Second Simplification Plan*, November 2007, Page 1, Executive Summary

“My members are very much at the “S” end of the SME sector and they do find it a struggle to cope with it. I think most support the principles behind it, want to abide by it, but the complexity of the whole raft of regulatory issues they have to cover [...] it is quite difficult.”<sup>27</sup>

32. The Federation of Small Businesses (FSB), agreed that many SMEs regard the health and safety regulatory burden as disproportionate and they need access to advice and support to facilitate their implementation of the law.<sup>28</sup>

**33. The Committee believes that the Health and Safety at Work Act 1974 is proportionate; however, some employers, particularly small and medium enterprises (SMEs) can find it difficult to understand and apply. We commend HSE’s efforts to reduce the administrative burden on businesses and conclude that it should continue to keep the adequacy of the support it provides to SME’s under review and ensure smaller employers are able to access sufficient and appropriate guidance.**

### **Public safety and the Health and Safety at Work Act 1974**

34. The Committee heard from a number of witnesses who, whilst valuing the framework of health and safety legislation, believed that it had been stretched beyond its original purpose (of regulating health, safety and welfare in the workplace) to encompass wider issues of public safety. Mr Chris Jackson highlighted the fact that HSWA’s coverage has been extended to include “everything from churches, to charities, to police operations, to army training”.<sup>29</sup>

35. The TUC was critical of the progressive expansion of the regulator’s scope of activities. Mr Tom Wilson, Head of Organisation and Services, told the Committee that:

“The TUC believes very strongly that the Act really covered the protection of workers in the workplace and people involved in work activities [...] Our view is that the HSE should be regulating on work related public issues but not just public safety issues generally; these should be primarily matters for either other regulators or local authorities.”<sup>30</sup>

36. However, Mr Martin Bare, President of the Association of Personal Injury Lawyers (APIL) suggested that it is the very fact that there are no “other regulators” to whom HSE can justifiably allocate these regulatory responsibilities that it must broaden its regulatory scope: “What I can say is that I do not see anybody on the reserves bench.”<sup>31</sup>

37. The Committee asked the Local Authority Co-ordinators of Regulatory Services (LACORS) whether it believed local authorities should be taking the lead on public safety instead of HSE. Executive Director, Mr Derek Allen told us:

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<sup>27</sup> Q 45

<sup>28</sup> Ev 249

<sup>29</sup> Q 2

<sup>30</sup> Q 121

<sup>31</sup> Q 2

“No, I do not think that it should be the sole responsibility of local authorities [...] I think that a focus towards public safety from the Health and Safety Executive is important. It needs to be balanced and it needs to be risk focused [...] the pressure that that would put on resources for local authorities would be huge and I think again it is ensuring that we work that through in a partnership way.”<sup>32</sup>

**38. HSE’s role in relation to public safety has expanded considerably and beyond that originally envisaged. The Committee believes that whilst this is not ideal, responsibility for public safety cannot be the sole remit of local authorities, which are also operating within tight budgets. We ask the Government to clarify its strategy for public safety, demonstrate where responsibility for this strategy should lie and how funding for its regulation should be allocated.**

### Transposition of EU directives

39. The greater part of relevant health and safety legislation is of EU origin, with EU directives being interpreted and transposed into member states’ own legislative framework. Witnesses highlighted the rate at which EU directives are created and the UK’s approach to their transposition.

40. FSB suggested that problems are created at a domestic, rather than EU, level, citing occasions when the UK has “gold-plated” EU legislation. It highlighted the findings of a survey in which eight directives were analysed by The Foreign Policy Centre after the FSB was advised by its members of those regulations that have proven particularly burdensome. It concluded that there was some evidence of gold-plating. For example, EU Directives on health and safety did not cover the self-employed, but when implemented by UK regulations, provisions were extended to cover this group.<sup>33</sup>

41. However, APIL gave a number of examples including the Noise at Work Directive and the Manual Handling Directive which it argued demonstrated a much greater tendency for the UK Government to dilute the purposes of EU directives rather than gold-plating them.<sup>34</sup>

42. In 2006, Lord Neil Davidson QC carried out a review of the UK’s implementation of EU legislation to identify whether and where gold-plating of European regulation had led to additional burdens on business. The Davidson Review report did not identify any gold-plating of UK occupational health and safety legislation which required action.<sup>35</sup>

**43. We call upon the Government to take steps to ensure that its transposition of EU legislation is consistent with HSE’s efforts to reduce the administrative burden on business. We are concerned that the implementation of some EU directives in UK regulations has introduced a more absolute duty on employers, which was over-prescriptive and countered these efforts. We call on the Government to evaluate the**

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<sup>32</sup> Q 241

<sup>33</sup> *Burdened by Brussels or the UK? Improving the implementation of EU Directives* - A joint publication by the Foreign Policy Centre and the Federation of Small Businesses, September 2006

<sup>34</sup> Ev 317

<sup>35</sup> The Davidson Review on Implementation of EU legislation, November 2006

extent to which this has taken place and, if necessary, to publish a strategy for reasserting the “reasonable practicability” test enshrined in the original 1974 Act.

### Corporate Manslaughter and Corporate Homicide Act (2007)

44. During the 2005-06 Session, this Committee published a joint report with the Home Affairs Committee on the Draft Corporate Manslaughter Bill. We welcomed its introduction and emphasised our belief that there was “a strong need for a statutory offence that shifts the basis of liability for corporate manslaughter away from the requirement of identifying a ‘directing mind’ of a guilty company.”<sup>36</sup>

45. The Bill was given Royal Assent and the Corporate Manslaughter and Corporate Homicide Act 2007 (CMCH) will come into force on 6 April 2008. It will introduce a new offence, under which companies and other organisations can be prosecuted where there has been a gross failing throughout the organisation in the management of health and safety, with fatal consequences. It will apply to a wide range of organisations across the public and private sectors. Courts will be able to look at management systems and practices; the Act will provide a more effective means of prosecuting the worst corporate failures to manage health and safety effectively. Whilst there are no new duties under the Act, HSE argued that it will motivate boards to evaluate their approaches to health and safety and their individual responsibilities as it concentrates on the failures of senior management.<sup>37</sup> The Communication Workers’ Union North West agreed, commenting that the Act:

“will be a wake up call for employers, company bosses and organisations and the law will be a deterrent to employers who fail to meet the proper standards of health and safety.”<sup>38</sup>

46. Whilst supporting the CMCH Act 2007 in principle, Thompsons Solicitors suggested that employers were not giving it due consideration and this problem was only exacerbated by the inaccuracies and misinformation propagated in the media. Thompsons Solicitors gave the example of a recent BBC You and Yours programme which trailed its feature on the Act by stating that it would affect everything from “team building away days to the office Christmas party”. Thompsons Solicitors described this as “nonsense.”<sup>39</sup>

**47. The Committee welcomes the Corporate Manslaughter and Corporate Homicide Act 2007. We call on the Government to assess the effectiveness of the Act after its first three years of operation and the impact it has on board level ownership of health and safety issues.**

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<sup>36</sup> Home Affairs and Work and Pensions Committees, First Joint Report of Session 2005 – 06, *Draft Corporate Manslaughter Bill*, Vol 1, Page 3

<sup>37</sup> Ev 164

<sup>38</sup> Ev 138

<sup>39</sup> Ev 232

## Directors' duties

48. There is a long-standing debate about whether or not the UK should adopt statutory health and safety duties for individual company directors. During the 2004-05 session of Parliament, a Private Members' Bill proposing duties on company directors to comply with health and safety law was introduced unsuccessfully.<sup>40</sup> Our predecessor Committee concluded that the Government should legislate on directors' duties.<sup>41</sup> However, in its response the Government argued that there was already an appropriate balance of legislative and voluntary responsibilities on directors for occupational health and safety, and explained that it had no immediate plans to legislate for this new legal liability for directors.<sup>42</sup>

49. The HSC has developed new guidance on board members' health and safety responsibilities, which was issued on 29 October 2007 jointly with the Institute of Directors (IoD). It suggested ways for directors to own and understand health and safety by leading from the top.<sup>43</sup> In its 2007/08 Business Plan, HSE emphasised that in order to clarify and boost director involvement, the Government is keen to see more attention to health and safety in company annual reports.<sup>44</sup>

50. The guidance has no direct legal force, as is it not an Approved Code of Practice, but boards that ignore its directions could leave themselves vulnerable in the event of legal action. Section 8 of the CMCH Act 2007, says juries considering whether there has been a gross breach of the law through organisational failings can "have regard to any health and safety guidance that relates to the alleged breach".<sup>45</sup>

51. HSE highlighted the fact that the guidance does not stand alone but is "just one aspect of the current arrangements, involving a mix of legislation, enforcement and voluntary guidance".<sup>46</sup> It emphasised the complementary roles of the CMCH Act 2007, enforcement action under the HSWA and the Company Directors Disqualification Act 1986, which may be used by the courts to disqualify an individual following a conviction.<sup>47</sup>

52. The employer groups all agreed that the voluntary duties, supported by guidance and legislation, were sufficient to ensure health and safety laws were abided by.<sup>48</sup> However, the unions opposed this view. There was consensus amongst Union of Construction Allied Trades and Technicians (UCATT), UNITE, PCS, Universities and Colleges Union (UCU),

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<sup>40</sup> Health and Safety (Directors' Duties) Bill, House of Commons, Session 2004-05, printed on 12 January 2005

<sup>41</sup> Work and Pensions Committee, Fourth Report of Session 2003-04, *The work of the Health and Safety Commission and Executive*, Vol I, para 60

<sup>42</sup> Work and Pensions Committee, Third Special Report of Session 2003-04, *Government Response to the Committee's Fourth Report into the work of the Health and Safety Commission and Executive*

<sup>43</sup> Institute of Directors and the Health and Safety Commission – *Leading health and safety at work – leadership actions for directors and board members*, October 2007

<sup>44</sup> *Challenges Ahead*; HSE Business Plan 2007/08

<sup>45</sup> Corporate Manslaughter and Corporate Homicide Act 2007 (c. 19)

<sup>46</sup> Ev 282

<sup>47</sup> Ev 282

<sup>48</sup> Ev 249, 131, 193, 260

TUC and Prospect that statutory directors' duties should be introduced. UCATT's National Political Officer, Mr Jim Kennedy, explained:

“We have had the voluntary code for six years but it has not worked. Construction workers still die on a weekly basis. We were disappointed with the new HSE code, the IoD code. As I said previously the voluntary code in construction does not work. Subcontractors will not abide by any voluntary guidance; statutory regulations are the way forward.”<sup>49</sup>

53. Research by the University of Warwick on behalf of HSE suggests that the existing legislation covering disqualification (the Company Directors Disqualification Act 1986) has been used so infrequently that it is impossible to conclude whether it has had a discernible influence upon director behaviour.<sup>50</sup> Furthermore, a recent report by the Centre for Corporate Accountability for UCATT reported that in the last five years only 33 company directors/senior managers have been convicted of health and safety offences under Section 37 of the Health and Safety at Work Act (which sets out the circumstances in which a director of a company can be prosecuted) – two of whom were convicted at the same time for manslaughter.<sup>51</sup>

54. Peer review, on behalf of HSE, of research carried out by the Centre for Corporate Accountability, the consultancy firm Greenstreet Berman and the Health and Safety Laboratory found that, on balance, there was a “strong, but not conclusive, basis for arguing that the imposition of such [directors’] duties would serve to usefully supplement the liability that directors currently face under section 37 of the Health and Safety at Work Act.”<sup>52</sup>

55. HSC Chair, Ms Judith Hackitt, has acknowledged the “strongly divergent views” of stakeholders on this subject and pledged to revisit the question of further legislation if the current arrangements do not provide sufficient protection for employees and the prioritising of health and safety at a director level.<sup>53</sup>

**56. Given that the UK has operated a voluntary approach since the introduction of the Health and Safety at Work Act in 1974, we are not convinced that the introduction of new guidance for directors on health and safety is sufficient to ensure board-level prioritisation of health and safety issues.**

**57. HSC’s Chair has promised to revisit the possibility of introducing statutory duties if the new guidance does not succeed in prioritising health and safety at a director level. We recommend that HSC sets out how it will measure the success of the current arrangements and over what period. Should the combination of existing guidance and**

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<sup>49</sup> Q 107

<sup>50</sup> A survey of the use and effectiveness of the Company Directors Disqualification Act 1986 as a legal sanction against directors convicted of health and safety offences, prepared by the University of Warwick for the Health and Safety Executive, 2007

<sup>51</sup> *Bringing Justice to the Boardroom: The Case against Voluntary Guidance and in Favour of a Change in the Law to Impose Safety Duties on Directors* - A report by the Centre for Corporate Accountability for UCATT, October 2007

<sup>52</sup> *Directors’ responsibilities for health and safety: the findings of two peer reviews of published research*. Prepared by Salford University & Middlesex University Business School for the Health and Safety Executive, 2006

<sup>53</sup> Ev 282

**legislation prove inadequate over the next three years, we are convinced by evidence that the introduction of statutory duties, as recommended by our predecessor Committee, would have a significant impact on board-level prioritisation of health and safety.**

## **Crown immunity**

58. Evidence to the Committee illustrated the widespread support for the HSWA among stakeholders. However, some, such as Thompsons Solicitors and CBI, identified the application of Crown immunity for prosecutions for health and safety offences as a significant shortcoming.<sup>54</sup> In 2006 the previous Chair of HSC, Bill Callaghan, told us that HSC “certainly hope[s] that at an appropriate stage the Government would use the opportunity to remove Crown immunity for health and safety offences. That has been a consistent policy of ours.”<sup>55</sup>

59. RoSPA agreed but did not think it necessarily had to be removed immediately:

”the removal of [...] Crown immunity should be a target but in the meantime there should be greater openness and publicity around crown notice and censure processes so that the public, including victims and other stakeholders can be involved.”<sup>56</sup>

60. There will be no Crown immunity in respect of the CMCH Act 2007 but it does remain in relation to HSWA and this was described by Thompsons Solicitors as a “significant anomaly”.<sup>57</sup> The Minister, Lord McKenzie of Luton, Parliamentary Under Secretary of State at DWP, recently explained that whilst lifting Crown immunity for health and safety offences is a long-standing Government commitment, it believes it is right to consider the implications of its removal in respect of the CMCH Act first before taking wider action.<sup>58</sup>

**61. The Committee believes that Crown immunity from prosecutions for health and safety offences needs to be re-examined. We ask the Government to outline what plans it has to legislate in this area.**

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<sup>54</sup> Ev 230, 131

<sup>55</sup> Work and Pensions Committee Oral evidence session HC 1143, 24 May 2006, Q 70

<sup>56</sup> Ev 151

<sup>57</sup> Ev 235

<sup>58</sup> Hc Deb, 12 Dec 2007, Col 228

## 4 Interpretation of health and safety legislation

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62. HSE produces a variety of guidance for businesses which aims to improve understanding of their duties under the Health and Safety at Work Act (HSWA) 1974 and of health and safety issues more widely. This includes formal guidance, Codes of Practice, and free downloadable information leaflets. HSE also operates an information line, a website that can be translated into eight different languages<sup>59</sup>, and is proactively involved in industry health and safety forums and committees.

63. The need for comprehensive guidance on health and safety is illustrated by the almost daily diet of media stories featuring the recurrent accusation that health and safety has “gone mad”. From pancake races to Christmas decorations, we hear of organisations preventing activities in order to avoid breaching health and safety law.

64. In some instances, activities may present a health and safety risk that must be managed; in Cambridgeshire last Christmas decorative lights fell from their harness in the street, injuring two people.<sup>60</sup> In other instances, such as the blanket banning of workplace Christmas decorations in certain organisations, HSE has confirmed that this represents over-zealousness on the part of employers, rather than good practice.<sup>61</sup> During this inquiry we examined the extent to which public perceptions and media portrayal of health and safety issues influence employers’ approach to health and safety risks and also how employers’ application of the law can become overly-burdensome through the process of risk assessment.

### Public misconceptions of health and safety law

65. The Institute of Occupational Medicine argued that the British public and its politicians do not view health and safety as a high priority. It suggested that, excluding well-documented incidents involving fatalities, responses to health and safety are limited and short-lived. It goes on to say:

“In fact, the situation is worse than this. It has become fashionable within the popular media to attack the notion of safeguarding health and safety. Partly this is a ridiculing of occasional instances [...] where health and safety precautions have clearly been taken to extremes [...] Partly this is an attack against the whole notion of affording protection to workers and others.”<sup>62</sup>

66. Institution of Occupational Safety and Health (IOSH) agreed and noted that in response to media amplification of health and safety stories, HSE had created a “myth of the month” section on its website, which aimed to tackle the negative and misleading press

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<sup>59</sup> Bengali, Chinese, Gujarati, Hindi, Polish, Punjabi, Urdu, Welsh

<sup>60</sup> BBC News website: <http://news.bbc.co.uk/1/hi/england/cambridgeshire/7119661.stm>

<sup>61</sup> HSE website: Myth of the month <http://www.hse.gov.uk/myth/>

<sup>62</sup> Ev 190

coverage of health and safety that can have a detrimental effect on public perceptions of the issue.<sup>63</sup>

**67. We acknowledge the challenge HSE faces in debunking health and safety myths and the importance of this in trying to promote understanding among the public. We commend the HSE for its efforts to tackle misconceptions and encourage it to continue working with partners to address this issue. Public misconceptions of health and safety can obscure the importance of sensible measures to protect workers and secure public safety. We share the disappointment of some witnesses that the media’s portrayal of health and safety issues encourages this misunderstanding and has a detrimental effect on public perceptions of health and safety.**

## Employers’ understanding of health and safety law

### *“Reasonable practicability”*

68. Chris Jackson argued that the opacity of some aspects of health and safety legislation encourages employers to over-regulate, highlighting in particular the uncertainty around what constitutes “reasonable practicability” – an issue discussed by our predecessor Committee during its inquiry in July 2004.<sup>64</sup>

69. Section 2 of HSWA 1974 states that “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.”<sup>65</sup> “Reasonably practicable” implies a balance of the degree of risk against the inconvenience and cost of overcoming it. Chris Jackson claimed that the lack of definition makes it difficult for employers to know how far they must go to demonstrate they have done everything except that which is “grossly disproportionate” to ensure good health and safety practices.<sup>66</sup>

“The difficulty is that if you use the word “gross” disproportion, you create three zones, not two. You know you have got to do the proportionate stuff, you know you have not got to do the grossly disproportionate stuff, but the question arises: “What about the disproportionate element in the middle?” [...] If you have uncertainty, you get some people who say it is all silly and they do not do enough and you get others who over comply or you get difficult situations.”<sup>67</sup>

70. The Federation of Small Businesses (FSB) highlighted findings of a survey it undertook of 1131 of its members, which illustrated this:

“In the case of the Working from Height Regulations, the findings showed that a significant majority of businesses questioned felt the need to go beyond the scope of the regulations in order to protect themselves legally against every eventuality. For

<sup>63</sup> Q 209

<sup>64</sup> Work and Pensions Committee, Fourth Report of Session 2003-04, Vol I, *The work of the Health and Safety Commission and Executive*, para 62

<sup>65</sup> Health and Safety at Work etc Act 1974, Part I, Section 2

<sup>66</sup> HSE guidance note– *The law- Health and Safety at Work etc Act 1974*, <http://www.hse.gov.uk/business/at-work-act.htm>

<sup>67</sup> Q 9

example, the original directive states that only working platforms that could cause a fall from a height of more than two metres need to be inspected. Despite this, 65% of all affected businesses feel the need to assess all work equipment. This highlights the high level of risk aversion felt by small businesses in the face of possible legal challenge.”<sup>68</sup>

71. Other witnesses to this inquiry disagreed with Mr Chris Jackson, arguing that there is no need for a statutory definition of “reasonable practicability”. Professor Frank Wright cited and supported HSE’s recent successful defence in the European Court of Justice of the phrase “so far as is reasonably practicable” (where the European Commission had argued that its inclusion meant UK health and safety legislation did not fully implement the European Framework Directive<sup>69</sup>) as evidence that the Government is right to commit to this standard.<sup>70</sup> **We are concerned that the test of “reasonable practicability” introduces a lack of clarity that can increase the burden on employers in meeting their health and safety obligations. We recommend that the Law Commission reviews the test of “reasonable practicability” and how it applies to the Health and Safety at Work Act 1974.**

### **Risk-assessments**

72. Ms Judith Hackitt, Chair of HSC, conceded that there is a “good deal of evidence” to indicate that duty-holders, and some organisations which advise them, can over-interpret legislation which leads to the production of voluminous risk-assessments that are not required under legislation.<sup>71</sup>

73. Research by FSB has shown that businesses’ understanding of the risk assessment process varies. 32 per cent of their members found it straightforward to carry out, 39 per cent found it quite difficult and 21 per cent found it very difficult to deal with.<sup>72</sup>

74. TUC highlighted the fact that some employers do not undertake risk assessments:

“around half of employers (mainly SMEs) have not even done a basic risk assessment. It is also the case that the HSC appears to be relying much more on goal-setting as opposed to actual prescriptions, which makes both compliance and enforcement more difficult, particularly in small and medium sized enterprises.”<sup>73</sup>

75. A number of witnesses suggested that a key issue for employers was that the risk assessment process was often over-burdensome and it was argued that this could be exacerbated by the approach of some health and safety consultants and advisers. Mr Richard Jones, Policy and Technical Director at IOSH, the professional body that represents health and safety consultants, explained that IOSH has had informal discussions

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<sup>68</sup> Ev 250

<sup>69</sup> Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.

<sup>70</sup> Ev 153

<sup>71</sup> Q17 (28.11.07)

<sup>72</sup> Ev 250

<sup>73</sup> Ev 183

with HSE and was told that inspectors had raised concerns about the credibility of the evidence used by some consultants to form the basis of risk assessments.<sup>74</sup> Lord McKenzie of Luton, Parliamentary Under Secretary of State at DWP also acknowledged this was an issue saying, “I think it is certainly a fact that this happens and there is a lot of evidence and information to suggest that it does.”<sup>75</sup>

76. IOSH argued that one way of tackling the problem of over-zealous health and safety consultants would be to make health and safety consultancy a regulated profession. Mr Jones outlined the work IOSH has undertaken so far in disseminating good practice to health and safety consultants and consumers:

“We recognise there are issues with consultants and one of the things we have done quite recently [is] a very short guide describing what we believe good practice consultancy should consist of. We have made that freely available on the website, and certainly all our members who are consultants would need to abide by that, because it is linked into our code of conduct. We have also produced an even shorter little guide for clients of consultants to say, “If you are engaging a consultant, these are the things you need to look for, this is how to determine whether you are getting a competent consultant”.”

77. However, despite IOSH’s efforts, Mr Jones explained that:

“the sad fact is that anybody can set themselves up as a health and safety consultant and start operating, anybody can call themselves a health and safety adviser without any level of qualification or experience, which we think is wrong.”<sup>76</sup>

78. We asked the Minister about this and he said:

“I think this is part of an issue as to competency of those who are in the field of offering health and safety advice and I think the proposition was that there should be more formal qualifications perhaps and then people would know when they are dealing with somebody who is qualified and when they are not.”<sup>77</sup>

79. In evidence to the Committee in November 2007, Ms Hackitt highlighted a major HSE exercise, “good enough risk assessments”, which outlined the requirements for risk assessments and encourage employers to produce easily digestible risk assessment forms.<sup>78</sup> Nonetheless, she accepted that HSE had “a long way to go” in tackling the over-interpretation of regulation.<sup>79</sup>

**80. The Committee commends HSC and HSE for its work with employers to address over-interpretation of health and safety legislation. However, as the Chair of HSC acknowledged, there is a long way to go. We are particularly concerned that the health**

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<sup>74</sup> Q 221

<sup>75</sup> Q 298

<sup>76</sup> Q 221

<sup>77</sup> Q 298

<sup>78</sup> Q 298

<sup>79</sup> Qq 298, 19

**and safety consultancy profession is currently unregulated. The Minister agreed that over-zealous health and safety advisers encourage employers to produce over-burdensome risk assessments. We therefore recommend that the Government, in consultation with the Institution of Occupational Safety and Health, introduces recognised accreditation for health and safety consultants and advisers, with appropriate sanctions for malpractice.**

81. In January 2008, a Risk and Regulation Advisory Council (RRAC) was established to address what Ms Hackitt has called “Elf and Safety”, which she argued has become “a universal excuse for banning many low risk activities and often in situations where there is actually no regulatory requirement at all.”<sup>80</sup> The RRAC will aim to tackle the issue of self over-regulation by employers and we look forward to HSC reporting on its progress. We asked HSE exactly how the RRAC will take this forward and were told:

“The RRAC is in its early days and still developing its workstreams, therefore it is not possible to give a detailed answer at this stage. However, we do hope that the RRAC will help shine a light upon the gap between genuine legal requirements and overly-bureaucratic and risk-averse actions taken by a small number of organisations that are then widely reported. This would be helpful in supporting HSE’s own work to focus attention upon practical measures to manage real risks.”<sup>81</sup>

**82. The establishment of the new Risk and Regulation Advisory Council (RRAC) creates an excellent opportunity to tackle over-zealous interpretation of regulation and over-burdensome risk assessment. We recommend that the RRAC focuses on identifying the main causes of overly risk-averse behaviour and introduces effective means of addressing them. RRAC should also have a role in the development of accreditation for health and safety consultants.**

## **HSE advice and guidance**

83. Comprehensive advice and information was seen by a number of respondents, including the IOSH, the Royal College of Nursing, the TUC and the Federation of Master Builders (FMB), as critical to ensuring that employers met their health and safety duties.<sup>82</sup>

84. Where HSE undertakes an advisory role, there was evidence to suggest that the outcomes were often positive. The British Association of Leisure Parks, Piers and Attractions Ltd highlighted the Fairground Joint Advisory Committee chaired by HSE and supported by all trade associations as an example of good practice:

“This body meets annually and examines safety statistics and issues which impact on the safety of employees and members of the public. Its efforts are recognised by all concerned as a principal component in the continuing drive towards reducing

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<sup>80</sup> HSC press release. *HSC welcomes the establishment of the Risk and Regulation Advisory Council*, 16 January 2008

<sup>81</sup> Ev 348

<sup>82</sup> Ev 299, 128, 183, 260

accidents and improving the safe environment for employees and members of the public.”<sup>83</sup>

85. HSE’s memorandum highlighted recent statistics that demonstrated the positive reception its written and web-based guidance had received from business and industry.<sup>84</sup> A 2006 MORI poll showed that 80 per cent of employers and 82 per cent of Chief Executive Officers (CEO) felt that information from HSE was easy to understand and of those who had had contact with HSE, 89 per cent of employers and 90 per cent of CEO’s respectively agreed that HSE was a helpful organisation.<sup>85</sup> However, although the majority of employers felt that they received sufficient guidance from HSE, a significant minority (37 per cent of employers and 27 per cent of CEO’s) disagreed.<sup>86</sup>

86. Witnesses suggested a number of reasons why some employers may believe that HSE provides insufficient guidance. Mr Jackson highlighted the delayed Construction (Design and Management) (CDM) guidance as problematic for employers in the construction industry.<sup>87</sup> Mr Richard Diment, Director General of FMB explained that its members were often unable to access HSE documents in hard copy because they are too expensive and can take up to ten days to be delivered.<sup>88</sup> Louise Ward from EEF – the manufacturer’s organisation (EEF) agreed, adding;

“I also think there are some challenges around organisation of the guidance that is available on the website. There is lots and lots of information on HSE’s website. Much of it is very good but it is not always as easy to find as it might be.”<sup>89</sup>

87. FSB argued that “useful and comprehensive guidance” was particularly important to SMEs. This was supported by research undertaken by the Committee’s specialist adviser, Professor Phillip James and colleagues, which found that “the degree of small-firm legal compliance is likely to be dependent, at least in part, on the propensity of owner-managers to take advantage of various external sources of information and advice.”<sup>90</sup>

88. Mr Steve Bailey, President Elect of the British Occupational Hygiene Society (BOHS) explained that HSE had developed a suite of simple guidance for small companies. He highlighted the complexities of producing such specific, targeted guidance:

“you give different guidance to a person working in a florist shop who is worried about dermatitis from contact with flowers to a person in the baking industry who is worried about flour exposure and occupational asthma. It used to mean that you

<sup>83</sup> Ev 139

<sup>84</sup> Ev 281

<sup>85</sup> Ev 281 – Source: SiteMorse Website Benchmarking Survey Report – see <http://survey-beta.sitemorse.com/survey/report.html?rt=304>

<sup>86</sup> Ev 281 - Source: SiteMorse Website Benchmarking Survey Report – see <http://survey-beta.sitemorse.com/survey/report.html?rt=304>

<sup>87</sup> Q 15

<sup>88</sup> Q 78

<sup>89</sup> Q 78

<sup>90</sup> Baldock, R., James, P., Smallbone, D., Vickers, I. (2006), *Influences on small-firm compliance-related behaviour: the case of workplace health and safety*. Environment and Planning C: Government and Policy 2006, volume 24, page 828

had to produce a published booklet on each one and it was expensive and you could not distribute them easily”<sup>91</sup>

89. With the growth of the internet, Mr Bailey suggested that there is now an opportunity that was not there 10 years ago to provide an extended suite of guidance, covering a far greater number of sectors. He argued that “the relatively small input of resource into that area of producing really specific focused guidance could get through to a lot of people.”<sup>92</sup>

**90. Comprehensive and digestible health and safety advice for employers is crucial and we heard evidence to suggest that more could be done by HSE to ensure its ready availability. We recommend that HSC consults with employers, particularly SMEs, and trade unions on how it can improve the dissemination of health and safety information.**

91. Not all of HSE’s guidance is free. HSE operates a subscription website, *hsedirect*, to which employers can subscribe. A Day Ticket costs £23.50, the annual subscription for a single user costs £351.35 and HSE agrees a charge on application for multi-user annual subscriptions. HSE markets the added value for employers of *hsedirect* on the website:

“We have introduced a unique subscription service adapted to meet the needs of everyone working in the field of health and safety. The beauty of this is that the cost of *hsedirect* is purely dependent on how often you need to use it.”<sup>93</sup>

92. The CBI, FMB and EEF felt strongly that HSE’s suite of guidance should be freely available and believed it unjust to place a price tag on those documents that are in fact more comprehensive.<sup>94</sup> IOSH was also critical of HSE’s decision to charge for some publications in its written submission, concluding that:

“All HSE publications should be made freely downloadable from its website. Unfortunately, some of this excellent guidance is priced and so may put off potential users, particularly small businesses.”<sup>95</sup>

93. Other witnesses including Chris Jackson reasoned that, given its already stretched resources, HSE’s rationale was clear: charging for selected guidance helped it to “balance the books”.<sup>96</sup> He noted that, in terms of costs for employers: “It is not a lot of money, but it may be a disincentive, particularly to smaller businesses.”<sup>97</sup>

94. The Committee raised these concerns with HSE and was told:

“HSC/HSE has given consideration to making all of HSE’s advice and guidance free to business. However, the loss of income would have to be accompanied by a corresponding reduction in expenditure, which in turn would require HSE to reduce

<sup>91</sup> Q 172

<sup>92</sup> Q 172

<sup>93</sup> Taken from the *hsedirect* website: <http://www.lexisnexis.com/clients/hsedirect/default.asp>

<sup>94</sup> Q 78

<sup>95</sup> Ev 302

<sup>96</sup> Q 17

<sup>97</sup> Q 17

health and safety activity. In these circumstances, given HSE's full programme of work it is not feasible to make all of its guidance, particularly more specialist publications, freely available to business in the near future."<sup>98</sup>

**95. The Committee asks that HSE explains its charging policy and clarifies how it determines which guidance businesses must pay for and which are free of charge. We recommend that all guidance pertaining to employers' general duties under the Health and Safety at Work Act 1974 should be freely available, without charge.**

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<sup>98</sup> Ev 348

## 5 Inspections and enforcement

96. As the main regulator for health and safety in Great Britain, HSE monitors business practices through preventative action and reactive enforcement. HSE inspectors play a critical role in ensuring that employers comply with health and safety regulation by providing information and advice and, where they fail to adhere to the law, taking appropriate action.

### Inspectors

97. The number of HSE inspectors overall has steadily decreased from 1,651 in 2003 to 1,389 in December 2007.<sup>99</sup> This figure includes all inspectors, including those working in HSE's operational directorates and a small number working in HSE's corporate functions and HSL.<sup>100</sup>

98. The TUC commented that the current figures fail to disclose the true number of HSE inspectors who actually carry out inspections, as inspectors are defined as anybody in possession of a warrant in HSE. The figures therefore include staff who are no longer employed as front line inspectors because, for example, they have moved to a different department or been promoted.

99. HSE provided a table outlining the number of inspectors across HSE's operational directorates between April 2003 and December 2007. The table excludes the inspectors working in HSE's corporate functions and those who transferred to the Office of Rail Regulation (ORR), when responsibility for rail regulation health and safety matters transferred from HSE to ORR in April 2006. The table also excludes local authority inspectors, who are responsible for the enforcement of health and safety legislation in offices, shops, retail and wholesale distribution, hotel and catering establishments, petrol filling stations, residential care homes and the leisure industry, but are not within the scope of this inquiry:

**Figure 1: Total Inspectors in operational Directorates – April 2003 to December 2007<sup>101</sup>**

DIRECTORATE/DIVISION	Apr 03	Apr 04	Apr 05	Apr 06 b/c	Apr 07	Dec 07
Field Operations Directorate (FOD)	916	844	818	752	747	680
Hazardous Installations Directorate (HID)	374	388	363	366	369	363
Local Authority Unit (LAU)					4	1
Nuclear Directorate (ND)	185	181	173	167	178	169

<sup>99</sup> Ev 291

<sup>100</sup> Ev 291

<sup>101</sup> Notes provided by HSE:

- a Breakdown not available, total inspectors in HSE at 1 April 2002 1,625.
- b Figures exclude inspectors who transferred to the Office of Rail Regulation (ORR) when responsibility for rail regulation health & safety matters transferred from HSE to ORR
- c Figures at 1 April 05 show Sectors staff transferred to Policy Group.
- d Science and Technology Group formed on 1 Oct 07 from staff transferred from FOD, HID, ND and Policy Group.

<b>Operational Policy &amp; Support Div</b>	15	12	15	11	7	6
<b>Policy Group</b>		38	37	115	105	87
<b>Science &amp; Technology Group</b> <sup>5</sup>						51
<b>Grand Total</b> <sup>6</sup>	1,490	1,463	1,406	1,411	1,410	1,357

Source: Ev 329

100. The table shows a reduction of 236 inspectors over the last four years in the Field Operations Directorate, which is the largest directorate and covers a number of employment sectors including construction, agriculture, general manufacturing, engineering, food and drink, quarries, entertainment, education, health services, local and central government and domestic gas safety.

101. Although, smaller there have also been reductions in the Hazardous Installations Directorate<sup>102</sup> and the Nuclear Directorate<sup>103</sup>; in fact the table indicates reductions in all of the areas where inspectors operate on the frontline.

102. Prospect argued that HSE needs to increase the number of inspectors it employs. It suggested that the resources allocated to inspections demonstrates inadequate commitment by the Government to achieving good health and safety standards.<sup>104</sup>

103. A recent report by the Centre for Corporate Accountability highlighted the fact that the application of enforcement (through inspection) is an effective means of securing compliance in all sectors and sizes of organisations, including major hazard sectors. Researchers concluded that:

“Whilst the evidence suggests that UK employers are “legislation driven” and that fear of enforcement is a significant motivator for organisations, there is also substantial evidence to suggest that current levels of inspection, enforcement and prosecution are too low to maximise the impact that regulators could have on employer compliance or to provide a sufficient level of deterrence.

Recent HSE proposals to shift resources away from front-line inspection, investigation and enforcement activity are contrary to the evidence which strongly suggests that HSE could have a significantly greater impact by *increasing* inspection and enforcement activity.”<sup>105</sup>

104. We asked HSE why the numbers of inspectors had decreased and Mr Geoffrey Podger, Chief Executive of HSE, told us:

“the thing which I lie awake at night puzzling about, is indeed exactly this issue of what is the correct number of inspectors to have or at what point do you actually reach the tipping point where we cease to have deterrent effect, where we cease to be

<sup>102</sup> The Hazardous Installations Directorate is responsible for chemical manufacture/storage, gas storage, offshore oil and gas extraction, pipelines, mining, diving, explosives, biological agents

<sup>103</sup> The Nuclear Directorate is responsible for the UK safety regulation of nuclear power stations, nuclear chemical plants, decommissioning, defence nuclear facilities, nuclear safety research and strategy and since 02 April 2007 for civil nuclear operational security and safeguards matters.

<sup>104</sup> Ev 212

<sup>105</sup> Making companies safe: What works? A report by Dr Courtney Davis, Centre for Corporate Accountability, January 2005

influential. We do not have an evidence base for this and it is not, to be frank, obvious to me as to how we could actually get one, but the thing which is unnerving because clearly a point could be reached at which we just did not have enough, and I accept that.<sup>106</sup>

105. According to HSE's own statistics, there were 41,496 inspections in 2006-07, Hazards Campaign calculated that this equated to an inspection on average every 14.5 years for every workplace regulated by HSE, which compared to an average of every 7 years in 2001/02.<sup>107</sup>

106. A number of the memoranda suggested that there was a correlation between the decline in the inspection rate and increases in fatal injuries.<sup>108</sup> Hazards Campaign highlighted the fact that in 2006/07 there were 241 workers killed per 100,000 compared to 217 in 2005/06 – an 11 per cent increase.<sup>109</sup> Over the same period, there was a 25 per cent decrease in the number of inspections carried out by HSE. Recent research by the Union of Construction Allied Trades and Technicians (UCATT), *Bringing Justice to the Boardroom*, indicated that for every one extra inspection there were three fewer injuries.<sup>110</sup>

107. In its memorandum, HSE argued that it was not possible to identify a direct relationship between the inspection and accident rates. It claimed that it used a combination of proactive and reactive interventions, one of which is inspections, but it could not calculate the specific impact of reduced inspection rates given that they were just one part of the much broader toolkit that HSE used.<sup>111</sup>

108. In order to improve compliance, Thompsons Solicitors argued that it was essential that the rate of inspection was increased and that doing so would ultimately decrease enforcement and prosecution costs.<sup>112</sup>

109. The correlation between inspections and compliance was highlighted in research undertaken by Professor Phillip James and colleagues. They found that there was a “substantial degree of correlation” between compliance-related health and safety improvements among SMEs and previous experience of visits by inspectors.<sup>113</sup> On the basis of the findings, the research concluded that the most effective way of increasing employer compliance “would be to provide the resources needed to increase substantially the number of inspections taken.”<sup>114</sup>

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<sup>106</sup> Q 282

<sup>107</sup> Ev 255

<sup>108</sup> Ev 118, 147, 160

<sup>109</sup> Ev 255

<sup>110</sup> *Bringing Justice to the Boardroom: The Case against Voluntary Guidance and in Favour of a Change in the Law to Impose Safety Duties on Directors* - A report by the Centre for Corporate Accountability for UCATT, October 2007

<sup>111</sup> Ev 284

<sup>112</sup> Ev 233

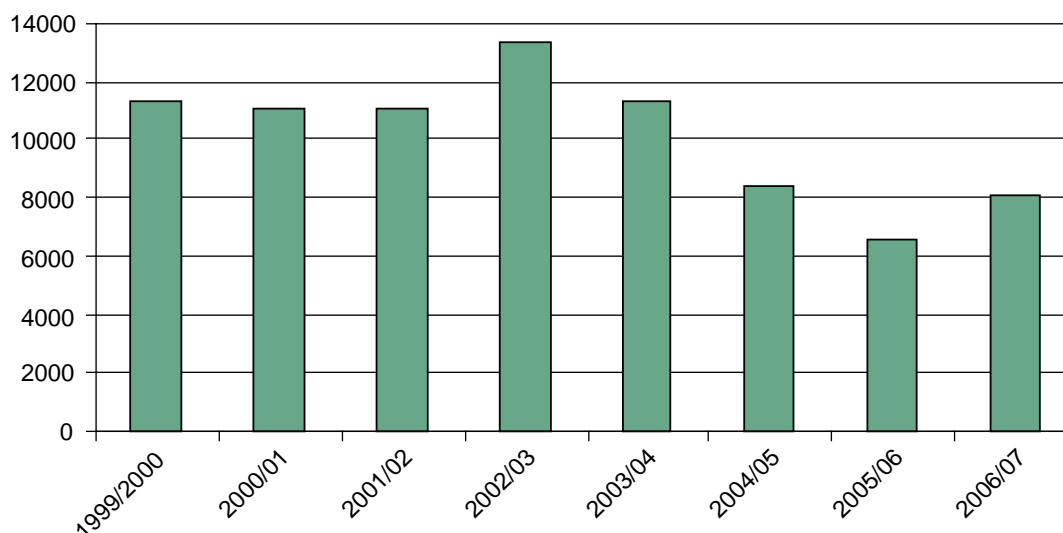
<sup>113</sup> Baldock, R., James, P., Smallbone, D., Vickers, I. (2006), *Influences on small-firm compliance-related behaviour: the case of workplace health and safety*. Environment and Planning C: Government and Policy 2006, volume 24, p 843

<sup>114</sup> Baldock, R., James, P., Smallbone, D., Vickers, I. (2006), *Influences on small-firm compliance-related behaviour: the case of workplace health and safety*. Environment and Planning C: Government and Policy 2006, volume 24, p 844

## Enforcement activity: enforcement notices

110. Inspectors can issue two types of notice: improvement and prohibition. The former can be issued where there is a perceived breach of the law and their effect is to require remedial work to be carried out within a specific period. The latter can only be issued where there is a risk of serious personal injury. This risk does not have to be associated with any legal breach. In order to comply with an enforcement notice, behavioural or operational changes are required. In 2006/07 there were 8,071 notices issued by HSE, compared to 6,593 in 2005/06. However, the table below shows that the numbers issued over the last three years remain the lowest since 1999:<sup>115</sup>

Figure 2: Number of enforcement notices issued by HSE 1999/20 – 2006/07<sup>116</sup>



Source: Adapted from HSE Enforcement Statistics, <http://www.hse.gov.uk/statistics/enforce/>

111. UCATT's National Political Officer, Mr Jim Kennedy, argued that HSE must increase the proportions of its time and resources that are spent on active enforcement. He argued that international evidence suggested that more inspections would lead to a reduction in injuries and fatalities and explained that the Republic of Ireland had seen a decrease in fatalities after increasing its inspection rate.<sup>117</sup>

112. The importance of inspection and enforcement has been further illustrated by the results of a recent HSE safety "blitz". The HSE carried out spot checks on 1,000 refurbishment sites across Great Britain and had to stop work on 30 per cent after serving 395 enforcement notices. Over half of the enforcement notices issued during the inspections were due to people working dangerously at height, which last year led to the death of 23 workers.<sup>118</sup>

**113. Many respondents to this inquiry raised their concerns that the number of inspections HSE undertakes has declined. Academic research has suggested a**

<sup>115</sup> HSE Enforcement Statistics <http://www.hse.gov.uk/statistics/enforce/index.htm>

<sup>116</sup> Figures for 2006/07 do not include notices issued by local authorities as these are not yet available.

<sup>117</sup> Q 80

<sup>118</sup> HSE press release, *Unacceptable performance by refurbishment sector of the construction industry*, 4 March 2008

correlation between inspections carried out and employers' compliance with their health and safety duties. Furthermore, the results of the recent HSE "blitz", which led to 30 per cent of sites inspected receiving an enforcement notice, highlighted the importance of inspections in ensuring health and safety laws are adhered to.

114. The inspection process can act as a preventative measure, improving safety and reducing the potential costs of future enforcement and prosecution. We concur with our predecessor Committee and recommend that HSE increases its enforcement activity in sectors where health and safety performance has not improved as much as others.

### **"Fit for work, Fit for Life, Fit for Tomorrow (Fit 3)"**

115. HSE's Fit 3 Strategic Delivery Programme (SDP) is based on analysis of injury and ill health across areas of businesses' and sectors' operations that are most susceptible to hazard. The SDP aims to deliver a 3 per cent reduction in the incidence of work-related fatal or major injuries, a 6 per cent reduction in the incidence rate of cases of work-related ill health and a 9 per cent reduction in the incidence rate of days lost due to work-related injuries and ill health.<sup>119</sup> HSE's Field Operations Directorate supports the SDP through a combination of specific projects and topic-based inspection.

116. Prospect, GMB and EEF criticised the Fit 3 programme, arguing that it limited the scope of inspections to key targets such as slips and trips and manual handling. GMB suggested that whilst this makes the inspection process less time consuming, the targeted approach supersedes the expert judgement of inspectors.<sup>120</sup> Mr Mike MacDonald, the Negotiations Officer for Prospect, told the Committee that inspectors have explained to Prospect that:

"Fit 3 directed them down the line of actually improving where the record was good rather than concentrating on areas of concern. Our view is that Fit 3 is guidance but in terms of providing a high quality service to the public you should rely on the professional discretion and judgment of inspectors."<sup>121</sup>

117. HSE's own statistics suggest that even with its targeted approach, the Fit 3 programme is failing to deliver on the "slips, trips and falls" indicator. Minutes of a HSC meeting on 5 December 2006, state that:

"HSE had not had a real impact on slips and trips across any sector, the performance overall was static. HSE needed to invest more for longer to achieve the sort of impact and culture changes required"<sup>122</sup>

118. The HSC's latest annual report demonstrates Fit 3's continued failure to address this as slipping and tripping incidents (the most common cause of major injuries) have remained constant.<sup>123</sup>

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<sup>119</sup> HSC Business Plan for 2005-06 to 2007-08

<sup>120</sup> Q118

<sup>121</sup> Q91

<sup>122</sup> Minutes of a meeting of the Health and Safety Commission held on 5 December 2006, HSC/06/M11

119. HSE supported Fit 3's target-based approach in principle but outlined a possible revision to it:

“we have undertaken something called ‘the Fine-Tuning Review’ and that is actually about saying that [...] within the Fit 3 programme more generally [we could] have more locally led initiatives from offices, so, in other words, the inspectors with their managers actually coming up with what they want to do to achieve a particular national goal.”<sup>124</sup>

**120. We heard concerns that the Fit 3 programme, whilst designed to create an efficient, target-based approach to inspection, is in fact limiting the ability of inspectors to apply their professional judgement on a site by site basis. Furthermore, HSE evidence shows that Fit 3 has had no impact on the reduction of slips and trips in any sector. We recommend that HSE examines the relevance of the programme more generally given its failure to reduce the number of slipping and tripping accidents. HSE should set out a timetable for the introduction of more locally-led initiatives under the Fit 3 programme and for assessing the effectiveness of the “Fine-Tuning Review”.**

### **Balance between HSE's proactive and reactive caseload**

121. The HSE's aspiration is to achieve a 60:40 ratio in its proactive: reactive caseload but it is currently failing to do so. HSE explained that its goal is to “see resources directed to proactive work - preventing harm in the first place is better than reacting afterwards.”<sup>125</sup>

122. The balance of the proactive:reactive caseload was 51:49 in 2006/07.<sup>126</sup> It explained that this was because, in practice, HSE's work is dictated by criteria set out in HSC's Enforcement Policy Statement and it is unable to predict the amount of work it will need to undertake in response to a particular accident. In fact, HSE noted that time spent on reactive operations is likely to increase following new developments, such as the need to assist the Police with prosecutions under the new Corporate Manslaughter and Corporate Homicide Act 2007.<sup>127</sup>

**123. Given the inevitable increases in the proportion of its reactive work, HSE is unlikely to reach its aspiration to achieve a 60:40 ratio in its proactive: reactive caseload. By HSE's own admission it is currently failing to achieve this and will continue to do so in the future, as new developments skew its focus towards reactive work. We are disappointed by this, particularly given the considerable evidence we received suggesting the importance of proactive inspections. We call upon HSE to publish empirical evidence proving what the optimal mix of reactive and proactive work should be, and to allocate its resources accordingly.**

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<sup>123</sup> *Meeting challenges*, Health and Safety Commission Annual Report, Health and Safety Commission / Executive Accounts 2006/07

<sup>124</sup> Q284

<sup>125</sup> Ev 275

<sup>126</sup> Ev 275

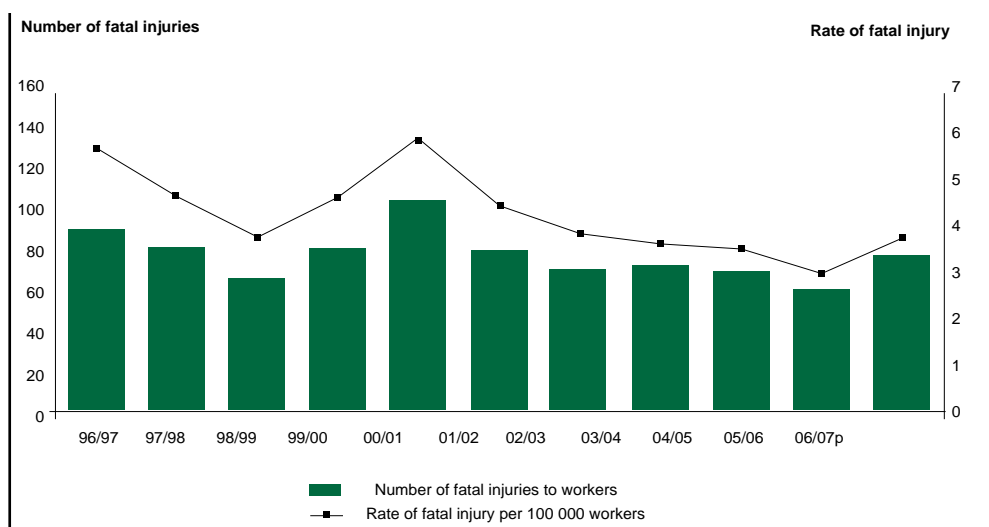
<sup>127</sup> Ev 284

## 6 Hazardous industries

### Construction

124. The UK construction industry has an annual turnover of £250 billion and employs approximately 10% of the working population, making it the country's biggest industry.<sup>128</sup> However, of the main industrial sectors, construction also has the highest number of fatal injuries, 32% of all deaths of workers occurred in this sector. In 2006/07, 77 workers were killed due to construction-related accidents, a 28% increase on 2005/06.<sup>129</sup>

**Figure 3: Number and rate of fatal injury to workers 1996/97 – 2006/07**



Source: HSE

125. Steps have been taken to try to improve safety in the construction industry. The Construction (Design & Management) Regulations 2007 (CDM 2007) came into force on 6 April 2007. These regulations focus attention on effective planning and management of construction projects, from design stage onwards, with the aim of reducing the risk of harm to those that have to build, use and maintain structures. HSE has also been involved in construction “blitzes”, particularly concentrating on refurbishment and roof work (see paragraph 113). However the Battersea Crane Disaster Action Group reported that there had already been 28 deaths in the first 4 months of 2007/08.<sup>130</sup>

126. Mr Richard Diment, Director General of the Federation of Master Builders, suggested that one of the reasons for the high number of fatal injuries in construction is the informality of the industry. He estimated that there are around 200,000 registered construction firms in the UK and as many again which are not officially registered. In addition, few of the registered companies are members of trade associations and the

<sup>128</sup> “Hain and construction sector vow to cut deaths”, DWP press release, 17 September 2007

<sup>129</sup> HSE website: <http://www.hse.gov.uk/statistics/industry/construction.htm>

<sup>130</sup> Ev 200

majority of the workforce is not unionised. He believed that this results in inadequate channels for health and safety communication.<sup>131</sup>

127. The Union of Construction, Allied Trades and Technicians (UCATT) highlighted the fact that within the construction industry there are high levels of “bogus self-employment”, individuals who are contracted rather than directly employed. It stated that the “safety imperative is obviously reduced when you do not have a directly employed workforce.”<sup>132</sup> Mr Jim Kennedy, National Political Officer at UCATT believed that this has contributed to a skills gap in the construction industry which affects health and safety: “we are short of skills [...] because the industry has failed to train its workers and once again it is because they do not employ anyone; if you do not employ anyone you do not train anyone”.<sup>133</sup> He also said that where people did bring up health and safety concerns they “have been finished on the Friday because contractors do not want it, they see it as a financial burden”.<sup>134</sup>

128. Prospect and the Institution of Occupational Safety and Health (IOSH) attributed the problems in construction to inadequate HSE resources. In 2002, HSE launched a new Construction Division under the direct management of the Chief Inspector of Construction. It was intended that by the end of its first year, it would have 138 dedicated construction inspectors. However, although the number reached 134 front-line construction inspectors in 2005-6 this has now dropped to 124 inspectors.<sup>135</sup>

**Figure 4: Average numbers of Full Time Equivalent (FTE) HSE Construction Inspectors**

	2003/04	2004/05	2005/06	2006/07	2007/08*
Total Operational Construction Inspectors	127	129	134	133	124
Total Operational Construction inspectors and their line managers	148	151	156	155	145
Number of these Operational Construction Inspectors based in London	16	17	17	14	14
Number of these Operational Construction Inspectors and their line managers based in	19	20	20	18	18

<sup>131</sup> Q 59

<sup>132</sup> Q 92

<sup>133</sup> Q 106

<sup>134</sup> Q 96

<sup>135</sup> Ev 306

London

\* forecast figures for this financial year are subject to change

Source: HSE<sup>136</sup>

129. This decrease in inspectors coincides with a growth of the industry,<sup>137</sup> the Government's commitment to build 3 million new homes and particularly large construction projects in London connected with the Olympics and Crossrail. We are surprised to learn that there are only 14 construction inspectors for the whole of London. Although we were told by Mr Geoffrey Podger, Chief Executive of HSE that it is "prepared to move more resources there"<sup>138</sup> it is unclear where these extra resources will come from. We welcome HSE's commitment to move resources to London but we have not identified any areas of excess capacity from where inspectors could be moved.

**130. We are concerned that HSE's construction inspectorate is not adequately resourced to ensure the maintenance of health and safety standards in the construction industry. We are convinced that there is a correlation between inspection and safety standards. The recent 28% increase in construction fatalities underlines the need for more resources.**

### **Construction Forum**

131. In response to the increase in fatalities in the construction industry, the then Secretary of State for Work and Pensions, Rt Hon Peter Hain MP, held a Construction Forum on 17 September 2007 to focus specifically on the house building and domestic repair/refurbishment sectors. Key areas for action agreed at the Forum included:

“sharing best practice - working together to agree standards of health and safety to be achieved on housebuilding and domestic repair/refurbishment projects;

raising levels of competence - encouraging all site workers in the housebuilding sector to carry a Construction Skills Certification Scheme (CSCS) card or be able to demonstrate their occupational and health and safety competence to the same or

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<sup>136</sup> Explanation of Table

- 1) The figures in the below table are for Full Time Equivalents (FTEs), averaged over the financial year and rounded to the nearest whole number.
- 2) The figures in the table do not include Health and Safety Awareness Officers introduced to Construction Division (CD) in 2004/05 to work alongside front line construction inspectors to assist delivery of important health and safety messages. Currently there are 22.1 in GB and 8 working in London.
- 3) There are also specialist staff working in construction. From April 2008 there will be 19 construction specialists.
- 4) Additionally, there are construction inspectors working in HSE's construction policy and operational policy teams. Presently this number is 15.
- 5) There are also 5 senior managers leading the Construction Division who are all inspectors.
- 6) As with the rest of HSE, CD's staffing will fluctuate through routine turnover. Affordable posts will continue to be filled through internal moves and/or recruitment. For example, a recent external trainee inspector recruitment exercise has resulted in 8 offers of employment being made for construction inspector positions.
- 7) The Select Committee had noted that CD was launched in 2002 and that earlier data on construction inspector numbers may not be available. While resourcing CD began in 2002, it was not fully established until April 2003. This and other related organisational changes resulted in significant modification of HSE's structure and its ways of working in the construction sector and prevent HSE providing validly comparable resource figures prior to 2003/04.

<sup>137</sup> National Statistics website: <http://www.statistics.gov.uk/pdfdir/cons0308.pdf>

<sup>138</sup> Q 39

better standard; and ensuring all workers receive induction training before they start work on a new site;

encouraging worker involvement - improving the way employers and others engage with and consult the people they manage;

integrated working - ensuring that site specific planning and induction is provided to all those in control of tower crane erection, operation and dismantling, with an emphasis on appropriate risk assessment; and

steps to drive out the informal economy in the sector, which can impact on health and safety.”<sup>139</sup>

132. The Strategic Forum for Construction, a cross-industry/government body, agreed that its Health and Safety Task Group would coordinate the development and implementation of the “Framework for Action” agreed at the Construction Forum. The Task Group, chaired by John Spanswick of Bovis LendLease, also a Health and Safety Commissioner, has provided an initial report to Government.<sup>140</sup> HSE has said that it will be monitoring progress against the actions agreed by the industry.<sup>141</sup>

133. UCATT were sceptical about the effects the forum would have:

“we have been there before; we had a safety summit in 2001 and it was revisited later on. I would like to remind people that in 2001 John Prescott told the construction industry that if they did not get their house in order he would legislate. So although we support the safety forum and the initiatives that come out of it, I believe the stance that was taken by the deputy prime minister at the time should still stand: put your house in order or the Government should legislate.”<sup>142</sup>

134. The HSE statistics show that following the 2001 summit there was a marked decrease in the number of fatalities in the construction industry. However the incidence rate is beginning to creep back up with the sudden increase in 2006/7. Prospect said “The support of the industry and the Secretary of State for action is welcome but there is a fundamental issue of resources as this is one sector where routine site inspection that addresses the full range of construction issues is vital.”<sup>143</sup>

**135. The Committee commends DWP’s initiative in setting up the Construction Forum and we call on Government to report on progress against the key areas in the “Framework for Action” so that the momentum for change is not lost.**

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<sup>139</sup> “Hain and construction sector vow to cut deaths”, DWP press release, 17 September 2007

<sup>140</sup> Report can be accessed on the Strategic Forum for Construction's website:  
<http://www.strategicforum.org.uk/report.shtml>

<sup>141</sup> Ev 275

<sup>142</sup> Q 109

<sup>143</sup> Ev 213

## Plant

136. The Battersea Crane Disaster Action Group believed that the recent tower crane collapses in London and across the UK indicated that there are serious problems associated with the supply, commissioning, use and maintenance of tower cranes.<sup>144</sup> It advocated a national register for plant, particularly cranes, so that ownership would be clear for inspection, enforcement and prosecution purposes. It also suggested that all plant on site should be labelled with the registration details and the date of the last inspection. It contrasted the UK situation with that in Australia, where there is a national register for plant, and France, where a state inspector is present whenever a crane comes on to a site.<sup>145</sup>

**Figure 5: Number of fatal injuries in construction sustained in incidents involving cranes or lifting equipment reported under RIDDOR**

1 April to 31 March	Agent	Fatalities
2002-03	Lorry crane	1
	Tower crane	1
	Misc. portable containers	1
	Other conveying, lifting, storage	1
	Total	4
2003-04	Tower crane	1
	Fixed crane	1
	Other crane	1
	Other lifting equipment	2
	Elevated work platform	1
	Total	6
2004-05	Lorry crane	1
	Tower crane	4
	Other crane	1
	Rough terrain lift truck	1
	Total	7
2005-06	Elevator	1
	Rough terrain lift truck	1
	Total	2
2006-07*	Lorry crane	1
	Tower crane	3
	Mobile crane	2
	Other crane	1
	Other lifting equipment	1
	Misc. portable containers	1
	Gas cylinders, bottles, aerosols	1
	Elevated work platform	2
	Total	12

Source: HC Deb 11 March 2008 Col 204W

\*Figures for 2006-07 are provisional until the release of 2007-08 figures in July 2008. Reporting years run from 1 April to 31 March each year.

**137. We are extremely concerned at the number of incidents and fatalities involving tower cranes and other plant on construction sites and call on the HSE to urgently**

<sup>144</sup> Ev 200

<sup>145</sup> Ev 198

**bring forward proposals such as a national register of plant including ownership, age, design type, date of last inspection and any other relevant factors.**

## Permissioning Regimes

138. High hazard industries such as oil and gas are subject to permissioning regimes. Operators have to produce a safety case, a report setting out the hazards of their activities and what measures they have in place to control the risks. The HSE assesses and analyses the reports and if it is content that risks are being managed appropriately they give “permission” to operate. This is in addition to the general framework of health and safety law.

139. Due to the resource-intensive nature of permissioning the HSE charges duty holders to help cover its costs. The charge for regulatory activities in the onshore chemical industry and all installations in the offshore oil and gas industry is calculated by reference to the time expended by HSE in carrying out its functions with regard to that establishment, including all relevant costs. £6.69million and £8.05m was recovered from industry in 2006/07 by HSE in connection with its Control of Major Accident Hazards and offshore regulatory activities respectively.<sup>146</sup> The DWP has estimated that HSE will recover an additional £12m of its existing costs through charging over the three year Spending Review 2007 period.<sup>147</sup>

140. Prospect reported that due to financial constraints, the time spent on assessing and approving safety cases has reduced the amount of time that the HSE can devote to site inspection and audit. They said that:

“The Buncefield report should start a debate on whether this approach is adequate but we believe that a better balance between safety case permissioning and site inspection would improve safety performance.”<sup>148</sup>

141. The CBI believed that permissioning regimes impose considerable costs on business because of the need for an audit trail proving compliance with health and safety legislation. It is therefore concerned by proposals to increase the charges levied by HSE above inflation, in April 2008.<sup>149</sup>

142. The Offshore Industry Liaison Committee (OILC) said that the introduction of safety cases following the Piper Alpha disaster has meant that major accident hazards are evaluated and inspected at the expense of every day workplace hazards.<sup>150</sup> They noted that of the 13 offshore fatalities from April 2000 to date, only two were associated with major accident hazards. OILC believed that the safety case regime has been little more than an “ineffective series of paper exercises” with too much emphasis on the assessment of management systems without a corresponding effort to ensure that standards are properly

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<sup>146</sup> Ev 287

<sup>147</sup> Ev 349

<sup>148</sup> Ev 213

<sup>149</sup> Ev 136

<sup>150</sup> OSD/HSE introduced the Offshore Installation (Safety Case) Regulations which came into effect in 1995. These arose from recommendations made by Lord Cullen following the Piper Alpha disaster in 1988.

implemented in the field.<sup>151</sup> It argued that HSE is continuing to give permission to operators despite knowing that safety arrangements set out in previous safety cases have been ignored.<sup>152</sup>

143. The Royal Society for the Prevention of Accidents (RoSPA) was fearful that safety case based regimes could lead to complacency and a danger of further major incidents as well as a rise in non fatal personal injuries.<sup>153</sup>

**144. Permissioning regimes are an essential tool in managing risk in high hazard industries but HSE must ensure that high safety standards in respect of everyday and major accident hazards are maintained with regular safety inspections and enforcement.**

### **Offshore Industry**

145. The offshore oil and gas industry comprises around 300 installations ranging from unmanned gas platforms to large oil and gas platforms and includes floating production installations and drilling rigs. It currently employs approximately 30,000 offshore workers, an increase of 50% in recent years.<sup>154</sup> HSE has an Offshore Division(OSD) responsible for the offshore industry.

146. HSC stated that in major hazard industries such as offshore oil and gas “the frequency and nature of catastrophic events makes them unsuitable as measures of health and safety performance in these industries. Instead, incidents that have the potential to lead to, or develop into, a catastrophic event are used as indicators – precursor incidents”.<sup>155</sup> The target for the offshore industry is a 45% reduction in the number of major and significant hydrocarbon releases in the offshore oil and gas sector against the 2001/02 baseline figure.<sup>156</sup> This target is at serious risk of not being met.<sup>157</sup>

147. In 2007 the HSE published a report, *Key Programme 3: Asset Integrity Programme*, highlighting problems with the physical condition of offshore platforms; in more than half the installations inspected the physical state of the plant was considered poor.<sup>158</sup> IOSH suggested that “another notable finding was that performance varied significantly between installations, including those with the same duty holder. This would suggest that acceptable performance is dependent more on individuals than on a systems approach,

<sup>151</sup> Ev 238

<sup>152</sup> Ev 239

<sup>153</sup> Ev 152

<sup>154</sup> Numbers of offshore workers for: 2004/05 18,940; 2005/06 23,072; and 2006/07 28,176 The increase from 04/05 to 2006/07 is 48.8%. The last three years uses data generated by the offshore industry's Vantage information system, earlier years Inland Revenue data supplied by HSE

<sup>155</sup> HSC, *Way ahead: Performance Report 2007*, November 2007

<sup>156</sup> Ev 270

<sup>157</sup> HSC, *Way ahead: Performance Report 2007*, November 2007 (The target for reduction of hydrocarbon releases at the end of 2007/08 is a reduction from the 2001/02 baseline of 113 to 62. By the end of the third quarter of the year this figure had already reached 57 releases.)

<sup>158</sup> HSE, *Key Programme 3: Asset Integrity Programme*, November 2007

which should not be the case in a permissioning regime.”<sup>159</sup> Mr Podger told the Committee in November last year that:

“there is this history of, on the one hand, under-investment in the rigs, and on the other hand the prolongation beyond their natural life, the situation up there is getting very knife-edge in some places. That is what the report shows”<sup>160</sup>

148. He said that one of the issues is that, due to bigger operators in the North Sea wanting to disinvest themselves of older rigs, “rigs are now being offloaded on to other companies” who do not have the capital behind them. However he also acknowledged that “it would be wrong to imply that new entrants, by definition equals unsafe”.<sup>161</sup> Ms Judith Hackitt, Chair of HSC, added that change of ownership can lead to a loss of corporate memory but that “there cannot be any question that because people do not have the resources we can compromise on the levels of safety that we would expect; that would be indefensible on our part”<sup>162</sup> She highlighted that there are still a number of long term operators in the North Sea and that there needs to be collective commitment to improve safety irrespective of who owns the rigs.<sup>163</sup>

149. Prospect said that:

“It is ironic that whilst record profits come out of the North Sea the feedback from the people who work there is that health and safety defects that have been tolerated [...] are not being put right”<sup>164</sup>

150. OSD has a programme of work for 2007/08 to start to address some of these problems and HSE stated that it “has engaged with the sector at its most senior level and secured acceptance of the challenge and firm commitments to address it”<sup>165</sup> but there is no detail as to how this is to be achieved.

151. OILC was highly critical of OSD. It claimed that OSD was perceived as a “captive regulator” with the safety agenda and policy being set by the industry; it was reluctant to take formal enforcement action; and was unable or unwilling to engage the offshore workforce in promoting a safe working environment.<sup>166</sup>

152. Prospect rejected the claims that OSD are in the “pockets of the operators”. They blamed this perception on OSD’s concentration on safety case work rather than practical inspections. They suggested that there needs to be the right balance between people working onshore on safety cases to give permission to operate and actually inspecting assets and making sure they work effectively.<sup>167</sup>

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<sup>159</sup> Ev 307

<sup>160</sup> Q 92 (28.11.07)

<sup>161</sup> Q 96 (28.11.07)

<sup>162</sup> Q 97 (28.11.07)

<sup>163</sup> Q 97 (28.11.07)

<sup>164</sup> Q 114

<sup>165</sup> Ev 287

<sup>166</sup> Ev 236

<sup>167</sup> Q113

**153. The Committee calls on HSE to report on what actions have been taken to rectify the failures to manage risk in the offshore industry that were identified by HSE’s Asset Integrity Report. We urge HSE to ensure that the undertakings made by operators in safety cases are implemented through a robust and proactive inspection regime.**

154. The main method used by the OSD to engage the workforce is through safety representatives and committees elected by the workforce and not appointed by trade unions. Since 1989 there has been a statutory system of safety representatives on offshore installations who must be consulted by installation owners on certain matters. However, OILC has criticised the way the system is operating saying there are too few properly trained safety representatives on many installations. Offshore safety representatives do not have the same protection in law as those onshore.<sup>168</sup>

155. This summer marks the 20th Anniversary of the Piper Alpha disaster and in his report on the disaster<sup>169</sup> Lord Cullen highlighted the importance of Offshore Safety Representatives and committees in involving the workforce to create a safety culture offshore.<sup>170</sup> **The Committee supports moves to increase the protection and independence of Offshore Safety Representatives and committees.**

156. Prospect noted the reduction in OSD inspectors from 200 in 1994 to fewer than 120 today. They also highlighted the fact that the OSD has an ageing workforce and inspectors are getting harder to replace as there is a high world demand for competent and experienced offshore personnel. Mr Mike MacDonald, Negotiations Officer from Prospect, told the Committee that “if you want specialist inspectors you have to pay round about the market rate”,<sup>171</sup> and that OSD’s inability to do so has meant that the OSD is having to train new inspectors, which takes time:

“one of the main deficits of not having the skilled professional specialist from the industry is actually you end up getting people with engineering qualifications and little industry expertise who do the safety case, they look at the plans and they do not have the nous that inspectors get from seeing how people work”.<sup>172</sup>

157. Prospect believed that the operators, who pay for inspections through the permissioning regime, would be prepared to pay more if they thought that they were getting a better standard of service.<sup>173</sup>

**158. The Committee calls on HSE to take urgent steps to address the loss of inspectors from its offshore division. Maintaining the quality of the offshore division inspectorate is essential in ensuring strong safety standards and is also in the interests of operators.**

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<sup>168</sup> Ev 240

<sup>169</sup> Department of Energy, “*The public inquiry into the Piper Alpha disaster*” Cm 1310, 1990

<sup>170</sup> Mr Frank Doran MP presented the Offshore Oil and Gas Industries (Health and Safety) Bill to the House of Commons on 1 April 2008 (HC Deb, 1 April 2008, col 644-6) The Bill would bring the regulations dealing with safety committees and safety representatives in the Offshore Oil and Gas Industry into line with the regulations in Onshore workplaces.

<sup>171</sup> Q 111

<sup>172</sup> Q 111

<sup>173</sup> Ev 213

**We urge HSE to discuss with the offshore industry funding models for the industry to contribute to maintaining a highly skilled offshore inspectorate.**

## 7 Prosecutions and Penalties

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159. HSE inspectors mostly enforce health and safety standards by giving advice on how to comply with the law. However, in some instances, failure by an employer to comply with his duties under the Health and Safety at Work Act 1974 may lead HSE to issue an improvement notice and, if necessary, to proceed to prosecution.

160. All local authority and HSE staff who take enforcement decisions are required to follow HSC's Enforcement Policy Statement. This sets out the general principles and approach which HSC expects the health and safety enforcing authorities (mainly HSE and local authorities) to follow.<sup>174</sup>

161. There was general agreement among the witnesses that information and advice backed up by a robust enforcement system is the most effective way of ensuring duty holders complied with health and safety regulations. However, a significant number described ways in which current enforcement activity did not create a sufficient deterrent to prevent employers breaking the law.

### Prosecution and conviction levels

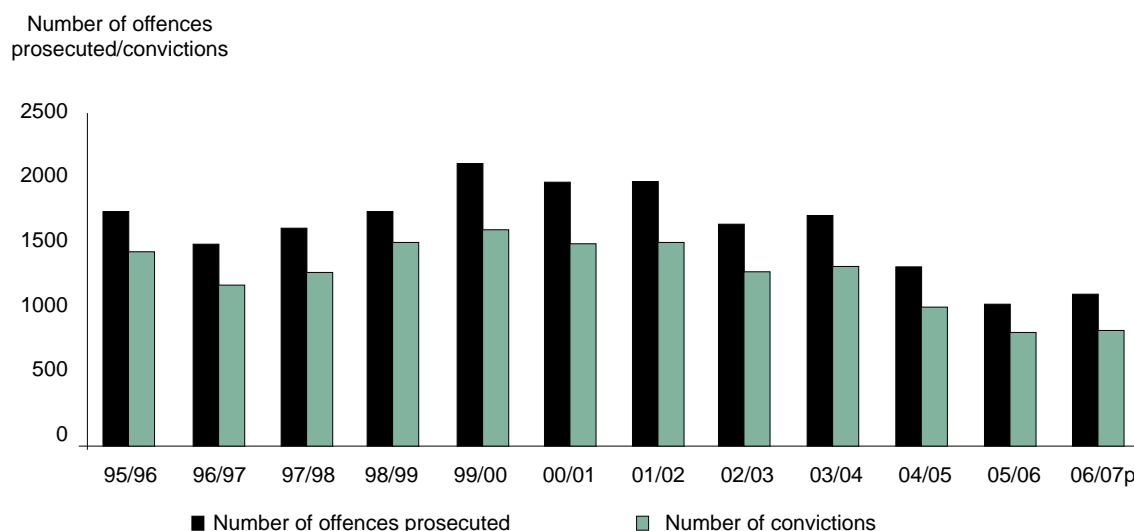
162. The table below illustrates that whilst there has been an increase in the number of prosecutions and convictions brought by HSE in the last 12 months, there has been a downwards trend almost continuously since 1999/2000. HSE statistics for 2006/07 show that the number of "informations laid" by HSE inspectors rose to 1,141 in 2006/07, from 1,056 in 2005/06 – the total of 1,141, nonetheless, remains the second lowest since 1999/2000.<sup>175</sup> The TUC emphasised the important role prosecutions play in regulating health and safety as a means of "ensuring that the culture within workplaces is changed" and suggested that HSE should use targeted prosecutions more widely.<sup>176</sup>

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<sup>174</sup> HSC, Enforcement Policy Statement, HSC15

<sup>175</sup> HSC, Enforcement Policy Statement, HSC15

<sup>176</sup> Ev 185

**Figure 6: Number of offences prosecuted and convictions - HSE**

Source: HSE Enforcement Statistics - <http://www.hse.gov.uk/statistics/enforce/>

163. The number of prosecutions leading to conviction has recently been criticised by some commentators. A report by the Centre for Corporate Accountability for UCATT, found that only 21% of construction deaths between April 1998 and March 2004 resulted in a conviction.<sup>177</sup> HSE figures on convictions for health and safety offences by industrial sector showed a very significant decrease in the number of convictions across all sectors between 2002/03 and 2006/07:

**Figure 7: Convictions for health and safety offences by industrial sector 2002/03 – 2006/07**

Year	Agriculture, hunting, forestry & fishing	Extractive & utility supply industries	Manufacturing industries	Construction	Service industries	All industries
02/03	68	28	522	434	221	1 273
03/04	81	34	502	418	282	1 317
04/05	61	29	335	405	195	1 025
05/06	40	23	287	338	152	840
06/07(provisional)	29	16	303	339	161	848

Source: Health and Safety Executive

164. The Committee welcomes the increase in the number of prosecutions between 2005/06 and 2006/07 but notes that whilst there has been an increase in the number of prosecutions and convictions brought by HSE in the last 12 months, there has been a downwards trend almost continuously since 1999/2000. Numbers of convictions have also declined from 1,273 in 2002/03 to 848 in 2006/07. A robust system of prosecution and conviction is needed to enforce health and safety law and act as a critical deterrent to those inclined not meet their legal obligations.

<sup>177</sup> Centre for Corporate Accountability - Report for UCATT: Levels of convictions and sentencing following prosecutions from deaths of workers and members of the public in the construction sector, April 2007

165. It was brought to the Committee's attention that, unlike in England and Wales, HSE cannot make an application for costs when they successfully prosecute in Scotland.<sup>178</sup> The Crown Office and Procurator Fiscal explained that:

“the Scottish rules on criminal procedure which are set in Criminal Procedure (Scotland) Act 1995 do not allow for the recovery of any costs by either the Crown or the defence at the conclusion of criminal proceedings.”<sup>179</sup>

**166. We consider that across the whole of Great Britain the HSE should be able to recoup its costs following a successful prosecution of which it was a part. Unless there are special circumstances, this should amount to full reimbursement. It is reasonable that those found guilty of serious health and safety breaches should meet the legal costs incurred. We recommend that the Scottish Executive should review its current arrangements in this regard.**

### Proportionality of Penalties

167. There has been a significant increase in the frequency with which courts have delivered fines of £100,000 or more in recent years. In the first nine months of the 2007/08 reporting period, courts had already imposed 25 such sentences. The adjusted average fine per offence (with fines of £100,000 omitted) illustrates a 229% increase from £3,805 in 1997/98 to £8,723 in 2006/07.<sup>180</sup>

168. The CBI highlighted the fact that the courts have started to enforce tougher sanctions on businesses:

“For offences heard in Crown Court, the imposition of unlimited fines has always been possible. There is no higher monetary sanction and judges have used their powers recently to impose punitive fines. It is important to consider the sanction in relation to the offence which for health and safety is usually a lack of or an inadequate provision or system and is not necessarily related to the injury.”<sup>181</sup>

169. The figures below are taken from HSE Offences and Penalties report. This report is no longer published by HSE, therefore the most recent figures are for 2004/05. It illustrates the average fines for health and safety offences by sector (with fines of £100,000 included):

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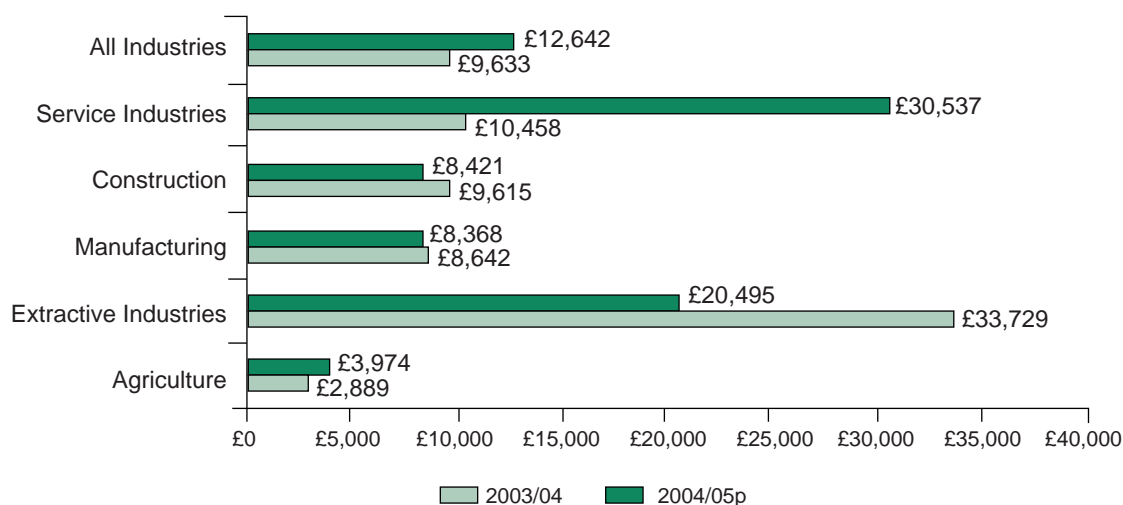
<sup>178</sup> Q 42 (28.11.07)

<sup>179</sup> Ev 350

<sup>180</sup> HSE Enforcement Statistics <http://www.hse.gov.uk/statistics/enforce/index.htm>

<sup>181</sup> Ev 136

**Figure 8: Average penalty per offence, 2003/04 – 2004/05**



Source:

170. In a recent issue of the journal, *Health and Safety Bulletin (HSB)*, its editor, Howard Fidderman, argued that the HSE's decision to stop publishing an Annual Offences and Penalties Report after 2004/05 has resulted in "a paucity of information that had been readily available until then."<sup>182</sup> He concluded that the absence of this data limited the scope for independent analysis and interrogation of HSE enforcement statistics, particularly in terms of developing an accurate picture of the level and impact of penalties at duty holder level.

**171. We recommend that the HSE reconsiders its decision to stop publishing its annual Offences and Penalties report. This provided an important evidence base for future policy decisions.**

172. The unions unanimously argued that penalties for health and safety breaches too often failed to reflect the gravity of the offence. The TUC explained that the majority of offences resulted in a fine, with very few cases leading to imprisonment, and most defendants were corporations, which often suffered minimally from the financial impact of a fine. The Communication Workers Union North West agreed and argued that at their current level, most fines do not have enough impact on companies' finances to act as a successful disincentive.<sup>183</sup> The Royal Society for the Prevention of Accidents (RoSPA) argued that more severe penalties were required in order to demonstrate a zero-tolerance approach to health and safety breaches.<sup>184</sup>

173. However, HSE itself acknowledged that:

"Ministers and HSC have long maintained that fines for health and safety offences are generally too low. This view was supported by the Hampton and Macrory

<sup>182</sup> Health and Safety Bulletin, March 2008, Issue 366, *When things go wrong*, pg 7 - 18

<sup>183</sup> Ev 138

<sup>184</sup> Ev 151

reviews.<sup>185</sup> Criminal penalties are an important way to express society's condemnation of serious failure to safeguard others."<sup>186</sup>

174. Professor Richard Macrory's independent review of the current system of regulatory sanctions looked at sanctioning regimes and penalty powers in detail over a 12 month period from 2005. He found that the fines handed down in court often do not reflect the financial gain a firm may have made by failing to comply with an obligation.<sup>187</sup> He cited fines for health and safety offences as a particular example of where this is the case and concluded that:

"These apparently low financial penalties could be seen as an acceptable risk by businesses that have chosen to be deliberately non-compliant. In these instances it might be assumed that financial penalties in the current system are failing to achieve even the most basic objectives of an effective sanctioning regime."<sup>188</sup>

### **Sentencing Guidelines**

175. Sentencing guidelines are set down for magistrates and judges in attributing proportionate penalties to suit the offence. The Sentencing Advisory Panel (SAP) recently consulted on the levels of fines that courts in England and Wales should impose for corporate manslaughter convictions and for the Health and Safety at Work Act 1974 (HSWA) offences that have resulted in death. The draft proposes that judges base the fine on the offenders' annual turnover averaged over the three years prior to sentencing. The SAP's starting point for calculating the fine would be 2.5% of the offender's average annual turnover, with aggravating and mitigating factors usually fixing the fine between 1% and 7% of turnover. The consultation closed on 7 February 2008 and at the time of writing, the Panel had yet to submit its advice to the Sentencing Guidelines Council.

176. Response to the guidelines has been mixed. The Communication Workers Union and TUC emphasised that the new guidelines must significantly increase fines and director level responsibility.<sup>189</sup>

177. The CBI, on the other hand, argued that sentencing based on a simple calculation on annual turnover will produce disproportionate results at both the very low and very high turnover levels.<sup>190</sup> This was supported by Chris Jackson, who told us that:

"If you have a very high turnover but very low margin company, say a construction company that is working on two per cent margin but maybe has a £1 billion turnover, and a high-tech supplier to that same construction company that maybe

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<sup>185</sup> Philip Hampton's report *Reducing administrative burdens: effective inspection and enforcement* (published March 2005). Richard Macrory's review *Regulatory Justice: Making Sanctions Effective* (published November 2006)

<sup>186</sup> Ev 285

<sup>187</sup> *Regulatory Justice: Making Sanctions Effective*, Final Report, November 2006, Department for Business, Enterprise and Regulatory Reform, para 1.18

<sup>188</sup> *Regulatory Justice: Making Sanctions Effective*, Final Report, November 2006, Department for Business, Enterprise and Regulatory Reform, para 1.19

<sup>189</sup> Taken from CWU website, <http://www.cwu.org/default.asp?Step=4&pid=637>

<sup>190</sup> CBI Response To Consultation Paper On Sentencing For Corporate Manslaughter Issued By The Sentencing Guidelines Council(Sgc), February 2008

turns over £100 million but makes £30 million profit; for the same incident, where both equally culpable, you will punish both in a very different way.”<sup>191</sup>

### **Health and Safety (Offences) Bill**

178. The Health and Safety (Offences) Bill was introduced as a private member’s Bill by Keith Hill MP on 5 December 2007. The Bill seeks to revise the mode of trial and maximum penalties applicable to certain offences relating to health and safety in Great Britain. Schedule 1 to the Bill sets out three proposals for change to the present arrangements: it would raise the maximum fine that may be imposed in the lower courts to £20,000 for most offences; it would make imprisonment an option for most offences in both the lower and the higher courts; and it would increase powers to make certain offences triable in both the lower and higher courts.

179. The changes proposed by the Bill were first proposed following a joint review of the current maximum penalties for health and safety offences, which was carried out between February and September 1999 by the Home Office, the then Department of the Environment, Transport and the Regions, and HSE. In the same year, the Government launched its *Revitalising Health and Safety* consultation, in which it voiced its concern that “the general level of penalties handed down by the courts for health and safety offences are too low and do not deter people intent on flouting health and safety law” and concluded that:<sup>192</sup>

“More needs to be done to encourage unscrupulous employers to take their health and safety responsibilities seriously. The Government is considering whether to make imprisonment available to the courts for all health and safety offences.”<sup>193</sup>

**180. The independent Macrory Review found that the average fines for health and safety offences are too low and HSE agrees with this. We await the outcome of the Sentencing Advisory Panel’s draft guidelines for corporate manslaughter and the Health and Safety at Work Act 1974 in England and Wales, but this will not address the problem of disproportionately low penalties where there is no fatality. In the light of our earlier recommendation to prevent the standard of legal proof from being raised from “reasonable practicability” to strict or absolute liability, we conclude that legislation is required to increase the maximum penalties available to the courts in examining breaches of health and safety law.**

**181. In the event of the Health and Safety (Offences) Bill becoming law we would recommend that a proportion of the income from increased penalties be returned to HSE to enhance its investigative capability. We are also concerned at the low level of costs awarded by courts which bear little relationship to expenditure incurred by HSE in mounting prosecutions and ask that the Department consult with the Ministry of Justice and the Scottish Justice Minister on the potential for further guidance to the courts.**

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<sup>191</sup> Q 38

<sup>192</sup> *Revitalising Health and Safety*, Consultation Document, July 1999

<sup>193</sup> *Revitalising Health and Safety*, Consultation Document, July 1999

## Alternative penalties

182. We received evidence which suggested that alternative penalties could also have a role to play within the framework of health and safety regulation, as part of a wider overall approach to improving enforcement.

183. A number of witnesses suggested the use of more innovative penalties such as corporate probation, “naming and shaming” orders and publicity orders.<sup>194</sup> Mr Daniel Shears, Health, Safety and Environmental Research Policy Officer at GMB said:

“We think it is very unfortunate that the range of penalties is so inadequate and in some ways so unimaginative as well. Were there to be a different kind of penalty, for example, some kind of corporate probation [...] with appropriate follow-up could provide the kind of extra range of weaponry in the sanctions HSE can apply.”<sup>195</sup>

184. HSE undertook a consultation in 2005 into the impact of introducing alternative penalties for health and safety offences, the results of which were to be fed into its enforcement policy document.<sup>196</sup> However, the current version does not include any guidance on the use of alternative penalties, as HSC concluded that:

“the health and safety regime was mature with no significant gaps in its powers. HSE and LAs already effectively enforce the legislation without being driven to excessive use of prosecution through lack of alternatives.”<sup>197</sup>

**185. We believe there is scope for HSC to introduce alternative penalties to deal with those in breach of their health and safety duties. We recommend that HSC should revisit whether innovative penalties could be incorporated into its enforcement policy document.**

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<sup>194</sup> Ev 186, 234

<sup>195</sup> Q 132

<sup>196</sup> HSE consultation - *Alternative penalties for health and safety offences*, 2005

<sup>197</sup> Cabinet Office consultation on draft Regulatory Enforcement and Sanctions Bill - HSC response, June 2007

## 8 HSE and Local Authorities

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### HSE and Local Authority partnership working

186. Since 2004, HSE and Local Authorities (LA) have made significant progress in building an effective partnership approach to health and safety. *A strategy for workplace health and safety in Great Britain to 2010 and beyond*, published in February 2004, set out a new direction for the health and safety system and the roles of HSC, HSE and LAs.<sup>198</sup> A “Statement of Intent” was agreed between HSE and LAs in July 2004, which set out the objectives of the partnership.

187. 410 LA’s in England, Scotland and Wales have responsibility for the enforcement of health and safety legislation in 1.1 million workplaces. These include offices, shops, retail and wholesale distribution, hotel and catering establishments, petrol filling stations, residential care homes and the leisure industry.

188. Derek Allan, Executive Director of the Local Authority Co-ordinators of Regulatory Services (LACORS) commented that, since signing the Statement of Intent, LAs and HSE had enjoyed a “really positive relationship”.<sup>199</sup> He suggested that the most significant achievement so far had been the effective harnessing of LA resources to achieve HSC priorities in local programmes supported by HSE materials and expertise.<sup>200</sup>

### Partnership Liaison Officers and Partnership Managers

189. LACORS highlighted the positive improvements that came about following the appointment of Partnership Liaison Officers (PLOs). PLOs are LA officers seconded to HSE with the aim of improving the working relationship between LAs and HSE on the ground. LACORS suggested that lack of resources within HSE has damaged the momentum of the PLO programme:

“The appointment of Partnership Liaison Officers (PLOs) in 2005 played a very significant role in improving the working relationship between LAs and HSE on the ground. PLOs were LA officers seconded to HSE, but as the first round of secondments began to come to an end in late 2006, HSE’s financial difficulties led to a hiatus before new secondments were made. The second round of secondments has suffered from a cut in funding and some of the appointments have been part time or for less than a year.”<sup>201</sup>

190. Mr Allan told us that he was confident that “for a relatively small investment, there has been a significant output” from the PLO programme and highlighted the positive response PLOs have received from senior LA staff.<sup>202</sup>

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<sup>198</sup> HSE - *A strategy for workplace health and safety in Great Britain to 2010 and beyond*, February 2004

<sup>199</sup> Q 231

<sup>200</sup> Q 231

<sup>201</sup> Ev 163

<sup>202</sup> Q 236

191. In addition to PLOs, HSE employs eight field-based Partnership Managers within its Local Authority Unit (LAU), whose Partnership Teams facilitate joint-working on the frontline. LACORS expressed its concern that the LAU and Partnership Teams have experienced resource cuts, “which has seen Partnership Managers combining their role with that of External Relations Managers”.<sup>203</sup> He argued that this undermines the Partnership Manager’s ability to concentrate on improving frontline partnership working.<sup>204</sup>

192. The Royal Society for the Prevention of Accidents (RoSPA) argued that effective ways of achieving a sensible division of responsibility between HSE and LAs in the enforcement of health and safety law needed to be kept under review, in addition to the arrangements for liaison and technical support between HSE and LAs. In general, it favoured the idea of more formal partnership agreements between HSE and LAs but argued that, in practice, the viability of this approach depends on ensuring allocation of sufficient resources.<sup>205</sup>

**193. The Partnership Liaison Officer (PLO) programme is a key component of the partnership approach between HSE and Local Authorities. It is disappointing that HSE appears to be unable to resource this programme fully to achieve its aims. We urge HSE, in partnership with Local Authorities, to ensure that the PLO programme is sufficiently funded.**

## HSE’s role as a statutory consultee in local planning

194. HSE explained that it provided safety-related advice to Local Planning Authorities (LPAs), with the aim of mitigating the effects of a major accident on the population in the vicinity of hazardous installations. HSE emphasised that its advice is based on the most up-to-date scientific and technical knowledge, and takes account of the residual risk after all the preventive measures which the law requires have been taken at the installation.<sup>206</sup>

195. HSE’s role in the land use planning system is advisory but its opinion carries significant weight. It has no power to refuse consent for a planning application. It is the responsibility of the LPA or the Planning Inspectorate to make the decision, weighing local needs and benefits and other planning considerations alongside HSE advice.

196. LPAs may decide to grant permission against HSE’s advice. In such cases, HSE will not pursue the matter further as long as the LPA understands and has considered the reasons for its advice. However, in England and Wales, HSE has the option, if it believes for example that the risks are sufficiently high, to request that a decision be ‘called in’ for consideration by the Secretary of State for Communities and Local Government (CLG) (or in Wales, the Secretary of State for CLG or the Assembly Minister, depending on the proposed development). In Scotland, if the planning authority is minded to grant

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<sup>203</sup> Ev 163

<sup>204</sup> Ev 163

<sup>205</sup> Ev 151

<sup>206</sup> Ev 282

permission against HSE's advice, it has to notify Scottish Executive Ministers, who can decide to call-in the application.<sup>207</sup>

197. CBI questioned the use of HSE's limited expert resources in local authority planning if its advice can be ignored<sup>208</sup> and the Federation of Small Businesses (FSB) argued that communication was often poor between the two agencies:

“The gap between local authority and HSE requirements is still a significant issue, with little evidence of the two organisations working together and/or sharing responsibilities. This is an area which has been much discussed yet still needs further attention.”<sup>209</sup>

**198. While accepting that Local Planning Authorities should have ultimate responsibility for local planning decisions, we believe that HSE has an important advisory role to play. We conclude that it is vital that DWP liaises with the Department for Communities and Local Government to ensure planning decisions reflect the importance of HSE's role in the process.**

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<sup>207</sup> HSE's Current Approach to Land Use Planning (LUP) - Policy & Practice

[www.hse.gov.uk/landuseplanning/lupcurrent.pdf](http://www.hse.gov.uk/landuseplanning/lupcurrent.pdf)

<sup>208</sup> Ev 134

<sup>209</sup> Ev 253

## 9 Worker involvement

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199. The Safety Representatives and Safety Committees Regulations 1977, the Health and Safety (Consultation with Employees) Regulations 1996 and the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 define the role of trade union appointed safety representatives and elected representatives of employee safety and place legal duties on employers to consult with their workforce on health and safety matters.

200. In workforces where the employer recognises a trade union the employer must consult with the union safety representative and, in situations where there are employees not covered by union appointed safety representatives, with those employees, either directly or through their elected representatives. Consultation should take place on:

“any measure at the workplace which may substantially affect employees’ health and safety for example, changes in procedures, equipment or ways of working;

the employer’s arrangements for appointing competent people to help him or her comply with health and safety requirements and evacuation procedures;

the information employers must give to employees about risks to health and safety and preventative measures;

the planning and organising of health and safety training; and

the health and safety consequences of introducing new technology.”<sup>210</sup>

### Unionised workforces

201. The statutory functions of trade union-appointed safety representatives are:

“to investigate possible dangers at work, the causes of accidents there and general complaints by employees on health and safety and welfare issues and to take these up with the employer;

to carry out inspections of the workplace;

to represent employees in discussions with HSE inspectors and to receive information from them; and

to attend safety committee meetings.”<sup>211</sup>

202. Both UK and international evidence indicates a relationship between trade union based workplace health and safety representation and standards of health and safety management and performance.<sup>212</sup> For example, accident rates in UK manufacturing have

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<sup>210</sup> HSE, *Consulting Employees on Health and Safety: a Guide to the Law*, HSE INDG232

<sup>211</sup> The Safety Representatives and Safety Committees Regulations 1977 described for employees on HSE’s website: <http://www.hse.gov.uk/workers/safetyreps/role.htm>

<sup>212</sup> “The Union Effect”, TUC website, [www.tuc.org.uk/h\\_and\\_s/tuc-8382-f0.cfm](http://www.tuc.org.uk/h_and_s/tuc-8382-f0.cfm)

been found to be significantly lower in workplaces in which unions appoint some members of health and safety committees.<sup>213</sup>

203. A number of Unions have proposed measures to build on the success of the 1977 safety representative legislation.<sup>214</sup> Unite has called for:

“safety representatives [to have] the right to inspect all premises where they have members, and those of contractors”;

“specific duties on employers to respond to issues raised by safety representatives”;

“a duty on employers to consult safety representatives on risk assessments”;

“the establishment of statutory roving safety representative<sup>215</sup> schemes”; and

“a new statutory right for safety representatives to serve provisional improvement notices”.<sup>216</sup>

204. Our predecessor Committee recommended empowering safety representatives to enforce health and safety law in the workplace as a means of improving health and safety standards.<sup>217</sup> The Government responded that empowering safety representatives would not lead to improved standards; that having increased powers would harm safety representatives’ relationships with employees and employers; and that inspections require “professionally-trained health and safety inspectors who are independent of the interests in any particular case”.<sup>218</sup> During the current inquiry the Minister confirmed that this would not “be the right way to go.”<sup>219</sup>

205. HSC acknowledged the importance of safety representatives, stating that “Trade union workplace health and safety representatives operating in partnership with management are an important part of realizing health and safety benefits. We recognise their valuable contribution.”<sup>220</sup>

206. However, Mr Daniel Shears, Health, Safety and Environmental Research Policy Officer at GMB, told the Committee:

<sup>213</sup> Reilly, Paci and Holl, “Unions, Safety Committees and Workplace Injuries”, *British Journal of Industrial Relations*, June 1995 (The research based on a Workplace Industrial Relations Survey data relating to manufacturing establishments found that workplaces where employers managed health and safety in the absence of any joint arrangements with a union had an injury rate of 10.6 per 1000 employees compared with a rate of 5.7 where unions appointed all employee members of health and safety committees.)

<sup>214</sup> Q 98 (UCATT), Ev 187 (TUC), Ev 247 (UNITE), Ev 138 (Communications Workers Union, NW Safety Forum), Ev 214 (University and College Union), Ev 123 (GMB)

<sup>215</sup> A roving safety rep is a representative who provides workers, commonly in SMEs, with a source of health and safety advice and support from outside of the workplace. The term is most commonly used in relation to representatives who are trade union appointed.

<sup>216</sup> Ev 247

<sup>217</sup> Work and Pensions Committee, Fourth Report of Session 2003-04, *The work of the Health and Safety Commission and Executive*, HC 456, para 176

<sup>218</sup> Work and Pensions Committee, Third Special Report of Session 2003-04, *Government Response to the Committee’s Fourth Report into the Work of the Health and Safety Commission and Executive*, HC 1137, p 12

<sup>219</sup> Q 277

<sup>220</sup> HSC, *A strategy for workplace health and safety in Great Britain to 2010 and beyond*, February 2004 P 9

“There was a very strong statement, a collective declaration of worker involvement, by the Commission in 2002 which made some very clear, positive directions in trying to involve the workforce in the management of health and safety. The trade unions have followed that up with a number of requests [...] whilst some of these things have been piloted there has been very little to no appetite in actually bringing these into play.”<sup>221</sup>

207. Lord McKenzie of Luton, Parliamentary Under Secretary of State at DWP, reassured us that:

“I see it as one of my personal key priorities, as the Minister, this year to have further engagement to try to [...] understand what challenges safety reps have and to see what we can do to remove barriers that might be there. [...] they are a key partner in helping to change behaviour.”<sup>222</sup>

**208. We are convinced that trade union safety representatives can be effective in improving health and safety standards and we are disappointed that, notwithstanding its public pronouncements, the HSC/E has not done more to promote their role. We call on the Minister to set out what steps he plans to take to enhance the role of safety representatives.**

## Non-unionised workforces

209. The majority of the workforce are not members of a trade union or employed in workplaces where unions are recognised. Therefore most workers are not represented by union safety representatives (although, as stated above, where unions are not present workers are still to be consulted by the employer on health and safety issues and can have an elected representative of employee safety).

210. The roles of elected representatives of employee safety, in accordance with the provisions of the 1996 regulations, are:

“to take up with employers concerns about possible risks and dangerous events in the workplace that may affect the employees they represent;

to take up with employers general matters affecting the health and safety of the employees they represent; and

to represent the employees who elected them in consultations with health and safety inspectors.”<sup>223</sup>

211. However under the regulations it is at the employer’s discretion as to whether they consult with the employees directly or through a representative. In addition to this, Mr Mike MacDonald, Negotiations Officer from Prospect, was concerned that elected safety representatives, without union support, lacked access to independent guidance, training

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<sup>221</sup> Q 118

<sup>222</sup> Q 271

<sup>223</sup> Health and Safety (Consultation with Employees) Regulations, 1996 (Described on HSE’s website <http://www.hse.gov.uk/involvement/law.htm>)

and development. Academic research has also found evidence of employers not fulfilling their duties under the 1996 regulations.<sup>224</sup> HSC has recognised that changes in the composition of the labour market have meant that too few employers properly involve and consult their workers on health and safety matters and too few employees feel able to come forward and take on health and safety responsibilities.<sup>225</sup>

212. In 2003 the then Secretary of State for Work and Pensions, Rt Hon Andrew Smith MP, launched HSE's Workers' Safety Adviser Challenge Fund to try to stimulate partnership working between workers and employers on health and safety matters in small businesses and organizations that lack union representation. The fund provided £1m a year for three financial years 2004/5, 2005/6, and 2006/7 with grants of up to £100,000 for each project.<sup>226</sup> The Workers' Safety Advisers visited non unionised workplaces, with the agreement of employers, to discuss health and safety issues with the employees.

213. The Federation of Master Builders (FMB), which formed a partnership with the Transport and General Workers Union, now part of Unite, and Union of Construction, Allied Trades and Technicians (UCATT) commended the scheme saying that:

“Firstly, as union trained safety representatives with considerable practical industry experience, the advisers had great credibility with workers and employers alike. Secondly, as the Workers' Safety Adviser's were employed by FMB, on secondment from their respective unions, and had no statutory powers of enforcement, they were able to gain the trust of the employers. This allowed all involved to raise any concerns without fear of negative repercussions.”<sup>227</sup>

214. Despite the apparent successes of the project the funding finished in 2007. The Minister told us:

“it was only ever meant to last for three years. It did prove to be quite an expensive pilot and, if it were to be rolled out, I think there was a potential £40 million price-tag for reaching 10% of SMEs and then for people to extrapolate that to a wider population of SMEs would be very expensive indeed.”<sup>228</sup>

215. Mr Geoffrey Podger, Chief Executive of HSE, added:

“The Commission looked into this very carefully, the outcome of the pilot, and it was clear that some good things had been achieved and I think it was generally a sort of motivating force, but I think it was equally clear that one of its main purposes, which was actually to encourage innovative ways of approaching worker involvement, actually had largely not been achieved”<sup>229</sup>

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<sup>224</sup> D. Walters and T. Nichols (2007), *Worker Representation and Workplace Health and Safety*. Basingstoke: Palgrave Macmillan

<sup>225</sup> HSC/E A *Collective Declaration on Worker Involvement*, <http://www.hse.gov.uk/involvement/hscdeclaration.pdf>

<sup>226</sup> Ev 326

<sup>227</sup> Ev 326

<sup>228</sup> Q 270

<sup>229</sup> Q 270

216. However Professor Stephen Wood, Chair of the Challenge Fund, informed us that evaluations of the fund were scaled back and the final evaluation was abandoned. He also stated that the “relative high cost approach” was not based on comparing alternative ways of reaching SMEs or generating worker involvement, which could be more costly. The Challenge Fund Board concluded that “all the positives from the Fund including the way it operated and was founded on partnership working are increasingly being swept into the background”.<sup>230</sup>

217. Mr Podger explained that “what we are trying to do is to pump-prime people to do what they are supposed to be doing anyway”.<sup>231</sup> The Minister suggested that “it would be good if the construction industry, which is going through pretty much a boom at the moment, felt able actually to put some funding into this itself; there is always a limit to what the public purse can fund.”<sup>232</sup> Mr Podger informed the Committee of the work that HSE was now concentrating on:

“one of the things that we are actually doing at the moment under the Commission’s direction is [...] to clarify the guidance for employers, both those who have unionised workforces [...] and those who have non-unionised workforces [...] to point out to them what their obligations still are and also to suggest to them things which, in their own interests, they might wish to do, even if they are not legally obliged to do. Again, I would stress to the Committee that we are very alive to this issue of non-unionised worksites, [...] but I would not claim that we have resolved it.”<sup>233</sup>

**218. We call on HSE to publish a final evaluation of the Workers’ Safety Adviser Challenge Fund, explaining the reasons why the pilot will not be rolled out, before the important lessons that could be learnt are lost. We believe worker involvement is a means of improving health and safety standards in non-unionised workplaces, benefiting employers and employees alike, and call on HSE to work with industry to explore models for the future funding of such projects.**

**219. We also urge the Government to consider amending the Health and Safety (Consultation with Employees) Regulations 1996 to give employees the right to insist on consultation through elected health and safety representatives. The proper enforcement of these regulations is essential to safeguard the rights of non-unionised workforces.**

## **Enforcement of Worker Involvement Legislation**

220. As with all health and safety legislation, non-compliance with legislation concerning safety representation and worker consultation can result in formal enforcement action by HSE but HSE states that:

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<sup>230</sup> Ev 334

<sup>231</sup> Q 273

<sup>232</sup> Q 271

<sup>233</sup> Q 276

“enforcement of the detailed requirements of worker consultation legislation is very much an option of last resort. Compliance is more effectively secured by employers and employees working together to reach a mutually agreeable settlement.”<sup>234</sup>

221. Figures from HSE’s internal Enforcement Notices Database show that from 1997 to February 2008:

- 5 Improvement Notices have been served for failure to comply with the Safety Representatives and Safety Committee Regulations 1977; and
- 42 Improvement Notices have been served for failure to comply with the Health and Safety (Consultation with Employees) Regulations 1996 (some in addition to notices issued primarily for other breaches).<sup>235</sup>

222. GMB noted that:

“There has never been a prosecution by the HSE following a complaint on a lack of consultation with reps or the workforce and safety reps become cynical that the law only seems to apply when it suits. In effect the provisions of the ‘brown book’- (The Safety Reps & Safety Committee Regulations) are never properly enforced.”<sup>236</sup>

223. Hazards Campaign suggested that:

“Despite paying much lip service to the value and vital role safety reps play, [HSE] consistently fails to enforce the regulations governing safety reps. [...] HSE Inspectors need to make much more contact with workers, trade union safety reps, and representatives of employee safety, and be seen to be there to enforce the law that is intended to protect workers.”<sup>237</sup>

224. Mr MacDonald said that inspectors do not have enough time on a visit to assess the role of the safety representatives, “it is simply not on their list of priorities”.<sup>238</sup> Evidence from academic studies and work by TUC show that the 1977 and 1996 regulations are not fully implemented in workplaces.<sup>239</sup>

**225. If the legislation governing worker’s involvement in health and safety is to operate effectively, it must be backed up with credible enforcement. We call on HSE to increase its efforts in taking enforcement action against duty holders who fail in their obligations to consult workers on health and safety matters.**

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<sup>234</sup> HSE website: <http://www.hse.gov.uk/involvement/law.htm>

<sup>235</sup> Ev 334

<sup>236</sup> Ev 127

<sup>237</sup> Ev 259

<sup>238</sup> Q 98

<sup>239</sup> D. Walters and T. Nichols (2007) *Worker Representation and Workplace Health and Safety*. Basingstoke: Palgrave Macmillan; P. James and D. Walters. 2005. *Regulating Health and Safety at Work: An Agenda for Change?* London: Institute of Employment Rights; and P. Kirby, *1998 TUC Survey of Safety Representatives*. London: TUC

## 10 Vulnerable Workers

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### Low Skilled Workers

226. DWP has stated that “Figures from the labour force survey for the three-year period 2003-04 to 2005-06 indicate that the average rate of reportable accidents for all workers (which includes temporary, short-term and permanent workers) is 1,090 per 100,000 workers. The figure for workers in occupations requiring few or no qualifications is 2,070 per 100,000 workers.”<sup>240</sup>

227. Mr Daniel Shears, Health, Safety and Environmental Research Policy Officer at GMB, suggested that workers who have low literacy levels are likely to be employed in industries which have high levels of physical activity, for example manufacturing, construction and agriculture.<sup>241</sup> GMB also noted that construction and agriculture are two of the most hazardous industries in the UK.<sup>242</sup>

228. We were told on a recent visit to the Olympic site in Stratford that there were high levels of illiteracy and innumeracy amongst the indigenous workforce there. The Olympic Delivery Authority is trying to identify low skilled workers and offers literacy and numeracy training as well as training in construction (part of which focuses on health and safety).<sup>243</sup>

229. Ms Louise Ward, Health and Safety Manager at EEF, told us that problems around illiteracy and innumeracy were:

“an issue that I think the majority of companies in my sector are very well aware of. It is something they have dealt with historically and they have good systems in place to identify the training needs of people coming into the business and to address those.”<sup>244</sup>

### Migrant Workers

230. In 2005, HSE commissioned research which assessed the health and safety risks to migrant workers. It revealed that migrants are more likely to be in occupations where there are existing health and safety concerns. They are more likely to have limited means of communication with indigenous supervisors and, as new workers, may have limited knowledge of the UK’s health and safety system. The research also noted that migrant workers often come to the UK with the intention of earning as much as possible in the shortest possible time and would therefore be more likely to work long hours, to work

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<sup>240</sup> HC Deb, 5 March 2008, 2599W

<sup>241</sup> Q 80

<sup>242</sup> Ev 127

<sup>243</sup> Appendix

<sup>244</sup> Q 69

shifts and to take jobs in sectors where they have no experience and have received no previous training.<sup>245</sup>

231. However HSE highlighted that analysis of fatal occupational accidents for 2006/07 shows that there was no higher rate of fatalities for migrant workers and that preliminary information from the Labour Force Survey for non-fatal accidents also suggests that migrant workers are not at measurably greater risk.<sup>246</sup>

232. Construction Skills identified that under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) there is no requirement to report the nationality of the injured or ill worker. It also noted that there is very little reliable data about minor accidents and near misses more generally, and so concluded that it is almost impossible to track occurrences of injuries to migrant workers and spot trends.<sup>247</sup> Mr Shears stated that the assertions made about risks to migrant workers were “based on surnames and first names which, at best, is speculative”.<sup>248</sup> He highlighted that not only did the reporting system not record an individual’s nationality but migrants would also be amongst the category least likely to be captured by a doorstep survey such as the Labour Force Survey.<sup>249</sup>

233. Mr Tom Wilson, Head of Organisation and Services at TUC, explained that “in Europe, where comparable statistics are collected [...] they do show that migrant workers on average have something like twice the rate of accidents and injuries as non-migrant workers.”<sup>250</sup>

234. Unite told us:

“We have come across many situations where migrant workers’ health and safety is being disregarded and believe also that there is chronic under-reporting of injuries in this group of workers, as well as more generally. HSE resources are urgently required to address this.”<sup>251</sup>

235. The Federation of Master Builders (FMB) and the CBI would like to see further research by the HSE on whether migrant workers are more at risk of occupational accidents and if so, what factors contribute to this. CBI said that without this the HSE may not provide the right policies and practices to tackle the problems.<sup>252</sup> HSE is currently surveying employers for their view on whether their migrant workforce is at greater risk of accident and ill-health than other workers and the results of this survey will be available during 2008. HSE will also shortly be tendering research to identify all possible published and unpublished information on risks to migrant workers, and to evaluate its

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<sup>245</sup> HSE, *Migrant workers in England and Wales: An assessment of migrant worker health and safety risks*, RR502 2006 HSE Books

<sup>246</sup> Ev 288

<sup>247</sup> Ev 229

<sup>248</sup> Q140

<sup>249</sup> Q 140

<sup>250</sup> Q 140

<sup>251</sup> Ev 248

<sup>252</sup> Ev 137

methodological quality, in order to establish with greater certainty whether migrant workers are at greater risk than the indigenous workforce.<sup>253</sup>

**236. There is currently no reliable evidence on whether migrant workers in the UK are more or less vulnerable to workplace accidents and therefore no basis on which to draw up policies targeting these potentially vulnerable groups. We welcome the research that HSE is carrying out on migrant workers and we urge HSE to increase its efforts in ascertaining what data is required to measure the risk factors for this group of workers.**

### Guidance

237. The HSE report on migrant workers highlighted the fact that more than a third of those interviewed had not received any training in health and safety and for the remaining two-thirds the training that had been offered was generally limited to a short session at induction. There was also widespread lack of knowledge of basic health and safety procedures and a low level of knowledge of health and safety rights and of how to enforce them.<sup>254</sup> Mr Shears, who was previously an HSE inspector, told the Committee that from his experience of inspecting workplaces where migrant workers were employed:

“the workers themselves knew nothing of the accident reporting procedures [and] had no way of communicating to their managers or those in the occupational health service that they were suffering pain.”<sup>255</sup>

238. General guidance is available from HSE for both employers and workers. This sets out what duty holders need to consider when assessing the risks to vulnerable workers and the steps to take to deal with them. HSE also produces targeted guidance in key areas such as a leaflet for food/agriculture SMEs entitled “Employing workers from overseas”; and advice on language issues.<sup>256</sup> HSE has also produced a new leaflet, in the form of a pocket card, aimed at migrant workers in food processing and agriculture, which provides basic and essential information on their rights and responsibilities under UK health and safety legislation. However Mr Shears explained that there are expanding areas where migrant workers are being employed; for example:

“We are starting to see evidence now of areas of real concern in warehousing where people are being bussed in from large urban areas to work in out of town warehousing sites.”<sup>257</sup>

There is, as yet, no guidance for workers in these sectors.

239. Mr Wilson suggested that migrant workers could be told of their rights and how they can be accessed as they enter the UK: “There is a leaflet that is given to all migrant workers when they arrive but that could be much expanded and improved upon”.<sup>258</sup> He also

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<sup>253</sup> Ev 288

<sup>254</sup> HSE, *Migrant workers in England and Wales: An assessment of migrant worker health and safety risks*, RR502 2006 HSE Books

<sup>255</sup> Q 140

<sup>256</sup> Ev 288

<sup>257</sup> Q 141

<sup>258</sup> Q 142

proposed foreign language helplines.<sup>259</sup> The Institution of Occupational Safety and Health (IOSH) recommended that HSE should consider distributing relevant health and safety information for migrant workers via ‘free newspapers’ in supermarkets and health, community and refugee centres.<sup>260</sup>

240. GMB and TUC also suggested that there is a need for clearer guidance for employers.

“employers are not on the whole really aware of their requirements to give information, supervision, instruction and training in comprehensible language to migrant workers. It typically tends to be a brief induction, very much non-verbal communication and a culture of ‘thumbs up’ approach which is not particularly suitable for workers who are potentially working in fairly high hazard occupations”<sup>261</sup>

241. GMB highlighted the success of the Workers Safety Adviser Pilot:

“where workers’ safety advisers, who were able to speak a number of languages, were going to areas with very high migrant workers concentrations and because they came from a similar background and had the linguistic skills, they built up relationships of trust very quickly. They were then able to not only empower the workers themselves to begin reporting their ill health concerns, taking time off work, claiming the benefits they were entitled to, but they were also able to act as facilitators for management so management could appreciate some of the concerns that workers were raising which, in fairness, some had been blindly ignorant of, not because they were somehow poor employers but because they had not had the feedback from the workforce itself.”<sup>262</sup>

**242. We recommend that HSC extends the guidance for migrants on health and safety issues and take steps to ensure its targeted dissemination amongst migrant workers. The HSC should also investigate ways of proactively informing employers about their duties and responsibilities when employing migrant workers.**

## Agency Workers

243. The health and safety of temporary, casual and agency workers is covered by the Health and Safety at Work Act 1974. An agency has a responsibility not to place a worker in a job for which the person is not capable or appropriately qualified or trained. The company where the agency worker is placed is responsible for making sure that the workplace is a safe working environment and must provide appropriate health and safety training, information, instruction, supervision, personal protective equipment and first aid provision.<sup>263</sup>

244. The HSE website advises small businesses that:

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<sup>259</sup> Q 142

<sup>260</sup> Ev 308

<sup>261</sup> Q 142

<sup>262</sup> Q 142

<sup>263</sup> HSE website: <http://www.hse.gov.uk/workers/agencyworkers.htm>

“If you hire temps or agency workers, you must tell the employment business (agency) hiring them to you about risks to the worker’s health and safety and steps you have taken to control them; any necessary legal or professional qualifications or skills; and any necessary health surveillance. The employment business/agency should pass this information on to the worker in a way that he/she can clearly understand, and you must ensure the worker has received and understood it.”<sup>264</sup>

245. However the Communication Workers Union dismissed this as the “ping pong” effect, with responsibility for safety going between the agency which is the direct employer and the company using agency workers.<sup>265</sup> Mr Wilson told the Committee

“the fundamental problem is that there is a kind of ambivalence between who exactly is responsible; is it the agency that hires and employs the workers or is it the contractor at whose premises they are working? What we find is that very often there is confusion and the net result is that the workers are often not retrained at all or where they do have a basic training from the agency it is not necessarily appropriate to the contractor where they may then be working”

246. Mr Geoffrey Podger, Chief Executive of HSE, has written to the Committee to explain that guidance can be found on the Businesslink website.<sup>266</sup> However **we recommend that the guidance produced by HSE and trade unions on agency workers should be clearly signposted for employers and workers through HSE’s website so that all stakeholders are aware of its existence.**

## Supply Chains

247. One of the ways that health and safety for vulnerable workers could be improved is through the supply chain. HSC define this as “encouraging those at the top of the supply chain (who are usually large organisations, often with relatively high standards) to use their influence to raise standards further down the chain, e.g. by inclusion of suitable conditions in purchasing contracts”.<sup>267</sup>

248. Ms Judith Hackitt, Chair of HSC, told us:

“it seems to us eminently sensible, as one of the ways of dealing with these changing employment patterns that we see, to start at the very top of the supply chain with the large organisation which will probably form the umbrella under which all of the other organisations work”.<sup>268</sup>

However, Lord McKenzie of Luton, Parliamentary Under Secretary of State at DWP, said that it would be difficult to draft and enforce legislation to effect this.<sup>269</sup>

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<sup>264</sup> HSE website: <http://www.hse.gov.uk/workers/employers.htm>

<sup>265</sup> Communications Union Website: <http://www.cwu.org/>

<sup>266</sup> Ev 349 and [www.businesslink.gov.uk/agencyworkers](http://www.businesslink.gov.uk/agencyworkers) dwp

<sup>267</sup> HSC, “*Sensible Health and safety at work: The regulatory methods used in Great Britain*”

<sup>268</sup> Q 295

<sup>269</sup> Q 297

249. CBI supported “the objectives of the HSE’s work with large organisations that are able to influence large part of the customer and supply chain and amplify the HSE effort to improve health and safety systems and help achieve Public Service Agreement objectives.”<sup>270</sup> However it also said “HSE could play a more active role in helping to ensure that supply chain initiatives do not generate excessive paperwork or lead to a duplication of effort”.<sup>271</sup>

250. There have been moves in New South Wales (NSW), Australia to regulate supply chains in the road freight and textile industries. Prime contractors for long distance lorry drivers are prohibited from entering into contracts with suppliers unless they are satisfied that the sub-contractors comply with driver fatigue regulations. The prime contractors are also obliged to monitor the legal compliance of those they contract. The clothing industry in NSW prohibits retailers from entering into an agreement with a supplier without having full details of all outworkers and without obtaining an undertaking from the supplier that these outworkers are working in industry standard conditions.<sup>272</sup>

**251. We welcome HSC’s support for the idea that health and safety for vulnerable workers can be improved by encouraging those at the top of supply chains to positively influence their contractors. However we call on HSE to explain how it intends to ensure prime contractors at the top of supply chains embed good practice in health and safety for those workers throughout these supply chains. We believe that there may be a need to introduce statutory duties on prime contractors and we ask HSE to assess the effectiveness of international examples of such regulation.**

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<sup>270</sup> Ev 135

<sup>271</sup> Ev 137

<sup>272</sup> Phil James, Richard Johnstone, Michael Quinlan and David Walters, *Regulating Supply Chains to Improve Health and Safety* (Industrial Law Journal, Vol 36, No 2, June 2007)

# 11 Occupational Health

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## Occupational Health: Regulation

252. HSC reported that 2.2 million people in 2006/07 were suffering from an illness they believed was caused or made worse by their current or past work. 646 000 of these were new cases in the last 12 months. 2037 people died of mesothelioma in 2005 and thousands more from other occupational cancers and lung diseases.<sup>273</sup>

253. TUC explained that there was still a tendency to view occupational disease and illness as a thing of the past, confined to industries such as mining and heavy engineering, but that the reality was very different. The British Occupational Hygiene Society estimated that there were more than forty times the number of deaths from occupational illnesses than there were from occupational accidents.<sup>274</sup>

### *HSE targets*

254. HSE had two Public Service Agreement (PSA) targets relating to occupational health for the Spending Review 2004 period (SR04):

- a) Work Related Ill Health - a target to reduce the incidence rate of work-related ill health by 6% in 2007/08 against a 2004/05 baseline; and
- b) Working Days Lost - a target to reduce the number of working days lost per worker due to work-related injury and ill health by 9% in 2007/08 against a 2004/05 baseline.

255. HSE was not on track to meet either of these targets but it is not clear whether significant progress towards the targets was even within HSE's power to achieve.<sup>275</sup> Mr Geoffrey Podger, Chief Executive of HSE, told the Committee that "we do not delude ourselves that we actually fully understand what is going on"<sup>276</sup> and a number of witnesses questioned whether the targets were appropriate.

256. The Institute of Occupational Medicine (IOM) said that the working days lost target is:

"about the overall effective management of businesses, rather than the control of risks at work, and the associated protection of workers from work-related hazards to health and safety. (Disease and injury caused or exacerbated by work is a relatively minor determinant of the amount of sickness absence from work)"<sup>277</sup>

257. Mr Steve Bailey, President Elect of the British Occupational Hygiene Society (BOHS) agreed that HSE does not have direct control over what happens in a workplace. The best

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<sup>273</sup> Health and Safety Statistics 2006/07, HSC & National Statistics

<sup>274</sup> Ev 166

<sup>275</sup> Health and Safety Statistics 2006/07, HSC & National Statistics

<sup>276</sup> Q 269

<sup>277</sup> Ev 190

it can do is influence but other influences on ill health can be greater or even more significant. He told the Committee:

“if the economy turns down and employers are in a position where they have to cut jobs or close operations, that puts employees under stress, so we get more stress cases, and employees under stress tend to have more accidents and suffer more ill-health, so we get more ill-health cases”.<sup>278</sup>

258. He also explained that many occupational diseases manifest themselves many years after exposure, so if conditions in the workplace are changed today the benefits in terms of ill-health statistics will not be seen for 10 or 20 years. He therefore believed that HSE targets should be based on what can be measured now which will make a difference in the future. He suggested:

“looking at how many people are actually exposed to these situations, how serious is their exposure, if necessary assessing and measuring their exposure, and then driving down the number of people and the extent to which they are exposed”.<sup>279</sup>

259. The Royal Society for the Prevention of Accidents (RoSPA) highlighted that “in meeting its PSA targets for ill health and days lost per worker HSE is heavily dependent on the work of many others”<sup>280</sup> and that “given that many contemporary occupational health problems have ‘mixed causation’ (work and non-work causes) HSE also has to work with other agencies who are seeking to promote wider health messages.”<sup>281</sup> The Association of British Insurers (ABI) suggested that HSE’s PSA “working days lost” target should be shared with the NHS.<sup>282</sup>

260. Dame Carol Black, National Director for Health and Work, referred to the working days lost target as “aspirational” agreeing that “many other factors will determine whether this target is met”.<sup>283</sup>

261. The Comprehensive Spending Review 2007 settlement was accompanied by a new performance framework for the DWP which saw the health and safety PSA targets replaced by a Departmental Strategic Objective to “improve health and safety outcomes”, supported by key indicators.<sup>284</sup> The key indicator relating to occupational health is the “incidence of work-related ill health.”

262. Lord McKenzie of Luton, Parliamentary Under Secretary of State at DWP, admitted there were problems for HSE in meeting its ill health targets which is causing HSE/C to “refresh where the direction and where the focus of the HSE is.”<sup>285</sup> However Mr Geoffrey Podger, Chief Executive of HSE, affirmed that the working days lost target:

<sup>278</sup> Q 162

<sup>279</sup> Q 163

<sup>280</sup> Ev 152

<sup>281</sup> Ev 147

<sup>282</sup> Ev 267

<sup>283</sup> Q 320

<sup>284</sup> Departmental Strategic Objective 3

<sup>285</sup> Q 269

“is a very proper target for government to have and it is a very proper target for us to contribute to. I think [...] the truth is that we are limited as to the number of levers that we, as HSE, can pull in this area”<sup>286</sup>

**263. We do not believe that the SR04 PSA target for HSE to reduce the number of working days lost due to work-related injury and ill-health provided a realistic and appropriate target for HSE as many of the factors affecting its achievement are outside its control.**

**264. Although the PSA targets relating to occupational ill health have been replaced with a Departmental Strategic Objective, we request that HSE continues to collect data on numbers of working days lost due to work-related injury and ill health. We also ask DWP to confirm that performance against the key indicators for the Departmental Strategic Objective will be fully reported on in the Departmental Annual Report and Autumn Performance Report.**

### ***Occupational ill health data***

265. Questions have also been raised about the accuracy of the ill health data on which the targets are based and against which they are measured. HSC’s ill health figures come from a number of sources. The Labour Force Survey is the main source of HSC’s ill health data. It is a quarterly national survey of over 50,000 households with questions on ill health included once a year. However HSE told us that comparing any single year’s estimate from this data with another year’s could be misleading and that trends provided a sounder basis for developing policy. They commented that “the proper conclusion is that we won’t know what is really happening until we have at least another couple of years’ estimates”.<sup>287</sup>

266. The HSC also quotes statistics from reports of ill health by doctors and specialist physicians gathered in surveillance schemes run by The Health and Occupation Reporting network (THOR). HSE suggested that these figures should also be treated with caution because “participation by specialist doctors in the schemes is voluntary and so the number of reporters may vary with time. In addition, there is evidence that some reporters may be less inclined to report as time goes on.”<sup>288</sup>

267. Other measures used for collecting ill health statistics include collating the number of cases of specified ‘prescribed diseases’ with an established occupational cause assessed for compensation under the Industrial Injuries Disablement Benefit scheme and occurrences on death certificate of a fatal occupational lung disease for example mesothelioma, neither of which represent the full spectrum of work-related illness.

268. A further way that HSE can collect ill health data is through the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR). RIDDOR places a legal duty on employers, self-employed people and people in control of premises to report work-related deaths, major injuries or over-three-day injuries, work related diseases, and dangerous occurrences. Work related diseases which have to be reported are:

<sup>286</sup> Q 269

<sup>287</sup> Ev 276

<sup>288</sup> “Data Sources”, HSE Website, <http://www.hse.gov.uk/statistics/sources.htm>

“Certain poisonings;

Some skin diseases such as occupational dermatitis, skin cancer, chrome ulcer, oil folliculitis/acne;

Lung diseases including: occupational asthma, farmer's lung, pneumoconiosis, asbestosis, mesothelioma;

Infections such as: leptospirosis; hepatitis; tuberculosis; anthrax; legionellosis and tetanus; and

Other conditions such as: occupational cancer; certain musculoskeletal disorders; decompression illness and hand-arm vibration syndrome.”<sup>289</sup>

269. Mr Bailey told the Committee:

“the current reporting requirements under RIDDOR are wholly inadequate, they only apply to a relatively small list of named occupational diseases in specific workplace situations. It does not begin to capture the scope of occupational health scenarios, so we really ought to look at a better, more general definition under RIDDOR”<sup>290</sup>

270. Professor Raymond Agius stated:

“the Reporting of Injuries Diseases and Dangerous Occurrences Regulations (RIDDOR) is acknowledged by HSE as being notoriously poor at collecting information about work related ill health. In fact HSE no longer uses its own RIDDOR data to provide statistics on its website about work related ill health.”<sup>291</sup>

271. DWP have confirmed to us that “indirect evidence suggests that under reporting is substantial in relation to all cases that might fall under the reportability conditions, perhaps less than 5% being reported [...] HSE assembles overall data on work related ill health from a range of sources. RIDDOR plays very little part in contributing to that overall picture.”<sup>292</sup> Mr Podger believed that the problem lay in employers not understanding where their obligations under RIDDOR were.<sup>293</sup> However Mr Daniel Shears, Health, Safety and Environmental Research Policy Officer at GMB rejected the suggestion of ignorance of reporting requirements or difficulties in reporting, noting that HSE has set up a website and call centre which provided help and easily available information.<sup>294</sup>

272. Mr Podger told the Committee that:

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<sup>289</sup> “RIDDOR”, HSE Website, <http://www.hse.gov.uk/riddor/riddor.htm>

<sup>290</sup> Q 199

<sup>291</sup> Ev 297

<sup>292</sup> Ev 350

<sup>293</sup> Q 259

<sup>294</sup> Q 152

“the Commission did look again at the RIDDOR system recently but actually reached the conclusion [...] that continuing the system as it was was a better use of resources than trying to significantly alter it.”<sup>295</sup>

273. Industrial Health Control Ltd and BOHS suggested HSE should have a clear obligation to collect more accurate figures on the incidence (number of new cases during the reporting period) and prevalence (number of all cases of the condition, new and established) of occupational ill health, in order to accurately monitor any changes. GMB suggested that there should be:

“something akin to the financial reporting regulations where there is a very, very strict clear code requiring employers to report accidents and ill health and where they do not for there to be on the spot penalties and fines as an inducement and encouragement to set standards. The trouble is that at the moment it is not exactly in the employer’s interests to report injury and ill health because what they are concerned about is that that might bring down upon them the might of the HSE and they will start digging around and asking awkward questions.”<sup>296</sup>

274. Dame Carol Black’s report suggested that an electronic sick note would improve data collection across the country:

“if only it could be electronic it would be incredibly valuable because we could develop patterns of illness in any particular community. We could see what type of illness was taking people out of work and we could then target our resources in a much more appropriate way, so within a PCT you would actually have geographic data and you would be able to start to really input at a much more appropriate level.”<sup>297</sup>

275. CBI stated:

“There is no single source of ill health figures that can be relied upon. Even combining most available public sources, official HSE reportable diseases, claims for prescribed industrial diseases, self reported ill health, medically validated schemes for particular diseases all require considerable manipulation to contribute to a fair overview.”<sup>298</sup>

276. The Minister told us:

“the fact that there is not a complete evidence base and an evidence base that is totally reliable does not preclude, and does not stop, the HSE from developing strategies and focus in appropriate areas”<sup>299</sup>

**277. The Committee finds it unacceptable that HSE acknowledges that it makes its policy decisions on flawed and incomplete data. RIDDOR is not fulfilling its role and**

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<sup>295</sup> Q 259

<sup>296</sup> Q 151

<sup>297</sup> Q 353

<sup>298</sup> Ev 137

<sup>299</sup> Q 269

**HSE is failing in its duties to enforce obligations under the regulations. We call on HSE to urgently address the shortcomings in its data collection.**

### ***Stress and musculoskeletal disorders***

278. DWP figures from the Labour Force Survey indicate that stress and musculoskeletal disorders (MSDs) make up approximately 75% of work-related sickness absence<sup>300</sup> but as Ms Kim Sunley, Senior Employment Relations Adviser, at the Royal College of Nursing told the Committee, it is very difficult to separate work-related causes from causes outside of the workplace. However she also suggested that many of these problems, particularly stress, can still be treated in the workplace regardless of what has caused the symptoms:

“For some people it may be that the stress has come from work and the employer should address those factors that are causing the stress, and that could be through organisational change. For some employees, it may have come from home so a good employer again will provide counselling and support for somebody going through a difficult time because obviously if it is coming from home it will impact on their performance at work.”<sup>301</sup>

279. The Minister also acknowledged that:

“sometimes it is almost impossible to determine whether it is the workplace or playing football on a Sunday morning which has caused a particular strain. In a sense, whichever it is, we shall be wanting to support people so that they can get back into work or remain in work and the challenge is how is that provision determined.”<sup>302</sup>

280. One way that HSE has tried to tackle stress in the workplace is by developing stress management standards. The standards and supporting processes are designed by the HSE to:

“help simplify risk assessment for stress;

encourage employers, employees and their representatives to work in partnership to address work-related stress throughout the organisation; and

provide the yardstick by which organisations can gauge their performance in tackling the key causes of stress.”

281. The HSE believe that the “Management Standards define the characteristics, or culture, of an organisation where stress is being managed effectively”.<sup>303</sup>

282. Submissions the committee received were supportive of HSE’s work in developing these standards. Mr Bailey told us:

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<sup>300</sup> Health and Safety Statistics 2006/07, HSC & National Statistics

<sup>301</sup> Q 170

<sup>302</sup> Q 266

<sup>303</sup> HSE website: <http://www.hse.gov.uk/stress/standards/>

“HSE have done some pioneering work in putting together their stress management standards and the approach to actually making it possible to tackle stress, and they are now rolling that out into industry, so that is great progress in a fairly short time. What we do not really know yet is just how effective those standards are, how good the take-up is going to be by industry. We have not really seen the results demonstrated downstream.”<sup>304</sup>

283. Mr Nick Starling, Director of General Insurance and Health, at ABI highlighted the problem of getting the message of these standards over to SMEs.<sup>305</sup>

284. Dr. Hazel Hartley said:

“The HSE (2004) Management Standards for Work-Related Stress are excellent. Furthermore, they so accurately reflect so many of the key organisational features which lead to deaths at work and major disasters that they are perfect as THE organisational performance toolkit to accompany the Institute of Directors/HSE (2007) guidance”<sup>306</sup>

285. She also suggested that they should be placed on a statutory basis or at least classified “as an Approved Code of Practice formally linked to the Health and Safety at Work Act 1974 and the Management of Health and Safety Regulations 1999.”<sup>307</sup>

**286. We commend the work that the HSE has done on Stress Management Standards but we call on HSE to increase its efforts to disseminate its guidance on the standards to SMEs. We are not yet convinced that the standards need to be placed on a statutory basis but we will await further research on their effectiveness with interest.**

287. Other than the Stress Management Standards, Mr Simon Pickvance, Senior Occupational Health Adviser at Sheffield Occupational Health Advisory Service, highlighted that there is currently no clear exposition of what arrangements HSE expects to see in place to prevent work-related ill-health. He suggested that:

“Guidance for local authority inspectors is probably the closest HSE has come, but still fails to show how the inter-relations between risk assessment, health surveillance, and hazard control measures are to be managed, and how this system should be monitored and controlled.”<sup>308</sup>

288. Dame Carol Black explored the idea of ‘good’ and ‘bad’ work: “The concept of ‘good work’ is fundamental to the evidence on the positive effects of work on health for individuals, and to the productivity of business.” She recognised that HSE’s stress

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<sup>304</sup> Q 201

<sup>305</sup> Q 201

<sup>306</sup> Ev 339

<sup>307</sup> Ev 345

<sup>308</sup> An open letter to the Health and Safety Commission from Simon Pickvance, Occupational Health Adviser at Sheffield Occupational Health Advisory Service, 10 February 2008

management standards go some way in helping organisations avoid ‘bad’ work which can create health problems.<sup>309</sup>

289. The European Agency for Safety and Health at Work (EU-OSHA) has recently published a report on the causes of occupational ill health from the changing working environment. The report highlighted that new forms of employment contracts, job insecurity, work intensification, high emotional demands, violence at work and a poor work-life balance can result in increased stress levels and may finally lead to a serious deterioration of mental and physical health. EU-OSHA now plans to launch a survey of businesses in all 27 EU Member States to learn how organisations in both the public and private sectors deal with psychosocial risks, and how businesses can be assisted to manage these complex workplace hazards more effectively.<sup>310</sup>

**290. We believe that there is potential for HSE to build on its Stress Management Standards as a tool to demonstrate what a ‘good’, healthy workplace should be including what constitutes a good occupational health structure within an organisation.**

### ***Enforcement of occupational health statutory duties***

291. As with safety-related provisions, inspectors enforce the relevant requirements of occupational health regulations via improvement and prohibition notices and prosecutions. HSE is unable to separately identify the number of enforcement notices issued and prosecutions that relate solely to non-compliance with occupational health legislative requirements. It told us that:

“The enforcement data we hold (notices and prosecutions) is in relation to specific statutory and regulatory requirements. We cannot, generally, separate out health breaches from other breaches except in specific ‘health’ legislation (eg Control of Substances Hazardous to Health (COSHH), Asbestos). A large proportion of notices issued and prosecutions brought are under HSWA (8,677 notices in 2006/07).”<sup>311</sup>

292. Prospect however believed that the HSE is very poor at enforcing the legal provisions relating to ill health and that prosecutions for causing ill health are very rare, if investigated at all; they blame this on lack of HSE resources.

293. IOM highlighted the lack of science and engineering expertise among inspectors whilst both the Federation of Small Businesses (FSB) and Mr Pickvance argued that HSE needs to invest far more in inspectors who understand occupational health, particularly mental health issues and musculoskeletal disorders. Mr Pickvance argued that:

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<sup>309</sup> Dame Carol Black’s Review of the health of Britain’s working age population, *Working for a healthier tomorrow*, 17 March 2008, pg 58

<sup>310</sup> European Risk Observatory, *More and more people face psychosocial risks at work* 30 January 2008

<sup>311</sup> Ev 332

“The lack of resources for HSE is clear in the field of occupational health, where medically trained staff are now in very short supply. Other skills relevant to effective inspection and enforcement are also scarce (e.g. ergonomics).”<sup>312</sup>

294. This opinion was supported by Mr Bailey, who explained that most HSE inspectors are generalists and do not receive any in-depth training on occupational health issues.<sup>313</sup>

**295. It is crucial that inspectors have the expertise to conduct comprehensive inspections and investigations and are able to offer accurate advice. We recommend that HSE ensures occupational health is embedded in the inspectors’ training programme.**

296. Ms Sunley emphasised that over the last few years HSE has been doing a lot of work advising NHS Trusts on how to manage work-related stress. However, a lot of Trusts are still not implementing the work-related stress management standards and yet no enforcement action has been taken against them by HSE:

“They have given the carrot, they have given free advice, information, and now they really need to start following through with the enforcement.”<sup>314</sup>

She believed that enforcement action has a very powerful effect, citing the example of a successful enforcement action brought by HSE against a Trust in the West Country in 2003 which had a significant influence on other Trusts.

297. TUC are concerned that the work HSE has done so far on issues such as musculoskeletal disorders, which is beginning to show results, will only be sustained if complemented by further inspection and enforcement activity. Mr Bailey told the Committee that “enforcement is critical to the credibility of the whole system”.<sup>315</sup>

**298. We believe that if the Government is committed to combating ill health in the work place then enforcement action needs to be taken against those who breach their statutory duties.**

## Occupational Health: Service Provision

299. Mr Bailey emphasised that enforcement alone would not guarantee an improvement in occupational health standards and that change needed to come from within the workplace.<sup>316</sup> In the UK occupational health services have traditionally been provided by employers not the state. When the NHS was founded occupational health was seen as being for the employers’ benefit and therefore something for employers to pay for. The problem that has arisen is that although employers have the responsibility for occupational health service provision they have not been very good at providing it. The TUC estimate that currently only 20% of workers in the UK are covered by any kind of basic occupational

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<sup>312</sup> Ev 193

<sup>313</sup> Q 173

<sup>314</sup> Q 180

<sup>315</sup> Q 182

<sup>316</sup> Q 182

health support from their employers and only 3% of employers provide comprehensive support.<sup>317</sup> This has led to the involvement of HSE.

300. The International Labour Organisation Convention on Occupational Health Services in 1985 defined the provision of occupational health service as:

- “Identification and assessment of the risks from health hazards in the workplace. This involves surveillance of the factors in the working environment and working practices which may affect workers' health. It also requires a systematic approach to the analysis of occupational "accidents", and occupational diseases;
- Advising on planning and organisation of work and working practices, including the design of work-places, and on the evaluation, choice and maintenance of equipment and on substances used at work. In so doing, the adaptation of work to the worker is promoted;
- Providing advice, information, training and education, on occupational health, safety and hygiene and on ergonomics and protective equipment;
- Surveillance of workers' health in relation to work;
- Contributing to occupational rehabilitation; and
- Organising first aid and emergency treatment.”<sup>318</sup>

301. Although occupational health services in the UK have encompassed both prevention and treatment of occupational ill health, in recent years the term “occupational health” has become more associated with treatment and vocational rehabilitation. HSE recognised that “the view of occupational health has now widened from exposure to hazardous materials and agents (for example, asbestos related and chemical carcinogens) to cover common health problems such as depression and backache”.<sup>319</sup> It also noted that “not all work-related ill health can be prevented”<sup>320</sup> particularly stress and MSDs. This has led to a concentration on rehabilitation. BOHS is concerned by this change of focus as stress and MSD are reversible whereas traditional occupational diseases for example asthma and mesothelioma are not.<sup>321</sup> HSE statistics highlighted that chronic obstructive pulmonary disease caused by work kills approximately 4,000 people a year and 7,000 people die from work related cancer.<sup>322</sup>

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<sup>317</sup> Ev 186

<sup>318</sup> ILO Conventions and Recommendations regarding Occupational Health and Occupational Health Services defined by Raymond Agius at <http://www.agius.com/hew/index.htm>

<sup>319</sup> Ev 273

<sup>320</sup> Ev 274

<sup>321</sup> Q 158

<sup>322</sup> HSE Website: <http://www.hse.gov.uk/copd/> and <http://www.hse.gov.uk/press/2007/e07041.htm>

### **Employment Medical Advisory Service (EMAS)**

302. The Employment Medical Advisory Service (EMAS) is part of the Field Operations Directorate within HSE and was set up under the Health and Safety at Work Act 1974. It is staffed by specialist occupational health doctors and nurses. EMAS's remit is to:

“investigate complaints and concerns of ill health raised by employers, employees, trade unions, members of the public and other health care professionals;

investigate ill health reports received from employers under the Reporting of Injuries Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR);

help other HSE inspectors and local authorities to make sure that people comply with health and safety law;

provide advice at the workplace to employers, employees and trade unions; and

provide expert advice to other doctors and nurses, in general health care and occupational health.”<sup>323</sup>

303. However concern has been expressed over the service's capacity. The number of staff employed by the service has dropped from 120 staff in the early 90s (half doctors and half nurses) to the equivalent of 7 full time doctors working as medical inspectors and 25 nursing staff working as occupational health inspectors. The Institute of Occupational Medicine said that in the past an NHS doctor who suspected occupational disease in a patient had a ready local source of occupational medical advice and experience in the local EMAS physician. This allowed discussion of the case on a confidential basis, and provided confidence that the medical issues that affected the specific patient and, importantly, his or her colleagues, would be investigated and resolved; this is no longer the case.<sup>324</sup>

304. TUC believed that:

“a fully restored advisory service, such as EMAS, could be effective in providing incentives to employers to make occupational health provision and will be able to provide the necessary advice to employers, as parliament originally intended, when it was set up under the Health and Safety at Work Act.”<sup>325</sup>

305. It has also been claimed that the reduced focus that HSE has placed on occupational health compared to occupational safety has had an effect on the occupational health academic and professional base. Professor Ramond Agius said that:

“Historically EMAS, within the HSE, used to provide excellent postgraduate training opportunities for aspiring specialists in Occupational Medicine competent both in the prevention or management of work related ill health and in the rehabilitation of workers back to work. For several years now EMAS / HSE offers no such jobs and instead relies on attempting to attract doctors with prior postgraduate training in

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<sup>323</sup> HSE information leaflet: “*The Employment Medical Advisory Service and you*”

<sup>324</sup> Ev 190

<sup>325</sup> Ev 188

private industry or in the NHS, without itself contributing to expanding the limited pool of such trained doctors.”<sup>326</sup>

306. BOHS told us that the cut back in HSE’s occupational health resources is having a knock-on effect on the standard of occupational hygiene provision throughout the country:

“HSE has reduced the number of occupational health and hygiene specialists it employs. This action has indirectly and unintentionally discouraged employers from employing or seeking advice from specialists themselves”.<sup>327</sup>

307. Mr Bailey noted that BOHS, the primary organization providing professional qualifications in relation to prevention of ill-health from workplace exposures to harmful agents, has seen “a general decline in interest in these qualifications and a decrease in the number of professional occupational hygienists”.<sup>328</sup>

308. However Mr Podger told us:

“It is not HSE’s function to actually provide an occupational health service across Great Britain and I think that I have to say that. The issue is the level of advice that we actually need to support what is otherwise there and, in that respect, we are certainly trying to make some expansion of EMAS but it will be a small expansion. We are actually looking to have a part-time Chief Medical Officer and ultimately to expand by two or three posts, but we are in no way thinking of going back to the level of provision that was previously there.”<sup>329</sup>

309. Dame Carol Black told us that:

“I see occupational health and its development as being largely through the professional bodies rather than through HSE. I am sure that HSE would have a need for occupational health advice and I presume they need that both for their own internal functions and for advice externally, but I do not see them as a deliverer of occupational health themselves.”<sup>330</sup>

### **Work Place Health Connect**

310. Workplace Health Connect was a two-year pilot service which was funded, managed and quality controlled by HSE, but independently delivered. It was designed to give advice on workplace health, safety and return-to-work issues, to small and medium sized businesses in England and Wales. Delivered by contractors in partnership with the HSE, the pilot took place between February 2006 and February 2008. All advice given by Workplace Health Connect was free, confidential and practical.<sup>331</sup>

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<sup>326</sup> Ev 298

<sup>327</sup> Ev 166

<sup>328</sup> Q 171

<sup>329</sup> Q 257

<sup>330</sup> Q 345

<sup>331</sup> HSE website: <http://www.hse.gov.uk/workplacehealth/>

311. After two years of operations, the Workplace Health Connect pilot had:

- Handled over 8,000 calls to the Adviceline
- Held over 5,000 initial visits, exceeding its visits target of 4,750 initial visits
- Held over 3,500 follow-up visits
- Had a positive impact on nearly 125,000 workers, exceeding its target of 95,000 workers<sup>332</sup>

312. The pilot has now ended, with the final evaluation expected in early 2009. The service continues through Workboost Wales in Wales and Safe and Healthy Working in Scotland.

313. There are mixed opinions as to whether the pilot was a success. Hazard Campaign suggested that the Workplace Health Connect programme has been a costly mistake that has stretched an already under-resourced HSE occupational health service. They highlighted that almost 9 out of 10 calls received were not workplace health-related. Most of the calls were safety related which are already catered for by HSE awareness advisers and the HSE Infoline.<sup>333</sup>

314. The Institute of Occupational Safety and Health (IOSH) told us that whilst the number of calls to the advice line were much lower than hoped, about 8,000 as opposed to the target of 60,000, the number of face-to-face visits in the workplace exceeded targets. Mr Richard Jones, Policy and Technical Director at IOSH, told us

“I think some of the reports back from those organisations who were visited are very positive, and they were impressed by the professionalism and the helpfulness of those visitors, those advisors that went out to talk to them. [...] it left them with a transfer of knowledge, so they were better able, they felt more confident about dealing with the health and safety issues than they had beforehand.”<sup>334</sup>

315. FSB was disappointed that the structures, personnel and expertise gained from the project will be lost. They believed that “important lessons need to be learnt from the project with regard to the sorts of advice and methods of communications that work most effectively with businesses.”<sup>335</sup>

316. IOSH believed that a service such as Workplace Health Connect is still required and that it should be state funded:

“there are huge savings to be made, and arguably the Government will be one of the major beneficiaries. The societal cost of occupational ill-health and injury in this country is up to £31 billion. I think that whilst Workplace Health Connect has been relatively expensive, £20 million over two years, if it can do the job of acting as a seed

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<sup>332</sup> HSE website: <http://www.hse.gov.uk/workplacehealth/>

<sup>333</sup> Ev 257

<sup>334</sup> Q 223

<sup>335</sup> Ev 253

corn or pump priming to get a system up and running that eventually people pay into and access, then the savings on societal costs alone will be enormous.”<sup>336</sup>

317. GMB stated that there is a need for standardised specialist occupational health but question who should pay for it “Should the state contribute? Or smaller employers club together collectively to get decent, inexpensive provision.”<sup>337</sup> FSB said that the main barriers preventing small businesses from providing occupational health and rehabilitation services for their staff in the workplace are that they have too few staff to make it worthwhile and a third of businesses have concerns about costs. They therefore suggested that HSE and DWP need to encourage alternatives to the Workplace Health Connect so that businesses have the option of accessing ad hoc services as and when the need arises.<sup>338</sup> However they also commented that these services need to be effectively advertised; there is currently very low awareness amongst businesses of the workplace health and rehabilitation support available to them. Fewer than 20 per cent were using Workplace Health Connect.<sup>339</sup>

318. Dame Carol Black recommended a “business led consultancy service” for England (to run in conjunction with Workboost Wales and Safe and Healthy Working in Scotland). This would need to be facilitated by the Government because “the market is currently underdeveloped” and would focus on provision for smaller organisations.<sup>340</sup> However Workplace Health Connect was defined by Mr Podger as a “pump primer” trying to get businesses “to do what they are supposed to be doing anyway”<sup>341</sup> and yet no further service has been taken forward by employers. **If businesses would be expected to pay towards the consultancy service we are unconvinced that take-up would be sufficient when a free service failed to reach its advice line targets. We would also be concerned if advice services were tax-payer funded in Scotland and Wales but not in England.**

319. **We believe that EMAS has an important role as an advisory service for doctors and employers as well as HSE. We endorse Dame Carol Black’s emphasis on occupational health provision and support her contention that there is a need for an occupational health advice service for medical professionals and employers. In time we see the role of EMAS being supplanted by a national occupational health service as envisaged by Dame Carol Black; we await the Government’s response to her report with interest. This will enable HSE to re-allocate resources to core workplace health and safety functions. However we are concerned by evidence of a decline in the numbers of occupational health professionals.**

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<sup>336</sup> Q 227

<sup>337</sup> Ev 127

<sup>338</sup> Ev 253

<sup>339</sup> Federation of Small Businesses, “*Health Matters: a small business perspective*”, 2006 and Ev 249

<sup>340</sup> Dame Carol Black’s Review of the health of Britain’s working age population, “*Working for a healthier tomorrow*”, 17 March 2008, p 55

<sup>341</sup> Q 273

## Occupational hygiene

320. Mr Bailey highlighted that occupational hygiene, preventing ill health in the workplace is:

“an aspect that is often neglected as part of an occupational health service. It is different in kind to a lot of the medical services that are provided in that typically occupational hygienists are engineers or chemists and they work in the workplace looking at risk and modifying the way work is carried out to prevent the ill-health arising in the first place. That is an integral part of any occupational health service and ought to be built into any plans.”<sup>342</sup>

321. He informed us that data on worker exposure to harmful chemicals is no longer being collected by employers: “We do not have the intelligence on where exposures are occurring to know what issues really need to be addressed.”<sup>343</sup> BOHS therefore called on HSE to “collect information about the numbers of people at risk from the most important harmful agents at work and the level of exposure that they experience”.<sup>344</sup>

322. However we recognise that it is up to the duty holder to measure and control exposure limits as defined in the Control of Substances Hazardous to Health (COSHH) Regulations and Control of Lead at Work Regulations and that this is not a service that HSE should provide. As the regulator it is for HSE to ensure that the regulations are adhered to and enforced.

323. HSE has a national network of 40 occupational hygiene specialists based in HSE’s field offices, HSE’s Corporate Specialist Division and HSL to help it determine the levels of likely exposure of workers to hazardous substances and identify reasonably practicable precautions to prevent or control exposure. HSE has in the period 2006/2007 issued 1,097 Notices for breaches of COSHH and secured 13 convictions, with an average fine, per conviction of £11,308.<sup>345</sup>

**324. We are convinced that HSE must continue to play an important role in occupational hygiene regulation and enforcement.**

## Vocational Rehabilitation

325. ABI defined the difference between vocational rehabilitation and medical rehabilitation as the focus on the individual and their work, rather than the individual and their condition.<sup>346</sup> However a recent study carried out by Norwich Union found that only 6% of GPs think that employers are doing enough to help rehabilitate their staff to return to work and only 36% of organisations had a specific rehabilitation policy in place.<sup>347</sup>

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<sup>342</sup> Q 155

<sup>343</sup> Q 182

<sup>344</sup> Ev 168

<sup>345</sup> Ev 332

<sup>346</sup> Ev 266

<sup>347</sup> Norwich Union Healthcare, “Health of the Workplace Report” June 2006

326. HSE along with the DWP and the Department for Health jointly launched the *Health, Work and Well-being Strategy* in October 2005 which focuses on the health of the working age population. One of the Strategy's four main aims is to "encourage the provision of effective rehabilitation and return to work support". The HSC's *Strategy for workplace health and safety in Great Britain to 2010 and beyond* aims "to strengthen the role of health and safety in getting people back to work through a much greater emphasis on rehabilitation".<sup>348</sup> The Minister chairs the Vocational Rehabilitation Task Force and has commissioned an evidence review with the Industrial Injuries Advisory Council (IIAC) on the effectiveness of rehabilitation.<sup>349</sup>

327. The ABI advocated the amendment of the HSWA 1974 to give the HSE a statutory duty to promote rehabilitation.<sup>350</sup> Mr Starling told us "there are obviously two components of days lost. The first is making sure people do not have an accident or ill-health event that makes them have the days off, but secondly, it is getting back as quickly as possible"<sup>351</sup> and that vocational rehabilitation, if done effectively, can speed up return to work by a third in terms of days lost.<sup>352</sup> ABI believed that HSE is well placed to encourage employers to make provisions for vocational rehabilitation as it interacts with many businesses which are prone to higher risks in the workplace. The ABI finds that many employers are not aware of the impact that vocational rehabilitation can have, and HSE could reinforce the message of its benefits.<sup>353</sup> Professor Raymond Agius also believed that advice on vocational rehabilitation should be more firmly embedded as a function of the HSE and especially of EMAS. He noted that the provision of specialist advice regarding vocational rehabilitation was an explicit responsibility of EMAS when it was founded.<sup>354</sup>

328. However GMB suggest that the HSE may not be best placed to deal with vocational rehabilitation.<sup>355</sup> The Royal College of Nursing agreed that HSE's role should be one of prevention of work-related ill health not provision of rehabilitation services.<sup>356</sup> The TUC believed that issues around the management of sickness and return to work should be dealt with by the DWP and Department of Health, not HSE.<sup>357</sup>

329. Dame Carol Black's report suggested a "Fit for Work Service" which would provide free vocational rehabilitation advice based within primary care for example at GP's surgeries. However we believe that this does not engage employers into creating 'healthy' workplaces. Dame Carol Black told us that the organisations that were studied for her report invested in the health of their workers not only due to the business case but because "it was the good and right thing to do" and to give them the "competitive edge."<sup>358</sup> We

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<sup>348</sup> HSC's "Strategy for workplace health and safety in Great Britain to 2010 and beyond", February 2004, p 7

<sup>349</sup> Ev 292

<sup>350</sup> Ev 267

<sup>351</sup> Q 186

<sup>352</sup> Q 189

<sup>353</sup> Ev 267

<sup>354</sup> Ev 299

<sup>355</sup> Ev 127

<sup>356</sup> Ev 131

<sup>357</sup> Ev 187

<sup>358</sup> Q 32

remain unconvinced that the majority of employers will act solely on exhortation to rehabilitate their workforce. We were particularly interested when visiting the Netherlands, in connection with our inquiry into incapacity benefits, to learn that employers, in return for lower National Insurance contributions, paid the first year of an employee's statutory sick pay. This system effectively incentivises employers' to rehabilitate their staff and get them back to work, employers were also required to have access to certain specified occupational health services .

**330. We commend Dame Carol Black's vision for a Fit for Work service and look forward to the Government's response to her report. We are concerned whether exhortation will be enough to engage employers in the provision of vocational rehabilitation and we await with interest the findings of Lord McKenzie's task force. We believe that there may be a need to incentivise employers financially.**

## Providing incentives for employers

### *Employers' Liability Insurance: international approaches*

331. "Employers' Liability Insurance" is insurance paid by employers in respect of their liability to compensate employees for injury or disease arising out of and in the course of their employment. A number of international Employers' Liability Insurance schemes, for example in the USA, Germany and Australia, relate premiums much more closely to the health and safety performance of the employer than in the case of the UK. The Committee was interested in whether the introduction of a similar system would increase employers' incentives to improve their health and safety performance.

332. We received evidence from the German Social Accident Insurance (DGUV), one of eight statutory accident insurance institutions in Germany responsible for almost 1.7 million Employers' Liability Insurance contributions. The DGUV explained that in Germany Employer Liability Insurance contributions are paid entirely by employers at an average rate of 1.32% of a company's payroll. The amount is determined by the size of the payroll, the sector of industry, the risk class and the number and severity of accidents.<sup>359</sup>

333. Germany also operates a no-fault compensation system in health and safety, where the entitlement to compensation is not linked to the ability to prove that a person's injuries were due to the fault of another. The key difference between a no-fault compensation system and the tort liability system operating in the UK (where the decision whether to compensate a plaintiff is determined primarily on the basis of whether the defendant was at fault) is that a case does not need to go through the courts and compensation is immediate.<sup>360</sup>

334. Mr Starling explained that there is a link in the UK between Employers' Liability Insurance and their performance against health and safety standards, but conceded that there is "patchy" coverage of rehabilitation and occupational health in the policies insurers

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<sup>359</sup> Ev 345

<sup>360</sup> Britain has experience of the no-fault system – the Industrial Injuries Disablement Benefit

offer.<sup>361</sup> Mr Bailey argued that the UK does not currently operate flexibly enough to incorporate incentives via Employer Liability Insurance:

“The employers’ liability system that we have is very difficult to use in an effective way to provide any sort of incentive. I have had this discussion a number of times with insurers. More than ten years ago I was involved in a European project looking at how insurance could be used as an incentive around Europe. We would have to change the system fairly radically to make it possible, but if we did change it we would have a better system.”<sup>362</sup>

335. Our predecessor Committee also examined the issue of Employer Liability Insurance during its inquiry into health and safety. It highlighted the fact that DWP, in its review of Employer’s Liability Insurance, emphasised that more effort should be made to link premiums to health and safety.<sup>363</sup>

**336. We received evidence which highlighted the close link in some countries, such as Germany, between Employers’ Liability Insurance premiums and standards of health and safety. We recommend that the Government, together with the insurance industry, investigate the case for developing a similar approach in the UK to increase the incentive for employers to improve their health and safety performance.**

### **Awards schemes**

337. The Committee explored the scope for introducing an award scheme that would recognise employers who achieved good standards of health and safety. In Scotland, the Healthy Working Lives (HWL) Award Programme was launched in February 2007. The programme covers a wide range of topics, enabling organisations to select those that are most relevant to the workforce, including health promotion, occupational health and safety, health and the environment, mental health and well-being, community involvement and employability. There are three levels in the programme: gold, silver and bronze, and employers are assessed by the Scottish Centre for Working Lives to determine their award.

338. The Minister gave his support to the scheme and acknowledged that a similar system could be valuable in other parts of the UK.<sup>364</sup> He also accepted that there is scope for introducing health and safety as a component of Investors in People, which does not currently include a health and safety indicator.<sup>365</sup>

339. Investors in People is working with Department of Health to develop a business improvement tool through addressing the health and wellbeing of employees. The *Health & Wellbeing at Work* is now being piloted and aims to establish whether additional health

<sup>361</sup> Q178

<sup>362</sup> Q 178

<sup>363</sup> House of Commons Work and Pensions Committee, *The work of the Health and Safety Commission and Executive*, Fourth Report of Session 2003-04, para 286

<sup>364</sup> Q 313

<sup>365</sup> Q 313

and wellbeing criteria can be added into the Investors in People Standard and Profile when these are next reviewed.<sup>366</sup>

**340. We recommend that the Government introduces a similar system in England and Wales to the health and safety award scheme “Healthy Working Lives” which operates in Scotland. We also urge the Government to include a health and safety component in the Investors in People award as a means of encouraging employers to maintain good health and safety standards.**

### ***Embedding health and safety in education***

341. The Royal Society for the Prevention of Accidents (RoSPA) argued that HSE:

“has a massive role to play in promoting safety and risk education not just in schools and colleges but in vocational training and above all, in businesses schools. Future business leaders need to understand effective H&S risk management. HSE resources devoted to this vital agenda have been cut back.”<sup>367</sup>

342. The Committee highlighted the need to embed health and safety in education, not just in schools, but in higher education programmes and professional qualifications, such as MBAs. The Minister agreed that MBAs should include a health and safety component and emphasised the importance of including it throughout the education system:

“The extent to which health and safety is embedded in education and qualifications again is a very, very important one. There is work that has been done, particularly by IOSH, in terms of education at schools and I know they are working at trying to get health and safety issues embedded into some professional qualifications.”<sup>368</sup>

343. The IOSH Education Group (EdG) was established in September 2001 and has since grown to over 1300 members. The committee is broadly based, encompassing education safety officers, teachers, lecturers, consultants, schools, FE colleges, universities, HSE and local authorities, the Universities Safety and Health Association and the Regional Safety Officers Group.

**344. We support the Institution of Occupational Safety and Health’s work to embed health and safety in education. We urge the Government to do more to ensure that health and safety components are included in higher education programmes, such as MBAs, to ensure that future business leaders understand the importance of creating safe working environments and maintaining a healthy workforce.**

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<sup>366</sup> For more information see the Investors in People website:  
<http://www.investorsinpeople.co.uk/Standard/Developingthestandard/health/Pages/Home.aspx>

<sup>367</sup> Ev 150

<sup>368</sup> Ev 150

## 12 Resources

345. Our inquiry has covered the full remit of HSC and HSE and has examined the breadth of HSE's operations, including its targets and how it measures its delivery against them. It became clear to us from the outset that the question of whether HSE's resources were adequate for it to carry out its work were fundamental to every aspect of the inquiry. We received a significant amount of evidence from individuals and organisations which suggested that HSE is not deploying sufficient front-line resources to meet its targets and operate effectively as the health and safety regulator.

Figure 9: HSE Budget 2003/04 – 2007/08

HSE (excl HSL) <sup>369</sup>	2003/04 Outturn £m	2004/05 Outturn £m	2005/06 Outturn £m	2006/07 Outturn £m	2007/08 Forecast £m
Admin (gross)	197	203	220	225	219
Programme (gross)	48	50	68	64	62
Total Expenditure	245	253	288	289	281
Income	(50)	(47)	(50)	(55)	(56) <sup>370</sup>
<b>Net Resources</b>	<b>195</b>	<b>206</b>	<b>238</b>	<b>234</b>	<b>225</b> <sup>371</sup>
Capital Expenditure	7	4	5	6	6

Source: Ev 271

346. HSC and HSE's funding is provided predominantly by grant from DWP. The settlement for the Spending Review 2004 (SR04) period (the three financial years from 2005/6) was slightly better than flat in cash terms than the previous spending review because HSE had previously, intentionally, built up a reserve and rolled forward the accumulated cash to boost activity.<sup>372</sup> Over the SR04 period, £17m of this money was being used to fund the Workplace Health Connect (WHC) pathfinder projects, which provided advice to SMEs on improving health and safety in their workplaces.<sup>373</sup>

347. Over the next three financial years, the period of the Comprehensive Spending Review 2007 (CSR07), HSE has a budget of £689.5 million.<sup>374</sup> Under the CSR07 settlement, DWP will also give HSE access to "exit funding" of up to £10 million (resources set aside to facilitate headcount reductions). Subject to Treasury agreement, HSE will also receive the remainder of its accumulated End Year Flexibility (EYF) for 2007-08 to spend during the CSR07 period; this is expected to be £13 million.<sup>375</sup> The net resources settlement for CSR07 is therefore £712.5 million, compared to £688 million for the SR04 period. This represents

<sup>369</sup> Figures have been adjusted to exclude Rail work which transferred to the Office of Rail Regulation (ORR) on 1 April 2006.

Employers' superannuation increased by £5.4m pa from 1 April 2005

<sup>370</sup> The revised forecast for 2007-08 income given to the Committee in March 2008 was £58 million.

<sup>371</sup> The revised forecast of net resources for 2007-08 given to the Committee in March 2008 was £216 million.

<sup>372</sup> Ev 334

<sup>373</sup> Ev 334

<sup>374</sup> Ev 334

<sup>375</sup> Ev 350

a nominal increase of 3.6%. Firm allocations for spending in each of the three financial years of the settlement were not available at the time of publishing this report.

348. As part of the mid-year review process, HSE reported an underspend of £12 million in 2007-08, approximately 4.3% of net resources for the year.<sup>376</sup> HSE reported that its underspend in 2007/08 was caused “largely by the need to carry forward funding into the next period”.<sup>377</sup>

**349. HSE’s explanation for its planned underspend is unacceptable and we note with dismay that this was never mentioned in our meetings with HSE or the Minister in November or in March. We call on DWP to clarify the reasons for this obfuscation.**

350. A substantial element of the resources available to HSE comes from income earned from charging for advice and services. HSE has undertaken work to examine its charging schemes to make sure that it charges for all the work for which it should be charging. It is expected that this initiative will produce an additional £12 million over CSR07 for delivery of the same amount of chargeable work; however, HSE also reports that some early projections suggest that this may be offset by a fall in income over the period due to changes in expected demand for HSE services.<sup>378</sup>

351. In evidence to the Committee, Lord McKenzie of Luton, Parliamentary Under Secretary of State at DWP, said that the CSR07 settlement:

“is slightly better than flat cash over that period. Given the department itself is faced with a five per cent year-on-year real reduction, I think that does indicate the degree of importance that the department as a whole has given to issues of health and safety.”<sup>379</sup>

**352. Without an indication of projections of income and a profile of resources for financial years 2008-09 to 2010-11, we have not been able to obtain a clear picture of the true nature of HSE’s financial settlement for CSR07. We are disappointed that it has not been possible to provide this information some six months after the CSR07 financial settlements were announced and within days of the start of the new spending period itself. We welcome the Minister’s assurance that resources for HSE are a high priority for DWP, but we ask DWP to provide the HSE final outturn for 2007-08 and a full profile of spending and income over the CSR07 period as soon as they are available.**

## Expanding remit

353. Following the Hampton report, *Reducing administrative burdens: effective inspection and enforcement*, and the Government’s *Better Regulation Action Plan*, HSE has taken on responsibility for a number of additional areas of regulation. These new responsibilities were detailed in HSC’s Business Plan 2007-08 and include:<sup>380</sup>

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<sup>376</sup> Ev 334

<sup>377</sup> Ev 350

<sup>378</sup> Ev 350

<sup>379</sup> Q 250

<sup>380</sup> Challenges Ahead, Health and Safety Commission Business Plan, 2007/08

- Adventure Activities Licensing Authority (AALA): HSE took on the role of Adventure Activities Licensing Authority from the Department for Education and Skills (DfES) on April 2007. Most of the duties, which will fall to HSE in its new role, will be performed on its behalf by Tourism Quality Services Ltd, the commercial company currently designated as the licensing authority;
- Office of Civil Nuclear Security (OCNS) and the operational arm of the UK Nuclear Safeguards Office: since April 2007, the security activities of OCNS have been performed by HSE on behalf of HSC. The operational nuclear safeguards work of the Department of Trade and Industry (now the Department for Business, Enterprise and Regulatory Reform) has also been carried out by HSE with effect from the same date. The staff in both areas transferred to HSE with their work.
- Competent Authority role for REACH (Registration, Evaluation and Authorisation of Chemicals). The REACH Regulations came into force on June 2007, implementing the EC Regulation on chemicals and their safe use [EC 1907/2006].
- Gangmaster Licensing Authority (GLA): HSE and Defra are consulting on proposals to transfer the GLA from Defra to HSE by April 2009. The consultation will be based on a Regulatory Reform Order under the Legislative and Regulatory Reform Act 2006

354. We were told by DWP that the costs to HSE of the AALA , the OCNS and REACH work have all been met through either transfers from other Government departments, from income raised by charging for this work or a combination of both.<sup>381</sup>

355. Mr Jim Kennedy, National Political Officer at the Union for Construction, Allied Trades and Technicians (UCATT) was critical of proposals to transfer the GLA from DEFRA to the HSE:

“The GLA has a completely separate function from the HSE; it is not health and safety specific, it looks at a number of other issues in terms of the vulnerability of workers within our society.”<sup>382</sup>

**356. We are not convinced that HSE is best placed to take on responsibility for the Gangmaster Licensing Authority (GLA). GLA’s remit extends further than health and safety at work, and the addition of this responsibility to HSE risks diverting its focus. We call on the Government to reconsider the proposal to transfer the GLA to the HSE.**

357. However, in November, Ms Judith Hackitt, Chair of HSC, acknowledged the difficulties that a growth in responsibilities had created for HSE and highlighted other areas in which HSE had been involved over the last year:

“It is certainly an added complication [...] that the demand on our Executive for its expertise and its resources is indeed increasing [...] We have seen this year calls upon us to get involved in other activities because of our recognised expertise, for example in the foot-and-mouth outbreak. We would want to be able to continue to

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<sup>381</sup> Ev 350

<sup>382</sup> Q 85

provide that expertise for which we are recognised; but, clearly, at the time when we are required to work with limited resources that does become more difficult.”<sup>383</sup>

358. Hazards Campaign criticised the involvement of HSE in the foot and mouth outbreak saying:

“as HSE struggled this year to cope with a crippling funding crisis it was pushed into areas of work with no relevance to workers’ health – including taking the lead on and footing the £100,000 bill for the investigation into this summer’s foot and mouth outbreak linked to the Pirbright laboratory near Guildford. Foot and mouth is a non-fatal disease of animals presenting no risk at all to humans.”<sup>384</sup>

359. In its memorandum to the Committee in November, HSE highlighted other areas where its workload had increased including:

- a marked increase in activity in some parts of the construction industry;
- major incidents such as at Buncefield and the BP Texas City refinery blast in the chemical industry;
- continuing increases in the number of migrant workers and contractorisation in the workforce;
- public safety and other issues like hospital-acquired infections, work-related Road Traffic Accidents and the investigation into the potential breach of biosecurity at the Pirbright site.<sup>385</sup>

360. This increased demand on HSE resources has come at a time when the total number of HSE staff in post has fallen from 4162 in April 2003 to 3458 in April 2007.<sup>386</sup> The Federation of Master Builders noted that:

“HSE’s budget has not kept pace with inflation since 2002, resulting in a considerable, real terms reduction in its spending power. The effects of this have been demonstrated in a series of cuts to HSE staff which have had to be made in order for HSE to stay within budget. HSE has had to make staffing cuts in 2003-4 and a further 250-350 posts were to be lost by 2008 via natural wastage.”<sup>387</sup>

361. Both UCATT and Prospect expressed their concern that HSE does not have sufficient resources to adequately regulate additional areas and therefore risks diluting its impact.<sup>388</sup>

**362. We were disappointed to hear many of the criticisms that were raised during our predecessor Committee’s inquiry concerning HSE’s resources were reiterated by**

<sup>383</sup> Q 10

<sup>384</sup> Ev 258

<sup>385</sup> Ev 270

<sup>386</sup> *Meeting the Challenges: Health and Safety Commission Annual Report, Health and Safety Commission / Executive Accounts 2006/07*

<sup>387</sup> Ev 262

<sup>388</sup> Ev 118, 208

witnesses. There is widespread concern that HSE is inadequately funded and that this undermines its ability to regulate effectively within its core remit.

363. We have made a case for HSE to increase its levels of inspection, which we believe will have a significant impact on compliance with health and safety legislation. This will require an increase in the numbers of front-line inspectors deployed by HSE. In view of the total lack of clarity in financial information supplied, it is not clear to us whether additional inspections can be financed from within the Comprehensive Spending Review 2007 settlement or whether additional resources will be required.

364. Furthermore, we are concerned at evidence that HSE is currently spreading itself too thinly. We call on DWP to evaluate whether HSE has the capacity to take on the additional responsibilities that it is being given as well as effecting the increase in deployment of front-line inspectors that we have argued is necessary.

### Health and Safety Laboratory (HSL)

365. During its inquiry the Committee visited the Health and Safety Laboratory in Buxton. HSL is an agency of HSE and provides the majority of HSE's science and technology requirements. HSL's new main building was constructed under the Private Finance Initiative (PFI) and operates as a "net-nil" agency, employing 371 staff covering a wide range of scientific disciplines. As a net-nil agency, HSL must recover the full cost of the services it provides to HSE and other public and private sector customers, therefore its total expenditure and income must balance.

366. The Chief Executive, Mr Eddie Morland, explained that HSL and HSE are working together more strategically than in the past. Up until two years ago, HSL was working on around 3,000 small contracts for HSE but has sought to rationalise and lengthen contract periods to improve the efficiency of HSL's operations.<sup>389</sup>

367. Outside its work with the HSE, HSL aims to maintain its commercial business at 20 per cent of its overall income. The Institute of Occupational Medicine (IOM) suggested this presented a potential conflict of interest, as HSL is part of the HSE regulatory body but also a provider of commercial services.<sup>390</sup>

368. HSL's forecast cost base for 2007/08 is £36 million with forecast income from HSE customers of £27.9 million and non-HSE customers of £7.1 million, and £1 million transitional funding from HSE. The transitional funding from the HSE covers the short term deficit between HSL's costs and earned income following the move to the new main building at Buxton.

369. During our visit to the Health and Safety Laboratory (HSL) we were told that there are no systematic means of sharing research findings between Government laboratories or between agencies.<sup>391</sup> **We commend the work of the Health and Safety Laboratory (HSL). However, we are convinced that the work of other similar testing centres would prove**

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<sup>389</sup> See visit note in Annex X

<sup>390</sup> Ev 191

<sup>391</sup> See report Annex X

**invaluable for HSL, and HSE by proxy, and any shortcomings in communication should therefore be addressed.**

370. The Health and Safety Laboratory (HSL) is an important resource that adds value to HSE's operations. HSE should demonstrate clearly how HSL's work transfers to the workplace and improves health and safety standards.

## Conclusions and recommendations

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1. The Committee supports the Government's proposals to merge the Health and Safety Commission (HSC) and the Health and Safety Executive (HSE) but believes that the new body must include appropriate representation of stakeholders on its board. We ask that HSC demonstrates how it will ensure that the new unitary body is not only representative, but also maintains the principles of tripartism in its approach to health and safety. (Paragraph 21)
2. The Committee accepts that HSE must make savings in order to release more money to fund frontline services but is concerned that the relocation to Bootle could lead to a significant loss of experienced staff. We are not satisfied that HSE has explained how it will ensure that the closure of its London headquarters will not create a gap in its expertise, particularly in the areas of policy and litigation. We ask that HSE explains this and clarifies how savings made from the relocation will be re-allocated. (Paragraph 26)
3. The Committee believes that the Health and Safety at Work Act 1974 is proportionate; however, some employers, particularly small and medium enterprises (SMEs) can find it difficult to understand and apply. We commend HSE's efforts to reduce the administrative burden on businesses and conclude that it should continue to keep the adequacy of the support it provides to SME's under review and ensure smaller employers are able to access sufficient and appropriate guidance. (Paragraph 33)
4. HSE's role in relation to public safety has expanded considerably and beyond that originally envisaged. The Committee believes that whilst this is not ideal, responsibility for public safety cannot be the sole remit of local authorities, which are also operating within tight budgets. We ask the Government to clarify its strategy for public safety, demonstrate where responsibility for this strategy should lie and how funding for its regulation should be allocated. (Paragraph 38)
5. We call upon the Government to take steps to ensure that its transposition of EU legislation is consistent with HSE's efforts to reduce the administrative burden on business. We are concerned that the implementation of some EU directives in UK regulations has introduced a more absolute duty on employers, which was over-prescriptive and countered these efforts. We call on the Government to evaluate the extent to which this has taken place and, if necessary, to publish a strategy for reasserting the "reasonable practicability" test enshrined in the original 1974 Act. (Paragraph 43)
6. The Committee welcomes the Corporate Manslaughter and Corporate Homicide Act 2007. We call on the Government to assess the effectiveness of the Act after its first three years of operation and the impact it has on board level ownership of health and safety issues. (Paragraph 47)
7. Given that the UK has operated a voluntary approach since the introduction of the Health and Safety at Work Act in 1974, we are not convinced that the introduction of

new guidance for directors on health and safety is sufficient to ensure board-level prioritisation of health and safety issues. (Paragraph 56)

8. HSC's Chair has promised to revisit the possibility of introducing statutory duties if the new guidance does not succeed in prioritising health and safety at a director level. We recommend that HSC sets out how it will measure the success of the current arrangements and over what period. Should the combination of existing guidance and legislation prove inadequate over the next three years, we are convinced by evidence that the introduction of statutory duties, as recommended by our predecessor Committee, would have a significant impact on board-level prioritisation of health and safety. (Paragraph 57)
9. The Committee believes that Crown immunity from prosecutions for health and safety offences needs to be re-examined. We ask the Government to outline what plans it has to legislate in this area. (Paragraph 61)
10. We acknowledge the challenge HSE faces in debunking health and safety myths and the importance of this in trying to promote understanding among the public. We commend the HSE for its efforts to tackle misconceptions and encourage it to continue working with partners to address this issue. Public misconceptions of health and safety can obscure the importance of sensible measures to protect workers and secure public safety. We share the disappointment of some witnesses that the media's portrayal of health and safety issues encourages this misunderstanding and has a detrimental effect on public perceptions of health and safety. (Paragraph 67)
11. We are concerned that the test of "reasonable practicability" introduces a lack of clarity that can increase the burden on employers in meeting their health and safety obligations. We recommend that the Law Commission reviews the test of "reasonable practicability" and how it applies to the Health and Safety at Work Act 1974. (Paragraph 71)
12. The Committee commends HSC and HSE for its work with employers to address over-interpretation of health and safety legislation. However, as the Chair of HSC acknowledged, there is a long way to go. We are particularly concerned that the health and safety consultancy profession is currently unregulated. The Minister agreed that over-zealous health and safety advisers encourage employers to produce over-burdensome risk assessments. We therefore recommend that the Government, in consultation with the Institution of Occupational Safety and Health, introduces recognised accreditation for health and safety consultants and advisers, with appropriate sanctions for malpractice. (Paragraph 80)
13. The establishment of the new Risk and Regulation Advisory Council (RRAC) creates an excellent opportunity to tackle over-zealous interpretation of regulation and over-burdensome risk assessment. We recommend that the RRAC focuses on identifying the main causes of overly risk-averse behaviour and introduces effective means of addressing them. RRAC should also have a role in the development of accreditation for health and safety consultants. (Paragraph 82)
14. Comprehensive and digestible health and safety advice for employers is crucial and we heard evidence to suggest that more could be done by HSE to ensure its ready

availability. We recommend that HSC consults with employers, particularly SMEs, and trade unions on how it can improve the dissemination of health and safety information. (Paragraph 90)

15. The Committee asks that HSE explains its charging policy and clarifies how it determines which guidance businesses must pay for and which are free of charge. We recommend that all guidance pertaining to employers' general duties under the Health and Safety at Work Act 1974 should be freely available, without charge. (Paragraph 95)
16. Many respondents to this inquiry raised their concerns that the number of inspections HSE undertakes has declined. Academic research has suggested a correlation between inspections carried out and employers' compliance with their health and safety duties. Furthermore, the results of the recent HSE "blitz", which led to 30 per cent of sites inspected receiving an enforcement notice, highlighted the importance of inspections in ensuring health and safety laws are adhered to. (Paragraph 113)
17. The inspection process can act as a preventative measure, improving safety and reducing the potential costs of future enforcement and prosecution. We concur with our predecessor Committee and recommend that HSE increases its enforcement activity in sectors where health and safety performance has not improved as much as others. (Paragraph 114)
18. We heard concerns that the Fit 3 programme, whilst designed to create an efficient, target-based approach to inspection, is in fact limiting the ability of inspectors to apply their professional judgement on a site by site basis. Furthermore, HSE evidence shows that Fit 3 has had no impact on the reduction of slips and trips in any sector. We recommend that HSE examines the relevance of the programme more generally given its failure to reduce the number of slipping and tripping accidents. HSE should set out a timetable for the introduction of more locally-led initiatives under the Fit 3 programme and for assessing the effectiveness of the "Fine-Tuning Review". (Paragraph 120)
19. Given the inevitable increases in the proportion of its reactive work, HSE is unlikely to reach its aspiration to achieve a 60:40 ratio in its proactive: reactive caseload. By HSE's own admission it is currently failing to achieve this and will continue to do so in the future, as new developments skew its focus towards reactive work. We are disappointed by this, particularly given the considerable evidence we received suggesting the importance of proactive inspections. We call upon HSE to publish empirical evidence proving what the optimal mix of reactive and proactive work should be, and to allocate its resources accordingly. (Paragraph 123)
20. We are concerned that HSE's construction inspectorate is not adequately resourced to ensure the maintenance of health and safety standards in the construction industry. We are convinced that there is a correlation between inspection and safety standards. The recent 28% increase in construction fatalities underlines the need for more resources. (Paragraph 131)

21. The Committee commends DWP's initiative in setting up the Construction Forum and we call on Government to report on progress against the key areas in the "Framework for Action" so that the momentum for change is not lost. (Paragraph 136)
22. We are extremely concerned at the number of incidents and fatalities involving tower cranes and other plant on construction sites and call on the HSE to urgently bring forward proposals such as a national register of plant to include ownership, age, design type, date of last inspection and any other relevant factors. (Paragraph 138)
23. Permissioning regimes are an essential tool in managing risk in high hazard industries but HSE must ensure that high safety standards in respect of everyday and major accident hazards are maintained with regular safety inspections and enforcement. (Paragraph 145)
24. The Committee calls on HSE to report on what actions have been taken to rectify the failures to manage risk in the offshore industry that were identified by HSE's Asset Integrity Report. We urge HSE to ensure that the undertakings made by operators in safety cases are implemented through a robust and proactive inspection regime. (Paragraph 154)
25. The Committee supports moves to increase the protection and independence of Offshore Safety Representatives and committees. (Paragraph 156)
26. The Committee calls on HSE to take urgent steps to address the loss of inspectors from its offshore division. Maintaining the quality of the offshore division inspectorate is essential in ensuring strong safety standards and is also in the interests of operators. We urge HSE to discuss with the offshore industry funding models for the industry to contribute to maintaining a highly skilled offshore inspectorate. (Paragraph 159)
27. The Committee welcomes the increase in the number of prosecutions between 2005/06 and 2006/07 but notes that whilst there has been an increase in the number of prosecutions and convictions brought by HSE in the last 12 months, there has been a downwards trend almost continuously since 1999/2000 . Numbers of convictions have also declined from 1,273 in 2002/03 to 848 in 2006/07. A robust system of prosecution and conviction is needed to enforce health and safety law and act as a critical deterrent to those inclined not meet their legal obligations. (Paragraph 165)
28. We consider that across the whole of Great Britain the HSE should be able to recoup its costs following a successful prosecution of which it was a part. Unless there are special circumstances, this should amount to full reimbursement. It is reasonable that those found guilty of serious health and safety breaches should meet the legal costs incurred. We recommend that the Scottish Executive should review its current arrangements in this regard. (Paragraph 167)

29. We recommend that the HSE reconsiders its decision to stop publishing its annual Offences and Penalties report. This provided an important evidence base for future policy decisions. (Paragraph 172)
30. The independent Macrory Review found that the average fines for health and safety offences are too low and HSE agrees with this. We await the outcome of the Sentencing Advisory Panel's draft guidelines for corporate manslaughter and the Health and Safety at Work Act 1974 in England and Wales, but this will not address the problem of disproportionately low penalties where there is no fatality. In the light of our earlier recommendation to prevent the standard of legal proof from being raised from "reasonable practicability" to strict absolute liability, we conclude that legislation is required to increase the maximum penalties available to the courts in examining breaches of health and safety law. (Paragraph 181)
31. In the event of the Health and Safety (Offences) Bill becoming law we would recommend that a proportion of the income from increased penalties be returned to HSE to enhance its investigative capability. We are also concerned at the low level of costs awarded by courts which bear little relationship to expenditure incurred by HSE in mounting prosecutions and ask that the Department consult with the Ministry of Justice and the Scottish Justice Minister on the potential for further guidance to the courts. (Paragraph 182)
32. We believe there is scope for HSC to introduce alternative penalties to deal with those in breach of their health and safety duties. We recommend that HSC should re-visit whether innovative penalties could be incorporated into its enforcement policy document. (Paragraph 186)
33. The Partnership Liaison Officer (PLO) programme is a key component of the partnership approach between HSE and Local Authorities. It is disappointing that HSE appears to be unable to resource this programme fully to achieve its aims. We urge HSE, in partnership with Local Authorities, to ensure that the PLO programme is sufficiently funded. (Paragraph 194)
34. While accepting that Local Planning Authorities should have ultimate responsibility for local planning decisions, we believe that HSE has an important advisory role to play. We conclude that it is vital that DWP liaises with the Department for Communities and Local Government to ensure planning decisions reflect the importance of HSE's role in the process. (Paragraph 199)
35. We are convinced that trade union safety representatives can be effective in improving health and safety standards and we are disappointed that, notwithstanding its public pronouncements, the HSC/E has not done more to promote their role. We call on the Minister to set out what steps he plans to take to enhance the role of safety representatives. (Paragraph 209)
36. We call on HSE to publish a final evaluation of the Workers' Safety Adviser Challenge Fund, explaining the reasons why the pilot will not be rolled out, before the important lessons that could be learnt are lost. We believe worker involvement is a means of improving health and safety standards in non-unionised workplaces,

benefiting employers and employees alike, and call on HSE to work with industry to explore models for the future funding of such projects. (Paragraph 219)

37. We also urge the Government to consider amending the Health and Safety (Consultation with Employees) Regulations 1996 to give employees the right to insist on consultation through elected health and safety representatives. The proper enforcement of these regulations is essential to safeguard the rights of non-unionised workforces. (Paragraph 220)
38. If the legislation governing worker's involvement in health and safety is to operate effectively, it must be backed up with credible enforcement. We call on HSE to increase its efforts in taking enforcement action against duty holders who fail in their obligations to consult workers on health and safety matters. (Paragraph 226)
39. There is currently no reliable evidence on whether migrant workers in the UK are more or less vulnerable to workplace accidents and therefore no basis on which to draw up policies targeting these potentially vulnerable groups. We welcome the research that HSE is carrying out on migrant workers and we urge HSE to increase its efforts in ascertaining what data is required to measure the risk factors for this group of workers. (Paragraph 237)
40. We recommend that HSC extends the guidance for migrants on health and safety issues and take steps to ensure its targeted dissemination amongst migrant workers. The HSC should also investigate ways of proactively informing employers about their duties and responsibilities when employing migrant workers. (Paragraph 243)
41. We recommend that the guidance produced by HSE and trade unions on agency workers should be clearly signposted for employers and workers through HSE's website so that all stakeholders are aware of its existence. (Paragraph 247)
42. We welcome HSC's support for the idea that health and safety for vulnerable workers can be improved by encouraging those at the top of supply chains to positively influence their contractors. However we call on HSE to explain how it intends to ensure prime contractors at the top of supply chains embed good practice in health and safety for those workers throughout these supply chains. We believe that there may be a need to introduce statutory duties on prime contractors and we ask HSE to assess the effectiveness of international examples of such regulation. (Paragraph 252)
43. We do not believe that the SR04 PSA target for HSE to reduce the number of working days lost due to work-related injury and ill-health provided a realistic and appropriate target for HSE as many of the factors affecting its achievement are outside its control. (Paragraph 264)
44. Although the PSA targets relating to occupational ill health have been replaced with a Departmental Strategic Objective, we request that HSE continues to collect data on numbers of working days lost due to work-related injury and ill health. We also ask DWP to confirm that performance against the key indicators for the Departmental Strategic Objective will be fully reported on in the Departmental Annual Report and Autumn Performance Report. (Paragraph 265)

45. The Committee finds it unacceptable that HSE acknowledges that it makes its policy decisions on flawed and incomplete data. RIDDOR is not fulfilling its role and HSE is failing in its duties to enforce obligations under the regulations. We call on HSE to urgently address the shortcomings in its data collection. (Paragraph 278)
46. We commend the work that the HSE has done on Stress Management Standards but we call on HSE to increase its efforts to disseminate its guidance on the standards to SMEs. We are not yet convinced that the standards need to be placed on a statutory basis but we will await further research on their effectiveness with interest. (Paragraph 287)
47. We believe that there is potential for HSE to build on its Stress Management Standards as a tool to demonstrate what a 'good', healthy workplace should be including what constitutes a good occupational health structure within an organisation. (Paragraph 291)
48. It is crucial that inspectors have the expertise to conduct comprehensive inspections and investigations and are able to offer accurate advice. We recommend that HSE ensures occupational health is embedded in the inspectors' training programme. (Paragraph 296)
49. We believe that if the Government is committed to combating ill health in the work place then enforcement action needs to be taken against those who breach their statutory duties. (Paragraph 300)
50. If businesses would be expected to pay towards the consultancy service we are unconvinced that take-up would be sufficient when a free service failed to reach its advice line targets. We would also be concerned if advice services were tax-payer funded in Scotland and Wales but not in England. (Paragraph 320)
51. We believe that EMAS has an important role as an advisory service for doctors and employers as well as HSE. We endorse Dame Carol Black's emphasis on occupational health provision and support her contention that there is a need for an occupational health advice service for medical professionals and employers. In time we see the role of EMAS being supplanted by a national occupational health service as envisaged by Dame Carol Black; we await the Government's response to her report with interest. This will enable HSE to re-allocate resources to core workplace health and safety functions. However we are concerned by evidence of a decline in the numbers of occupational health professionals. (Paragraph 321)
52. We are convinced that HSE must continue to play an important role in occupational hygiene regulation and enforcement. (Paragraph 326)
53. We commend Dame Carol Black's vision for a Fit for Work service and look forward to the Government's response to her report. We are concerned whether exhortation will be enough to engage employers in the provision of vocational rehabilitation and we await with interest the findings of Lord McKenzie's task force. We believe that there may be a need to incentivise employers financially. (Paragraph 332)

54. We received evidence which highlighted the close link in some countries, such as Germany, between Employers' Liability Insurance premiums and standards of health and safety. We recommend that the Government, together with the insurance industry, investigate the case for developing a similar approach in the UK to increase the incentive for employers to improve their health and safety performance. (Paragraph 338)
55. We recommend that the Government introduces a similar system in England and Wales to the health and safety award scheme "Healthy Working Lives" which operates in Scotland. We also urge the Government to include a health and safety component in the Investors in People award as a means of encouraging employers to maintain good health and safety standards. (Paragraph 342)
56. We support the Institution of Occupational Safety and Health's work to embed health and safety in education. We urge the Government to do more to ensure that health and safety components are included in higher education programmes, such as MBAs, to ensure that future business leaders understand the importance of creating safe working environments and maintaining a healthy workforce. (Paragraph 346)
57. HSE's explanation for its planned underspend is unacceptable and we note with dismay that this was never mentioned in our meetings with HSE or the Minister in November or in March. We call on DWP to clarify the reasons for this obfuscation. (Paragraph 351)
58. Without an indication of projections of income and a profile of resources for financial years 2008-09 to 2010-11, we have not been able to obtain a clear picture of the true nature of HSE's financial settlement for CSR07. We are disappointed that it has not been possible to provide this information some six months after the CSR07 financial settlements were announced and within days of the start of the new spending period itself. We welcome the Lord McKenzie's assurance that resources for HSE are a high priority for DWP, but we ask DWP to provide the HSE final outturn for 2007-08 and a full profile of spending and income over the CSR07 period as soon as they are available. (Paragraph 354)
59. We are not convinced that HSE is best placed to take on responsibility for the Gangmaster Licensing Authority (GLA). GLA's remit extends further than health and safety at work, and the addition of this responsibility to HSE risks diverting its focus. We call on the Government to reconsider the proposal to transfer the GLA to the HSE. (Paragraph 358)
60. We were disappointed to hear many of the criticisms that were raised during our predecessor Committee's inquiry concerning HSE's resources were reiterated by witnesses. There is widespread concern that HSE is inadequately funded and that this undermines its ability to regulate effectively within its core remit. (Paragraph 364)
61. We have made a case for HSE to increase its levels of inspection, which we believe will have a significant impact on compliance with health and safety legislation. This will require an increase in the numbers of front-line inspectors deployed by HSE. In view of the total lack of clarity in financial information supplied, it is not clear to us whether additional inspections can be financed from within the Comprehensive

Spending Review 2007 settlement or whether additional resources will be required. (Paragraph 365)

62. Furthermore, we are concerned at evidence that HSE is currently spreading itself too thinly. We call on DWP to evaluate whether HSE has the capacity to take on the additional responsibilities that it is being given as well as effecting the increase in deployment of front-line inspectors that we have argued is necessary. (Paragraph 366)
63. We commend the work of the Health and Safety Laboratory (HSL). However, we are convinced that the work of other similar testing centres would prove invaluable for HSL, and HSE by proxy, and any shortcomings in communication should therefore be addressed. (Paragraph 371)

# Annex A

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## Work and Pensions Committee

Visit to Buxton – 18 February 2008

### Health Improvement

*Dr David Fishwick, Chief Medical Officer for HSL and Clinical Co- Director of the Centre for Workplace Health*

Dr Fishwick gave an overview of the recently established Centre for Workplace Health (CWH) – this is based in HSL but operates in partnership with the University of Sheffield and the Sheffield Teaching Hospitals NHS Foundation Trust. Established in 2005, it aims to develop appropriate approaches to occupational asthma and occupational health issues more widely by undertaking research that leads to the creation of simple, non-medicalised solutions for the workplace. CWH's research outputs focus to a large extent on HSE's PSA targets.

CWH works with employers to develop bespoke packages for particular organisations or sectors, rather than taking a generic approach to workplace health solutions. Once these packages are implemented, employers learn to identify situations and individuals who may be susceptible to particular conditions early and take action. There is still considerable work to be done to raise awareness amongst employers about the need for early intervention – the median is 4 years between an individual's first approach to primary care and the diagnosis of a work-related illness.

The changing dynamics of the UK's workplaces and society's demographics makes it increasingly important that employers are assessing the potential impact of their business practices on workers' health. This includes tackling the unique issues the business faces and also the more generic issues caused by demographic, economic and societal evolution.

CWH works with six other Trusts across the UK and is confident that its model could be replicated elsewhere in the country to create hubs of research into workers health led by partnerships at a regional level.

Dr Fishwick is also the national coordinator for the group of occupational disease specialists (GORDs) – a national group of experts involved in implementing national audit and research into occupational respiratory ill health, this group helps to ensure that findings from CWH are disseminated to other areas.

*Dr Alan Beswick, Principal Microbiologist*

Dr Berwick gave details of HSL's work in the evaluation of the Department of Health funded research to evaluate emerging ward-based disinfection methods that use pathogenic micro-organisms in a clinical setting. It is investigating ways to control issues such as MRSA.

*Eddie Morland, HSL Chief Executive*

Mr Morland highlighted the profile of HSL's expertise: over 90 of its 380 staff have PhDs and over 70 have MScs. He explained that HSL has the widest science base of any equivalent European laboratory.

HSL's relationship with HSE has improved considerably in recent years. HSE has now taken a more consistent approach to its strategic partnership with the laboratory. HSL is now involved much earlier in the investigative process and has the opportunity to make proactive decisions about the direction of HSE funded research more frequently.

HSL is developing a more structured approach to its work with employers but it aims to increase its commercial revenue over the next three years and beyond. If it is successful in securing a sustainable increase in third party revenue, HSL intends to expand its business and recruit more experts to meet growing demands.

However, it is critical that it maintains a sensible balance between its third party work and HSE generated research – HSE derived work will always take priority. HSL does not believe that its increased focus on commercial business development might impact upon its ability to react quickly to emergencies and/or disasters – it is honest with its clients from the outset, emphasising its primary focus on HSE business.

HSL works with other agencies, such as the emergency services, through clearly defined spheres of influence. However, there is no guarantee that HSL, other agencies, or indeed other laboratories, will share their practices and conclusions and HSL accepts that it could do more to improve these communication channels.

*Dr Bill Geary, Material Engineer*

Dr Geary escorted the Committee around the hazard reduction laboratory. The Committee saw the work HSL is undertaking into the Battersea Crane Disaster and Buncefield. Investigators examine both the site and the possible causes of the accident.

Once HSL completes its investigation, it prepares a technical report with conclusions for HSE, which will then use the report to pursue further investigation or prosecution, if appropriate.

If HSL identifies generic issues, for example that particular crane equipment used was faulty, it will report this to HSE immediately, which should then take necessary action to prevent further accidents.

There have been occasions when HSL has been unable to identify the reasons for an accident. These instances are rare and are often the result of the resulting debris following a disaster contaminating evidence, thus making it difficult to reach conclusions.

*Human Factors Team – Mr Jeremy Ferreira, Dr Roxanne Gervais, Dr Helen Balmforth*

The Human Factors Team gave an overview of HSL's work on the impact of work health and safety measures on employees.

Mr Ferreira summarised the aims of the Personal Protective Equipment (PPE) team, which gives technical guidance on the content, measurement and delivery of PPE standards.

Dr Gervais outlined the work HSL has done with employers including Bradford and Bingley and Hinchingsbrooke NHS Trust to develop risk-based approaches to stress. It provided training to support staff in identifying stress-inducing environments and behaviour and preventative and combative approaches to tackle them.

Dr Balmforth discussed HSL's Geographical Information System (GIS). The GIS software uses data from ordnance surveys and other publicly available data to map local areas and model the impact of accidents on the people and space within them. HSL is working with both the Cabinet Office and the MoD on the further development of GIS, looking at how it could benefit the work of both departments.

#### *Question and Answer Session*

Terry Rooney asked whether funding for HSL's work into accidents on behalf of HSE is allocated as part of its standing budget or if it receives additional monies to cover these costs. Mr Morland explained that HSL does not receive an annual budget – all of its funding comes via contracts. This is one of the reasons it has been keen to develop a more strategic partnership with HSL and undertake bigger and more sustainable contracts. Up until two years ago, HSL was working on around 3,000 small contracts for HSE but following his appointment Mr Morland sought to rationalise and lengthen contract periods to improve the efficiency of HSL's operations.

Terry Rooney asked whether the transfer of knowledge from the research laboratory to the workplace was swift enough. HSL believe it is. Its contract work usually involves working with clients on training and the implementation of results.

Joan Humble asked whether HSL is required to undertake all of the work it receives from HSE. Morland explained that HSL cannot refuse HSE work.

Joan Humble asked whether HSL shares information with other laboratories and was told that this is not necessarily the case. Joan Humble suggested there should be a national system to link up areas of expertise and promote good practice and communication of research findings.

Jenny Willott asked whether HSL designs its complex software packages in-house or if they are purchased. Mr Morland explained that they often need to customise software packages to add value and there are occasions when they develop them from scratch. Oliver Heald asked whether, in these instances, HSL patents its products and was told that HSL has now started to sell the rights to use its intellectual property (IP) and is two years into a programme of commercialising its IP.

Michael Foster asked what proportion of HSL's business is derived from consultancy work and was told that this currently stands at approximately 25 per cent. Oliver Heald asked whether HSL has developed a business plan outlining how it plans to "scale-up" its commercial revenue. HSL's aim is to maintain its commercial business at 20 per cent. It has no plans to increase this further as it believes it would need to invest millions in order

to generate a significant profit and HSL, as a Government agency, is not in a position to do this.

Anne Begg asked what work HSL has done on conditions such as RSI. Morland explained that HSL has just completed the development of an Assessment of Repetitive Tasks Tool (ARTT) for inspectors, which aims to support them in identifying risks of RSI and how best to minimise that risk in the workplace.

Harry Cohen asked how much work HSL does with the oil and gas industry. HSL does only a limited amount of work in this sector because it lacks expertise in the necessary areas.

## Annex B

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### Visit to Olympic Site

#### Meeting with Lawrence Waterman

*Lawrence Waterman told the Committee Members:*

The Olympic Delivery Authority (ODA) is trying to minimise the impact of the construction site on the local area and community. For example there are boundary checks to monitor effects of noise and dust on population living near the perimeter.

All staff to the site are inducted and part of this is on health and safety to try and create a safe culture and attitude – the induction is part of the process required to get a site pass.

The challenge is the number of workers and the number of projects.

The Olympic site is different to the construction of Terminal 5 because it has a tighter time frame with less planning time, it is larger and there are lots of projects.

Principal contractors are responsible for their own areas and the ODA focuses on the interface between them.

The Olympic employment and skills programme aims to train people in construction and create sustainable employment, part of this focuses on health and safety. There is also a supervisors academy to ensure they are well trained on health and safety, as they are the lynch pin between the board room decisions and what is happening on site.

Mark Pritchard asked how the ODA was dealing with migrant workers who do not have English as a first language and who may not have experience of the UK health and safety culture. Mr Waterman explained that there was also a problem with the high levels of illiteracy and innumeracy amongst the indigenous workforce and that there are 151 different languages spoken in the East London boroughs. He pointed out that this is, however, a problem that is no different from other construction sites. The ODA has a contract condition that companies adhere to the Olympic health and safety standards, which includes the need for buddies and bilingual supervisors. There are also training facilities where people with language problems can seek assistance and attend numeracy and literacy classes.

A DVD has been produced on health and safety which includes athletes talking about the need to prepare and get fit for events in the same way that construction workers need to.

The current accident rate for the project is 0.16 with good reporting - the average for construction being 1.2 and that is with 75 % non reporting (it is estimated that 1 in 4 accidents in construction are not reported) 60% of accident reporting on the Olympic site is for near misses which indicates the high level of attention that is being given on site to health and safety and its reporting. The only major injury since autumn 2005 has been a broken foot bone.

Terry Rooney asked about the terms and conditions for workers and the maximum amount of hours per week that were permissible. He highlighted that more accidents happen in construction when people are tired.

Mr Waterman said that he would look into the 2 different sets of figures for maximum number of hours worked and check there was no disparity.

The Olympic site has reached 1 million hours without an accident on 2 occasions.

Mark Pritchard asked how many health and safety staff they have on site. Mr Waterman answered that there are 9 and 2 staff who audit the Construction (Design and Management) (CDM) regulations. The Chief Executive presents the health and safety report to the executive committee and it is the first item on the agenda. The senior management are committed to the delivery of health and safety.

Michael Foster asked if there were other Olympics that could be used to benchmark health and safety performance against. The Athens Olympics had 15 deaths. The ODA have met with the Labour Inspectorate from New South Wales to discuss worker safety in preparing for the Sydney Olympics in 2000. The Sydney Olympics were a more appropriate comparison.

Tom Levitt asked what involvement the Health and Safety Laboratories were having with the ODA. LW answered that they would be working with the ODA to update and pilot a climate tool for surveying worker perceptions of site safety. Once piloted on the Olympic site it would be available to all construction sites for a nominal fee.

Contractors monitor their own health and safety and this is audited by the ODA. The main contractors see the benefit of good health and safety for production and delivery.

The Occupational Health provision is based on the model for Terminal 5 and will be evaluated by HSE and ODA as this opportunity was missed at the Heathrow site. There will be health promotion programmes eg on testicular cancer. The ODA aim to keep workers fit, healthy and available for work. Treatable illnesses are already being found amongst workers on site.

Mark Pritchard asked what would happen on site in the summer weather. LW explained that the ODA will require all workers to wear shirts, sun screen will be available and there will be briefings from occupational health.

LW said it was important for the ODA to have a sense of ownership for the workforce whether or not they were paying the workers directly.

Terry Rooney asked if the occupational health services would be voluntary or mandatory to take up. LW answered that they would be optional unless drive by a risk assessment.

Mark Pritchard asked if the HSE could come on site unannounced for an inspection. LW confirmed that since 2005 the ODA have had 25 engagements with HSE, 10 site visits and 3 designer visits.

LW sees the ODA's work with the HSE as a partnership, involving consultation and advice on aspects of the site.

# Formal Minutes

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**Wednesday 2 April 2008**

Members present:

Mr Terry Rooney, in the Chair

Miss Anne Begg

Mr Michael Jabez Foster

Mr Oliver Heald

Mrs Joan Humble

Mr Tom Levitt

Mr Greg Mulholland

Mr John Penrose

Draft Report (*The role of the Health and Safety Commission and the Health and Safety Executive in regulating workplace health and safety*), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 370 read and agreed to.

Annexes and Summary agreed to.

*Resolved*, That the Report be the Third Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 16 January.

[Adjourned till Wednesday 23 April at 9.15am]

# Witnesses

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## Wednesday 28 November 2007

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**Ms Judith Hackitt CBE**, Chair, Health and Safety Commission and  
**Mr Geoffrey Podger CB**, Chief Executive, Health and Safety Executive Ev 1

## Wednesday 23 January 2008

**Professor Frank Wright**, University of Warwick, **Chris Jackson**, Solicitor, and  
**Mr Martin Bare**, Association of Personal Injury Lawyers Ev 20

**Mr Richard Diment**, Director General, Federation of Master Builders, **Ms Louise Ward**, Health and Safety Manager, EEF – the manufacturers organisation,  
**Dr Janet Asherson**, Head of Health and Safety, CBI Ev 31

## Monday 4 February 2008

**Mr Jim Kennedy**, National Political Officer, UCATT and **Mr Mike MacDonald**,  
Negotiations Officer, Prospect Ev 39

**Mr Tom Wilson**, Head of Organisation and Services, TUC, and **Mr Daniel Shears**,  
Health, Safety and Environmental Research and Policy Officer, GMB Ev 49

## Wednesday 27 February 2008

**Mr Steve Bailey**, President Elect, British Occupational Hygiene Society, **Mr Nick Starling**,  
Director of General Insurance and Health, Association of British Insurers,  
and **Ms Kim Sunley**, Employment Relations Adviser, Royal College of Nursing Ev 62

**Mr Ray Hurst**, President, **Mr Ian Waldram**, past President, and **Mr Richard Jones**,  
Policy and Technical Director, Institute of Occupational Safety and Health Ev 74

## Wednesday 5 March 2008

**Mr Derek Allen**, Executive Director, LACORS Ev 80

**Lord McKenzie of Luton**, Member of the House of Lords, Parliamentary Under  
Secretary (Lords), **Mr Geoffrey Podger**, Chief Executive, Health and Safety  
Executive, and **Ms Judith Hackitt**, Chair, Health and Safety Commission Ev 84

## Wednesday 19 March 2008

**Dame Carol Black**, National Director for Health and Work, and **Mr Hugh Stickland**,  
Analyst Ev 102

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3	GMB	Ev 123; 125
4	Royal College of Nursing	Ev 128
5	CBI	Ev 131
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7	British Association of Leisure Parks, Piers and Attractions Ltd (BALPPA)	Ev 139
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9	Professor Anthony Seaton CBE	Ev 144
10	Royal Society for the Prevention of Accidents (RoSPA)	Ev 146; 147
11	Professor Frank Wright	Ev 153
12	Local Authorities Co-ordinators of Regulatory Services (LACORS)	Ev 160
13	Association of Personal Injury Lawyers (APIL)	Ev 164; 317
14	British Occupational Hygiene Society (BOHS)	Ev 166
15	Bill Campbell	Ev 169
16	Chris Jackson	Ev 174
17	Trades Union Congress (TUC)	Ev 181; 183
18	Institute of Occupational Medicine (IOM)	Ev 188
19	Senior Occupational Health Advisory Service (SOHAS)	Ev 192
20	EEF – the manufacturers organisation	Ev 193; 321
21	Battersea Crane Disaster Action Group (BCDAG)	Ev 197
22	Centre for Corporate Accountability (CCA)	Ev 201; 203
23	Prospect	Ev 206; 208
24	University and College Union (UCU)	Ev 214; 217
25	Public and Commercial Services Union (PCS)	Ev 220; 223
26	ConstructionSkills	Ev 225
27	Thompsons Solicitors	Ev 229; 230
28	Offshore Industry Liaison Committee (OILC)	Ev 236
29	Industrial Health Control Ltd	Ev 241
30	Chemical Industries Association	Ev 241
31	Unite the Union	Ev 244
32	Federation of Small Businesses	Ev 249
33	Hazards Campaign	Ev 254; 257
34	Faculty of Occupational Medicine	Ev 259
35	Federation of Master Builders	Ev 260; 325
36	FDA	Ev 264
37	Association of British Insurers	Ev 265
38	Department for Work and Pensions (DWP)	Ev 268; 276; 280; 292; 326; 332; 334; 347; 349; 350
39	Professor Raymond Agius	Ev 296
40	Institute of Occupational Safety and Health (IOSH)	Ev 299
41	University College London (UCL)	Ev 310
42	Professor Stephen Wood	Ev 334

43	NHS Plus	Ev 338
44	Hazel Hartley	Ev 339
45	DGUV (German Statutory Accident Insurance Association)	Ev 345
46	Colin Breed MP	Ev 350