IMPROVING OUTCOMES FROM HEALTH AND SAFETY

A Report to Government by the Better Regulation Executive

AUGUST 2008
# Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>The benefits and challenges of the existing regulatory framework for health and safety in the UK</th>
<th>Page no</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Executive summary</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Recommendations</td>
<td>9</td>
</tr>
<tr>
<td><strong>Chapter 1</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Background to the review</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>The UK’s record on health and safety, and current regulatory arrangements</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>Industry sectors where the risk of injury or ill health is relatively low</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>Health and safety regulation in the UK and its benefits and challenges</td>
<td>17</td>
<td></td>
</tr>
<tr>
<td>Benefits of a goal-setting regulatory system</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>Challenges of a goal-setting regulatory system especially for smaller firms</td>
<td>19</td>
<td></td>
</tr>
<tr>
<td>The relative cost of compliance for smaller and larger firms</td>
<td>21</td>
<td></td>
</tr>
<tr>
<td>Stakeholder views about health and safety</td>
<td>22</td>
<td></td>
</tr>
<tr>
<td>Health and safety regulation has not changed significantly in recent years</td>
<td>23</td>
<td></td>
</tr>
<tr>
<td>Views on specific aspects of the health and safety regulatory regime</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>Current initiatives by the Health and Safety Executive and local authorities</td>
<td>26</td>
<td></td>
</tr>
<tr>
<td>Improving penetration rates and distribution of support on health and safety</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td>Conclusion</td>
<td>29</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 2</th>
<th>The Growth of the Health and Safety System and the Impact of Third Parties</th>
<th>Page no</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>31</td>
<td></td>
</tr>
<tr>
<td>The health and safety system has developed significantly since 1974</td>
<td>31</td>
<td></td>
</tr>
<tr>
<td>Third parties are playing an increasingly important role</td>
<td>32</td>
<td></td>
</tr>
<tr>
<td>Growth in paid-for health and safety support</td>
<td>32</td>
<td></td>
</tr>
<tr>
<td>The cost and impact of health and safety support</td>
<td>36</td>
<td></td>
</tr>
<tr>
<td>Growth in membership of professional health and safety organisations</td>
<td>36</td>
<td></td>
</tr>
<tr>
<td>Quality of paid support is variable</td>
<td>36</td>
<td></td>
</tr>
<tr>
<td>Employers struggle to act as informed consumers of consultancy support</td>
<td>37</td>
<td></td>
</tr>
<tr>
<td>Helping employers become more informed consumers of consultancy support would improve outcomes and save them money</td>
<td>38</td>
<td></td>
</tr>
<tr>
<td>The experience of employers who have received poor quality support also helps fuel negative perceptions of health and safety</td>
<td>39</td>
<td></td>
</tr>
<tr>
<td>Third parties increasingly imposing health and safety standards of their own</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Pre-qualification schemes</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Insurers</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>Conclusion</td>
<td>46</td>
<td></td>
</tr>
</tbody>
</table>
Chapter 3
Media Coverage of Health and Safety

Introduction
Media coverage of health and safety in the UK
More coverage of health and safety than equivalent regulatory regimes
The tone of media coverage of health and safety
The impact of media coverage of health and safety
Some media coverage trivialises health and safety regulation
Media coverage adds to confusion about the scope of health and safety regulation
The impact of media coverage on how some employers calculate the likely impact of the risks they face, especially from civil claims
Existing efforts to respond to media coverage of health and safety
Conclusion

Chapter 4
Health and Safety Inspection and Enforcement

Introduction
Current division of responsibilities between HSE and local authorities
HSE and local authority inspectors
Local authority enforced sectors of the economy have growth since the 1970s
Levels of HSE and local authority inspection
Both HSE and local authorities take account of risk in determining their levels and approach to inspection
Additional influences on local authority inspection activity
Relationship between health and safety inspection and levels of fatal injury, non-fatal injury and ill health
Benefits of the current division of enforcement responsibility
Issues raised by the current enforcement division
Could health and safety inspection resource be used more effectively?
Revision of the Enforcement Regulations
Conclusion

Annex A: Responses to the Call for Evidence

Annex B: Low Risk

Annex C: Media Examples
Executive summary

Aim and scope of the review

1 The review has considered how the health and safety regulatory regime affects workplaces where the overall risk of injury or ill health is relatively low, focusing in particular on low risk smaller businesses. Its aim is to reduce unnecessary burdens on these businesses while reducing injury and ill health and increasing public confidence in the UK’s health and safety regime as a whole.

2 The review team received over 120 formal responses and held over 50 meetings across England, Wales and Scotland with groups representing the full spectrum of those with an interest in health and safety. We also commissioned research into the views of small and micro businesses and their employees. A full list of the organisations and individuals who have contributed to our call for evidence is at Annex A. Individual written responses are available on the web at http://www.berr.gov.uk/bre/reviewing-regulation/health-safety/page44096.html. We also received significant assistance from the Health and Safety Executive (“HSE”), the Local Authorities Coordinators of Regulatory Services (“LACORS”) and individual local authorities throughout the project. We are extremely grateful to all who have helped us.

The UK’s record on health and safety and current regulatory arrangements

3 The UK health and safety regulatory system is long-established, well-regarded by those who are knowledgeable about it, and has one of the most successful records in the world, especially on workplace injury.

4 The core of the system is contained in the 1974 Health and Safety at Work etc Act and the more recent Management of Health and Safety at Work Regulations. Both set out employers’ obligations in goal-setting form; they show what must be achieved but not how it must be done.

5 This goal-setting approach has significant benefits including:

- providing flexibility for employers in how they control the risks they identify;
- ensuring that the responsibility for identifying and responding to risks rests with the firm causing them; and
- allowing the regulatory regime to reflect the relative risk of accidents and ill health in different workplaces.

6 But the goal-setting approach can be difficult for some firms, especially smaller ones. They can struggle to evaluate for themselves how well they are meeting the goal set by the law: the process of risk assessment. In particular:

- the lack of specific criteria to give them reassurance of their compliance can increase misunderstanding among some employers of what is required;
- they may not know where to look for advice and guidance from the HSE and other government sources;
• they need to make time to update their risk assessments on a regular basis, ensuring they reflect changes in work practices;
• a few employers find the language used around the process confusing – “risk assessment” may have no meaning for them; and
• the smallest firms are less likely to have management systems or keep significant written records to which they can attach health and safety activity.

The relative cost of compliance for smaller and larger firms

An average firm spends approximately 20 hours and over £350 a year meeting the administrative cost of complying with the *Management of Health and Safety at Work Regulations*.

There appear to be significant differences in the cost of compliance for smaller and larger firms. On a per employee basis, small and medium-sized enterprises (“SMEs”) may be spending almost six times more than larger ones on risk assessment.

Confusion about the scope of health and safety regulation

In spite of overwhelming support for the objective of protecting health and safety in the workplace, business owners frequently make highly critical general comments on health and safety.

It is difficult to interpret these comments as reactions to HSE policies or actions. Many firms do not recognise the boundaries between different regulators and different regulations and use the term “health and safety” to cover a wide range of regulations for which HSE is not responsible such as fire, disability discrimination, food hygiene, and trading standards. But these comments are still important because they show how the actions of organisations outside the control of the HSE can influence business views of health and safety. They also help to explain why many employers believe health and safety regulation has grown in recent years. In fact, it has not changed significantly since the early 1990s, and the volume of both primary and secondary legislation has almost halved since then.

Improving business awareness of existing support

Both the HSE and local authorities provide a range of written, telephone and face-to-face support to help employers meet their health and safety obligations. These initiatives have been welcomed by business and business representative groups almost universally. But there is scope to improve both access to, and awareness of them, especially among smaller firms.

A campaign in Scotland to promote “Healthy Working Lives” may provide a model that could improve business recognition of the existing support available from regulators.

The possible benefits of improving access to existing HSE and local authority support are large. If the average time to comply with the administrative requirements of the *Management of Health and Safety at Work Regulations* was reduced by 5 hours a year, it could save enterprises in low risk sectors over £150 million pa.
Growth in the influences on workplace health and safety

Since 1974 the influences on workplace health and safety have grown significantly. There is now a complex network of sources of health and safety support to which businesses can turn. These are often outside the control of HSE or local authorities. Many charge for their services.

Consultants and other sources of paid for business support are especially important. There may be more than 1,500 specialist health and safety consultancy firms in the UK. Depending on their size and sector, between 20% and 70% of businesses currently pay for support on health and safety requirements. According to recent analysis, the market for health and safety support is worth over £700 million and possibly as much £1 billion a year in annual sales. Services to SMEs are a key growth area.

The experience of employers who pay for health and safety consultancy is variable. While some report good experiences, others pay for support they could undertake in-house more cheaply or take action on the advice of consultants that is not required by the law and which provides no or little benefit in the workplace. This can lead them to undertake unnecessary bureaucratic activity in the name of health and safety.

Smaller employers find it especially difficult to know when – and when not – it is in their interest to buy-in health and safety support. Businesses in sectors of the economy where the risk of injury or ill health is relatively low could save up to £140 million pa if instead of paying third parties for basic health and safety support, 20% more of them turned to the HSE, local government or other government sources.

Third party health and safety requirements

Enterprises are increasingly required to demonstrate compliance and / or forms of health and safety assessment when they bid for contracts, when they undertake training and when they seek insurance cover.

For many employers these requirements have become a significant additional source of health and safety bureaucracy. Mutual recognition of only two of the around 35 national “pre-qualification schemes” could save the c. 30,000 members of the schemes between £3.5 and £12.5 million pa in fees alone. Some of the requirements insurers ask for from employers appear to provide little additional protection in the event of a civil claim being made against them and can add significant costs for the business.

Media coverage of health and safety and its impact

There are approximately 48,000 written media articles referring to health and safety published in the UK each year. In an average month, there is three times more media coverage of health and safety than of “food safety” and “red tape” combined.

The tone of much of media coverage of health and safety is negative, especially in the national press. This is important in shaping public views not only of health and safety but also of regulation in general. This coverage:
• underpins and strengthens some of the criticism of the current regulatory regime, especially that it is overly bureaucratic;
• links health and safety to activity outside of the control of the Health and Safety Executive and local authorities adding to confusion about the scope of health and safety regulation; and
• has an impact on how some employers calculate the likely impact of the risks they face, especially from civil claims and a “compensation culture”.

**Inspection and enforcement of health and safety regulation**

22 Inspection and enforcement of health and safety regulation is divided between the HSE and local authorities on the basis of the main activity undertaken at a workplace. HSE inspectors are responsible for workplaces which historically have a higher risk of injury, including construction, agriculture, and manufacturing as well as specialist inspection of high hazard industries, like nuclear and off-shore sites. Local authority inspectors enforce in workplaces at historically lower risk of workplace injury, including offices and retail premises.

23 The current division of responsibility was established in the early 1960s and has remained largely unchanged since then. Since the late 1970s, levels of employment and numbers of businesses have grown in the sectors of the economy that are inspected by local authorities. Within their respective areas of responsibility both HSE and local authorities take account of risk in determining their levels of inspection.

24 Local authorities undertake between three and four times more preventative inspections than the HSE even though levels of fatal injury, non-fatal injury and work-related illness are lower in sectors of the economy that are local authority enforced.

25 The current system has considerable benefits:

- it is stable;
- it allows local knowledge and concerns to influence inspection activity;
- it supports joined-up inspection of businesses by local authorities as well as the development of specialist skills within the HSE; and
- it avoids unnecessary duplication of guidance and general information by local authorities.

26 But the division of responsibilities also gives rise to significant challenges and issues because:

- it limits the ability of regulators to target overall inspection resource on workplaces where the risk of injury and illness is highest;
- it is complex. The guide to the allocation of premises between HSE and local authorities runs to over twenty pages;
- it makes co-ordination at a local level difficult. The HSE, through approximately 20 regional and national offices, has to work with over 400 local authorities;
- it leads to inconsistency in inspection activity across the country as a whole; and
- it potentially restricts the ability of the HSE to investigate serious accidents or ill health in workplaces allocated to local authorities.
Through their partnership work in recent years, the HSE and local authorities have piloted practical ways to overcome these challenges. There is scope to expand this work by undertaking larger scale pilots. Such a move would reflect the policy direction established by recent guidance on joint working issued under section 18 of the Health and Safety at Work Act.

There is also a strong case for review of the current enforcement regulations. While a move to increase HSE responsibility would help address issues of inconsistency, it is difficult to see how this could be made to work in practice. However, the potential benefits of allowing local authorities – with appropriate training – to take on responsibility for more, higher risk workplaces are significant: more enforcement and inspection activity, more closely linked to local knowledge, harnessed where it can be more effective in protecting workers and the public; more joined-up inspection and the ability for the HSE to concentrate even more on specialist and expert activity where risks are highest.

Recommendations

Recommendation 1
To improve penetration rates and distribution of the support they provide to SMEs and to help employers make more informed choices of when – and when not – to pay for support on health and safety, the Health and Safety Executive should:

- improve the provision of telephone and web-based support aimed at businesses where the risk of injury or ill health is relatively low – especially low risk smaller businesses – drawing on experience from the Scottish “Safe and Healthy Working Lives” website. Web content should be based on the existing material HSE has developed as part of its sensible risk management programme supplemented with single web page advice on specific issues and hazards where this is not already available. Content and hosting would need to reflect existing Government policy on website consolidation, the use of businesslink.gov.uk and any relevant recommendations from Sarah Anderson’s “Review of Guidance”;
- train and allow Infoline operators to provide more specific, tailored support and advice;
- promote the support it provides to start-up businesses through first points of contact, including through Company House, Trade Associations, other local authority services, e.g. planning, building control, economic development and, subject to mutual agreement, financial services companies;
- review
  - its guidance regularly to ensure that it remains up to date; and
  - whether more of its guidance should be free to download, e.g. the Approved Code of Practice on the Management of Health and Safety at Work Regulations, the SME Starter Pack, Essentials of Health and Safety at Work, Recipe for Safety and Charity and Voluntary Workers: a Guide to Health and Safety at Work;
- consider revising the guidance on the Management of Health and Safety at Work Regulations to provide further clarity to employers on the meaning of “competent advice” to emphasise when – and when not – businesses should seek paid external support; and
• evaluate penetration rates of their support more actively and score this against the HSE’s administrative burden target, taking into account on-going work on the methodology for measuring the impact on administrative burdens of example risk assessments.

Recommendation 2
To improve outcomes in lower risk, small businesses in the regulatory areas employers associate with health and safety:

• the Local Better Regulation Office should work together with the HSE and the Local Authorities Co-ordinators of Regulatory Services (LACORS) to design a new scheme that would allow small firms to demonstrate in a single process their compliance in a range of regulatory areas associated with health and safety, including health and safety, fire, food safety, and other areas of trading standards, targeting micro-firms in particular; and
• the Local Better Regulation Office should work with local authorities to consider additional benefits for firms that have demonstrated compliance through the scheme, learning from the experience of the retail enforcement pilots and the work of Sarah Anderson’s “Review of Guidance”.

Recommendation 3
To seek to improve the tone and impact of media coverage of health and safety, the Health and Safety Executive and local government with support from other partners including the Better Regulation Executive should:

• continue robust and immediate responses to media coverage they consider inaccurate; and
• develop an even more active media strategy including further promotion of the message “we’re here to save lives, not stop them”, monitoring of media coverage of the term “health and safety” alongside coverage of the “Health and Safety Executive”; pursuing opportunities for journalists to witness the benefits of appropriate health and safety and the consequences of poor health and safety at first hand; and ensuring partners support the strategy and actively join-up messages.

Recommendation 4
To ease unnecessary burdens on business from requirements in health and safety procurement pre-qualification schemes:

• Anne Glover’s review of the barriers to SMEs winning a greater proportion of Government contracts should consider the extent to which pre-qualification schemes act as a barrier to SMEs bidding for public sector contracts; and
• public sector procurers should have a presumption that SME bidders for their contracts who are members of any health and safety pre-qualification scheme meet their requirements. Exceptions should be limited to cases where the contract clearly requires an assessment of standards only available from a specific pre-qualification scheme.
**Recommendation 5**
To strengthen the contribution of the insurance industry towards low levels of work-related injury and illness, and to further improve clarity for businesses:

- the Association of British Insurers (ABI) should, as part of its role in advocating high standards of customer service, encourage member firms to draw a distinction between advice grounded in regulatory requirements and advice related to the insurance policy itself, such as guidance in the event of a compensation claim; and
- the British Insurance Brokers’ Association (BIBA) should continue its work to promote good health and safety practices e.g. by highlighting government information and advice services to its members, supporting the development of products that strengthen the link between small firm health and safety performance and premiums, and continuing to help firms find a suitable insurance broker.

**Recommendation 6**
To address issues and challenges from the current division between HSE and local authorities of health and safety inspection and enforcement, especially barriers to targeting overall health and safety inspection and enforcement resource on workplaces where the risk of injury or ill health is greatest:

- building on their existing partnership, the HSE and local authorities should launch a series of pilots to test, both in terms of scale and types of workplace, where more joint-working (such as joint inspections and flexible warranting) can be most effective; and
- as part of their ongoing strategic review, the HSE and local authorities should consider revision of the existing enforcement regulations.
Main findings

This review concludes:

• the UK has one of the most successful records on health and safety in the world, especially on workplace injury;

• media coverage and many peoples’ responses to the phrase ‘health and safety’ are often very negative, despite almost universal support for the overall aim of protecting health and safety at work;

• a large number of businesses are relatively lower risk in health and safety terms. This review defines low risk in terms of sectors with below average injury and illness rates, bringing over two million businesses into its scope. Many operate from homes, offices or shops;

• the vast majority of these businesses should be able to comply with health and safety requirements easily and without external advisors. Yet currently, some small low risk firms appear to be spending unnecessary time and money meeting their obligations in this area; and

• health and safety inspections could be more focused on workplaces with greatest risk of injury and illness. This will require further flexible working across the HSE local authority enforcement division.

The review recommendations address these issues. They will:

• improve health and safety outcomes by making businesses more aware of their obligations, and making it easier for them to know what – and what not – to do in all of the regulatory areas they associate with health and safety;

• save businesses in scope almost £300 million pa in unnecessary administrative and consultancy costs. This assumes that improving access to information and advice reduces the average time spent on paperwork associated with the Management of Health and Safety at Work Regulations by five hours a year, and that at least 20% of businesses in scope use HSE, local authority or other government advice, rather than pay for a day of basic consultancy;

• increase public confidence in health and safety by further challenging inaccurate media coverage and promoting positive messages about health and safety; and

• target overall inspection resource at workplaces where the risk of injury or ill health is highest by encouraging further joint working between HSE and local authorities.
Chapter 1: The benefits and challenges of the existing regulatory framework for health and safety in the UK

Introduction

This chapter covers

- background to the review and basic contextual information about UK health and safety regulation as well as sectors of the economy where the risk of workplace injury or ill health is relatively low;

- the benefits of the current goal-based regulatory regime as well as some of the cost and capacity challenges it can give rise to especially for smaller firms;

- stakeholder views on health and safety including evidence of confusion about the scope of health and safety regulation; and

- current initiatives led by the Health and Safety Executive and local authorities that aim to address these issues, and ways in which they might be extended.

Background to the review

1.1 The Better Regulation Executive’s role is to reduce the burden of regulation without lessening the protection it provides. We aim to make everybody’s working life easier by saving people and business time and money, which can then be spent on things that really make a difference. We focus on challenging new legislation as well as simplifying and improving existing regulation, which in turn helps reduce administration costs borne by businesses, currently running at about £20 billion a year. We work with other government departments, and national and local regulators to help them develop plans that either simplify, update or scrap their own rules and regulations to meet the government target of reducing the regulatory burden to businesses by 25% by 2010. We also have a voice in Europe where we work to improve the quality of EU legislation and reduce the administrative burden for businesses across the European Community.

1.2 In summer 2007, we launched a review with support from the Health and Safety Executive (“HSE”) to consider how the health and safety regulatory regime affects workplaces where the overall risk of injury or ill health is relatively low, focusing in particular on low risk smaller businesses. Our aim was to find ways to reduce unnecessary burdens on these businesses while reducing injury and ill health and increasing public confidence in the UK’s health and safety regime as a whole.

1.3 After carrying out initial research, we published a ‘Call for Evidence’ in November 2007 seeking views. The review team received over 120 formal responses and held over 50
meetings across England, Wales and Scotland with groups representing the full spectrum of those with an interest in health and safety. We also commissioned research into the views of small and micro businesses and their employees, to ensure we had evidence from all key stakeholders including those unlikely to respond in a formal exercise. A full list of the organisations and individuals who have contributed to our call for evidence is at Annex A. Individual written responses are available on the web at http://www.berr.gov.uk/bre/reviewing-regulation/health-safety/page44096.html. We are extremely grateful to all who have helped us.

The UK’s record on health and safety, and current regulatory arrangements

1.4 The UK’s health and safety regulatory system is long-established, well-regarded by those who are knowledgeable about it and has a good record. The UK has a tradition of health and safety regulation going back to the 1830s. Health and safety at work is paramount to the UK’s position as a fair and decent society.

1.5 In terms of outcomes, the UK has one of the most successful health and safety records in the world. Although ill health and injury still occur with damaging and sometimes devastating consequences – 241 workers and 90 members of the public were killed by accidents arising from work in 2006/7 – the UK has consistently enjoyed among the lowest rates of work-related deaths and injuries in the developed world. This is especially true for workplace injury. Since the current regulatory regime was introduced in 1974, fatalities at work have fallen 76% and serious injuries by 68%.

1.6 The health and safety regulators in the UK are the Health and Safety Executive and over 400 lower-tier local authorities. Inspection and enforcement of health and safety regulation is divided between the HSE and local authorities on the basis of the main activity undertaken at a workplace. HSE inspectors are responsible for most premises in the agriculture, construction and manufacturing sectors as well as specialist inspection and enforcement of high hazard industries, like nuclear and off-shore sites. HSE also leads on policy and general information. Local authorities are responsible for most offices, shops, retail and wholesale distribution, hotel and catering establishments, petrol filling stations, residential care homes as well as the leisure industry.

Industry sectors where the risk of injury or ill health is relatively low

1.7 The focus of this review is lower risk enterprises. We have defined four industry sectors as relatively low risk based on injury and ill health outcomes: Finance & Business, Hotels & Restaurants, Wholesale, Retail & Repair, and Education. Annex B contains our detailed analysis. We have not focused on higher risk sectors like Construction, Agriculture and Manufacturing.

1 There are currently 408 local authorities with responsibility for health and safety. These include all-purpose councils (unitary authorities, Metropolitan Boroughs, London Boroughs) of which there are 170 (England 116, Wales 22, Scotland 32) and 238 English district councils which undertake a subset of functions in areas which also have County Councils. From April 2009, the number will change due to local government reorganisation.

2 The first three sectors are below average on both injury outcomes and on ill health outcomes separately. Education has a significantly below average injury rate and is below average when both injury and ill health are considered together using a cost weighting, although on ill health alone it is slightly above average.
**Figure 1.1:** Rate of fatal accidents at work in Europe by member state, 2005

![Graph showing the rate of fatal accidents at work in Europe by member state, 2005.](http://www.hse.gov.uk/statistics/european/tables.htm)

**Source:** HSE (http://www.hse.gov.uk/statistics/european/tables.htm).

**Notes**

a. Road traffic and transport accidents (RTTAs) at work are defined as accidents in the transport branch and traffic accidents or accidents on all means of transport at work in all other branches of economic activity.

b. The profile of employment by industrial sector will vary between member states and will impact therefore on the comparison between member states. The standardised incidence rate of fatal injury for each member state is calculated on the basis of sectoral rates in the member state applying to the profile of employment at EU level. In effect, the rates for member states are standardised to the same basis of employment by industry – the EU profile.
1.8 These four industry sectors are economically significant. They contain around two million enterprises (c. 44% of all enterprises), at least 12 million workers (more than 42% of all workers), generate about half of turnover and contain c. 45% of all SMEs.

**Figure 1.2:** Work-related injury and illness by industry category, with indication of number of private enterprises

![Graph showing work-related injury and illness by industry category with bubble size indicating number of private enterprises.]

Source: HSE, from worker self-report (LFS), injury 04/05-06/07 avg, illness 03/04-05/06 avg

**Notes**

Figure 1.2 illustrates the key data we used to define low risk sectors. It locates industry categories as represented by coloured dots along two axes, one for injury and one for ill health outcomes. It also, through the shaded areas surrounding the dots, gives an indication of the number of firms within each category. The Finance & Business and the Wholesale, Retail & Repair sectors contain the largest number of enterprises. The injury rate is not available for the sector category Extractive & Utility Supply so it is not shown.
Health and safety regulation in the UK and its benefits and challenges

The current regulatory regime

1.9 The core of the UK’s regulatory framework for health and safety is contained in the Health and Safety at Work etc Act 1974 and the Management of Health and Safety at Work Regulations.3

1.10 The Health and Safety at Work Act sets out the general duties that employers and the self-employed have towards employees and members of the public, and employees have to themselves and to each other. The Management of Health and Safety at Work Regulations make more explicit what employers are required to do to manage health and safety, including the requirement to carry out a risk assessment in their workplaces. Box 1.1 summarises what this means in terms of employer duties.

1.11 This approach, where the focus in law is on what needs to be achieved rather than how it must be done, is generally called goal-setting.4 It has been adopted in Europe in the EU Framework Directive on Health and Safety.

1.12 The legal framework established by the 1974 Act has proved to be both robust and enduring. It has accommodated significant structural and other changes in the UK economy over recent decades. It has adapted to various European Directives and ensured a more prescriptive regulatory regime is not introduced in certain areas. And a key component of flexibility in the regime – the use of “so far as is reasonably practicable” – has recently been upheld by the European Court of Justice in response to a challenge from the European Commission.5

Box 1.1: Employers’ key duties and ‘so far as is reasonably practicable’

Business obligations under the current regulatory regime are fairly straightforward. They must:

- ensure “so far as is reasonably practicable” the health, safety and welfare of their employees when they are at work, including providing relevant information and training;

- protect “so far as is reasonably practicable” members of the public from risks to their health and safety arising from the work of the business;

- undertake and act upon a “suitable and sufficient” assessment of the risks in their workplace, keep it under review and communicate both the risks identified and the actions being taken to their employees. If they employ five or more people, this assessment has to be written down;

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4 For example Michael Wright classifies the system operated in the UK as goal-setting regulation ‘mostly based on a partially mandated self-compliance model’. See Wright, Factors motivating proactive health and safety management (1998), p. 31.
• appoint a “competent person” to help them with health and safety. This could be themselves, someone who works for them, or an external provider;

• consult their employees on health and safety issues either directly, through an elected representative or through someone appointed by a trade union;

• have a policy that sets out who does what, when and how on health and safety. This need not be complicated but has to be brought to the attention of their employees; and

• register with the HSE or local authority and make sure they report specified work-related accidents, diseases and dangerous occurrences if they occur.

Employers’ duties under the *Health and Safety at Work Act* are qualified by the principle of “so far as is reasonably practicable”. This means an employer does not have to take measures to avoid or reduce the risk if they are technically impossible or if the time, trouble or cost of the measures would be grossly disproportionate to the risk.

**Benefits of a goal-setting regulatory system**

1.13 The goal-setting regulatory regime provides significant benefits for firms. It provides important flexibility because it sets goals for employers but does not mandate how these goals must be achieved.

1.14 This has several advantages:

• it enables firms to respond to technological and other advances as they arise, rather than requiring them to meet fixed rules that may quickly become out-dated;

• it places responsibility for identifying and responding to risks with the firm causing them;

• it ensures the regulatory regime reflects the relative risk of accidents and ill health in different workplaces. For example, in workplaces where risks are relatively low, it should ensure risk assessments are relatively straightforward and employers do not need to pay for additional support to help them; and

• it provides flexibility for employers in how they control the risks they identify. Except where the hazards they face are especially serious, employers can choose to manage the risks in their workplaces in ways that work best for them. They do not need to re-invent processes if they start working with new technologies or products – the core of what they have to do to complete a risk assessment remains the same.
Challenges of a goal-setting regulatory system especially for smaller firms

1.15 There is evidence that the goal-setting regulatory approach is more efficient, and less expensive overall, for both regulators and the regulated. But it can give rise to challenges for individual firms, especially smaller ones.

1.16 This is primarily because goal-setting regulation requires firms to evaluate for themselves how well they are meeting the goal set by the law, and to decide what, if any, additional action they need to take to meet that goal. This process is called “risk assessment” in the case of health and safety.

1.17 Firms need a degree of knowledge and understanding to undertake these evaluations. This is acknowledged in the regulatory regime. The Management of Health and Safety at Work Regulations requires firms to have access to competent advice to help them meet their health and safety obligations. Firms must use in-house support where this is available.

1.18 For most of the firms that are the focus of this review, developing their in-house competence in health and safety should not be difficult. HSE emphasize that most small firms should be able to deal with their workplace health and safety issues easily themselves. Yet some firms still struggle, especially with the process of risk assessment. In particular:

- the lack of specific criteria to provide them with reassurance of their compliance can increase misunderstanding among some employers of what is required – and make it difficult for them to identify areas of non-compliance;

- some employers may not know where to look for advice and guidance – including the free support that is available from HSE, local authorities and other government sources – making it harder for them to challenge the opinions of professed experts, especially those who are attempting to sell them health and safety training or other support services;

- firms must make time to update their risk assessments on a regular basis, ensuring they reflect any recent changes in their working practices as well as new or emerging risks to work activity since the previous assessment;

- a few employers find some of the language used around their obligations confusing. A small retailer and a small baker stressed in verbal responses to the review that the words “risk assessment” had no meaning for them; and

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6 Such claims are outlined with reference to three studies as examples, in Fairman and Yapp, Making an impact on SME compliance behaviour (2005), p. 13.
7 HSE, “Getting Specialist Help with Health and Safety” (INDG420, 2007).

1.19 This does not mean that all small firms struggle with their health and safety obligations. Some are simply unaware of their responsibilities and give no priority to finding out about them. While larger firms with greater resources are more likely to be able to respond effectively to the regulatory environment – including health and safety\footnote{Hart et al, \textit{The Impact of Regulation on Small Business Performance} (2008), p. vi.} – smaller ones can still take advantage of the opportunities created by regulatory systems and can benefit from the goal-setting approach.\footnote{Ibid., p. 21.} Even where small firms struggle with their obligations this may not be a result of their size but because of broader motivation or capacity issues.\footnote{Wright, \textit{Factors motivating proactive health and safety management}.}

Box 1.2: The Black Review

Health Work Wellbeing is a Government-led initiative to improve the health and wellbeing of working age people. Founded on a growing evidence base that working is good for health, it brings together employers, unions and healthcare professionals in helping more people with health conditions to find and stay in employment.

As part of this initiative, Dame Carol Black was appointed as the first ever National Director for Health and Work. In March 2008, she published a review of the health of Britain’s working age population. She proposed a new, more strategic approach from Government, businesses and the healthcare profession, based around three principal objectives:

- prevention of illness and promotion of health and well-being;
- early intervention for those who develop a health condition; and
- an improvement in the health of those out of work – so that everyone with the potential to work has the support they need to do so.

Dame Carol’s review was commissioned by the Secretaries of State for Health and for Work and Pensions as an independent report. The Government will publish its formal response later this year.

The recommendations from the Black Review seek to refocus both Government and business activities towards prevention and early intervention. They include proposals for further strengthening cross-Government working in this area, and for some significant changes in the NHS with the sick note system being replaced by ‘fit
notes’ and piloting of a new ‘Fit for Work’ service. To support business action, it is proposed that the business case for investing in health is further promoted and a new business-led health and wellbeing consultancy service geared towards smaller organisations is launched.

For more information, see http://www.workingforhealth.gov.uk/.

**The relative cost of compliance for smaller and larger firms**

1.20 According to the Government’s administrative burden measurement exercise, an average firm spends approximately 20 hours and over £350 a year meeting the administrative cost of complying with the *Management of Health and Safety at Work Regulations*.12

**Box 1.3: Administrative and policy costs**

The costs of regulation can be split into two types:

- *policy cost* is the cost inherent in meeting the aims of a regulation, such as installing new equipment prescribed by legislation; and

- *administrative cost* is cost that is incurred in gathering information about a business, or checking on compliance. So, for example, filling in a form is an administrative cost, as is showing an inspector around a site.

1.21 In general, smaller firms face higher relative costs from regulation than larger ones.13 This appears to be equally true of the UK’s health and safety regulatory regime. The most detailed study on relative costs of the UK’s health and safety regulation found that the overall cost of compliance on a per-employee basis can be up to seven times more for the smallest enterprises than for the largest ones. This 2003 report for the HSE found that, on average, small firms in five higher risk sectors spend just over £4,000 pa on health and safety in comparison to medium-sized firms who spend just over £27,000 pa and large firms who spend £420,000 pa or more. But, on a per-employee basis, smaller and medium-sized firms were spending far more than larger ones to comply with health and safety requirements, including almost six times more on risk assessment, as figure 1.3 details.14 It is possible that the goal-setting approach widens this gap because the requirement that all firms have access to competent advice may lead to a higher fixed cost for the smallest firms compared to other regulatory approaches.

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12 Administrative Burdens Measurement Exercise.

13 An international literature review on the regulatory burdens of small business found that in the USA, UK, European Union, Australia and New Zealand, the smallest firms of up to 20 employees could bear costs of at least 35% more, and sometimes several times higher, than the largest firms (500+ employees). This review by Chittenden et al, and other studies are referenced in Lancaster et al, *Cost of compliance with health and safety regulations in SMEs* (HSERR 174, 2003), p. 1.

Figure 1.3: Cost of complying with health and safety regulations in SMEs

Overall spend

<table>
<thead>
<tr>
<th>Organisation type (by employees)</th>
<th>Average Mean Spend</th>
<th>Number of Firms Surveyed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small (0-49)</td>
<td>£4,136</td>
<td>654</td>
</tr>
<tr>
<td>Medium (50-249)</td>
<td>£27,345</td>
<td>648</td>
</tr>
<tr>
<td>Large (250-4,999)</td>
<td>£419,691</td>
<td>219</td>
</tr>
<tr>
<td>Very Large (5,000+)</td>
<td>£628,926</td>
<td>127</td>
</tr>
<tr>
<td>Not Known</td>
<td>£28,784</td>
<td>128</td>
</tr>
</tbody>
</table>

Average spend per employee by size of organisation on Management of Health and Safety at Work Regulations

<table>
<thead>
<tr>
<th></th>
<th>Small</th>
<th>Medium</th>
<th>Large</th>
<th>Very Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small</td>
<td>£111.59</td>
<td>£176.75</td>
<td>£20.89</td>
<td>£15.99</td>
</tr>
<tr>
<td>Medium</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Large</td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>Very Large</td>
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<td></td>
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</tbody>
</table>

Average spend per employee by size of organisation on Risk Assessment

<table>
<thead>
<tr>
<th></th>
<th>Small</th>
<th>Medium</th>
<th>Large</th>
<th>Very Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small</td>
<td>£87.01</td>
<td>£34.03</td>
<td>£14.07</td>
<td>£15.00</td>
</tr>
<tr>
<td>Medium</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Large</td>
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<td></td>
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<tr>
<td>Very Large</td>
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</tbody>
</table>

Source: Lancaster et al, Cost of compliance with health and safety regulations in SMEs (HSERR 174, 2003)

Stakeholder views about health and safety

Confusion about the scope of health and safety regulation

1.22 There is strong support for the objective at the heart of health and safety regulation. There is almost universal agreement – including from surveys of business – that it is important to protect workers’ health and safety.\(^{15}\) Around 75% of citizens agree that “health and safety requirements are a cornerstone of a civilized society”.\(^{16}\)

1.23 Yet the general comments on health and safety made by business owners are frequently critical.\(^{17}\) Some of the small firms who responded to our Call for Evidence were extremely negative when mentioning health and safety in general terms (see Box 1.4) while a recent Government survey found that over a third of SMEs think health and safety regulations are an obstacle to growing their business (see Figure 1.4).

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\(^{15}\) This is confirmed in a wide variety of surveys including by MORI, the Federation of Small Businesses and the HSE.

\(^{16}\) MORI, Attitudes towards health and safety: a quantitative survey of stakeholder opinion (HSE, 2004), p. 11.

\(^{17}\) By general comments, we mean comments along the lines of ‘I think health and safety rules are good/bad’ or replies to similar survey questions by an audience whose degree of knowledge is entirely unknown.
Confusion about the scope of health and safety regulation makes it difficult to interpret these general comments on “health and safety” as reactions to HSE specific policies or actions. There is a low level of awareness among small businesses of specific health and safety regulations that apply to them.¹⁸ Many firms do not recognise the boundaries between different regulators and different regulations. During the course of this review, questions about “health and safety” have prompted comments about fire, disability discrimination, food hygiene, trading standards and other regulations that do not flow from the Health and Safety at Work Act. A number of business owners appeared to believe that their insurer’s practices stemmed from Government regulation while others appeared to be influenced by media stories. Business surveys which describe recent changes to regulation on workplace smoking and assessment of fire risks as “fundamental points of health and safety law” only help to strengthen this confusion.¹⁹

But this does not mean these comments should be ignored. They are important because they show how the actions of organisations and individuals outside of the control of HSE can influence business views of health and safety. And they suggest that health and safety regulators should take an interest in the development and implementation of regulations that firms associate with health and safety. If firms can be helped to comply with associated requirements, this may influence the views of employers on health and safety more broadly.

Health and safety regulation has not changed significantly in recent years

There is also evidence that recent changes to regulations that firms associate with health and safety – including fire, food and smoking regulations – but which are not the responsibility of the HSE help explain why many employers believe health and safety regulation has grown in recent years.

In fact, the regime established by the Health and Safety at Work Act and the Management of Health and Safety at Work Regulations has not changed significantly since the early 1990s and the introduction of the “six-pack” (see Box 1.5).²⁰ Since then, the overall volume of health and safety regulation has actually fallen significantly. In May 1994, there were 367 sets of health and safety regulations, and 28 pieces of primary legislation in force in Great Britain for which the Health and Safety Executive had responsibility.²¹ The number has almost halved in the last 13 years with the removal of 12 Acts and 175 sets of regulations. Over the last 18 months alone, 60% of forms previously required by HSE have been removed as part of their better regulation simplification programme.²²

²² The HSE currently has 54 different forms for collecting information from businesses. This has reduced from 127 following a recent internal review. A further 9 forms are currently being considered for removal.
Figure 1.4: Regulations which SMEs consider to be obstacles to business success

Source: BERR Annual Small Business Survey 2006/07
Box 1.4: SME views about health and safety

“Health and safety issues are the bane of my life. I cannot possibly totally comply with the huge mountain of regulations imposed. If I were a multinational I would have an entire department dedicated to this task. As a small business I already have to spend thousands on consultants.”

Forum for Private Business

“I see the inefficiency of the whole thing. You waste an awful lot of time filling in silly forms to cover your back.”

SME Publisher

“I feel that a lot of the requirements are ‘over the top’ and an unnecessary burden on businesses.”

SME Fruit and Vegetable Supplier

“Health and Safety should be about common sense.”

SME Masonry Firm

Views on specific aspects of the health and safety regulatory regime

Specific comments on individual aspects of health and safety regulation are less likely to be critical than more general comments. Large firms – including in lower risk sectors – appear to recognise the benefits of the goal-based approach, especially the flexibility it provides. Some small firms are critical, arguing that some of the activity they undertake in the name of health and safety is inefficient and lacks common sense. Some believe that the law applies to them in a disproportionate way. And some report finding risk assessment difficult. Others, though, are more concerned about health and safety consultants who they fear will exploit them. Some accept the regulatory regime but find it frustrating when they cannot find “definitive information” easily. There is also evidence that those who have most contact with the regulatory regime are less likely to be critical of it. For example, firms who have had contact with them report high levels of satisfaction from the service they receive from the health and safety regulators.

23 FPB response to the call for evidence.
25 Ian Robertson of Albert Bartlett, response to the call for evidence.
26 Tony Langmead of Langmead Masonry, response to the call for evidence.
28 Ibid.
29 Federation of Small Businesses, Whatever happened to common sense (2007).
Box 1.5: The six-pack

The last substantial change to health and safety legislation with an impact on business across the economy as a whole was the implementation of the various European directives that made up the “six-pack” over 15 years ago. These are six sets of health and safety regulations that implemented a series of European Directives covering:

- general management arrangements for health and safety, competent advice, communication and cooperation;
- basic standards for workplace lighting, temperature, ventilation, cleanliness, welfare facilities and drinking water;
- the handling of heavy loads;
- protective equipment, such as gloves and masks, used by individuals;
- computer equipment and the environment in which it was used; and
- construction and use of equipment such as dangerous machinery.

Current initiatives by the Health and Safety Executive and local authorities

1.29 Both the HSE and local authorities recognise the challenges SMEs face in meeting their regulatory requirements and the undesirable consequences from continuing criticism of health and safety. They provide a variety of forums, and support, information and advice services to tackle these issues. These include:

- ‘example risk assessments’ which show in a page or two what a good enough risk assessment for a specific business area might look like. These stress practical actions that employers can take to prevent workplace injury and ill health. They make clear that the process of risk assessment should not be a bureaucratic experience and that bullet points work well in the vast majority of cases. Over the last year, HSE has launched example risk assessments for 29 separate business and work places including butchers, betting shops, offices and call centres. Example risk assessments have been welcomed universally by those businesses we have shared them with during the collection of evidence for this review and have quickly become among the most popular areas of the HSE’s website;30

- an online checklist of the key things businesses must do to comply with health and safety legislation aimed specifically at smaller businesses, and other information targeted at small employers in leaflet and web formats.31 The HSE, businesslink.co.uk and some local authority websites also aim to provide accessible information on health and safety;

- groups to ensure the views of business are fed into the development of both policy and of guidance, including the HSE’s “Small Business Trade Association Forum” and various local authority-led groups;

• telephone support, including through HSE’s free enquiry contact centre called Infoline which receives just under 300,000 calls a year, and by individual local authorities;

• advice and guidance given by HSE inspectors and Environmental Health Officers (EHOs) during inspections, and by HSE Health and Safety Awareness Officers or Local Authority staff at seminars and awareness days; and

• specific industry and local campaigns.

Box 1.6: The Enterprise Strategy, “Enterprise: Unlocking the UK’s Talent”

The enterprise strategy, published alongside the Budget, sets out the Government’s renewed enterprise vision to make the UK the most enterprising economy in the world and the best place to start and grow a business. The strategy focuses our enterprise policies over the coming years on five enablers:

A culture of enterprise – where everyone with entrepreneurial talent – irrespective of age, gender, race or social background – is inspired and not afraid to take up the challenge of turning their ideas into wealth.

Knowledge and skills – a lifelong journey for enterprise education, starting in our primary schools, continuing in our universities and embedded in the workplace, equipping employees and owners with the tools to unlock their entrepreneurial talent.

Access to finance – ensuring that our entrepreneurs and small business owners have the knowledge, skills and opportunity to access the finance they need to make their enterprising ideas a reality.

Business innovation – ensuring that UK business is in position to capitalise on global trends, by helping them develop and successfully commercialise innovative products, process and services; and

Regulatory framework – keeping legislation to a minimum, reducing the burdens of regulation, inspection and enforcement without removing essential protections, and clearly communicating any changes.

The proposed regulation measures will set a radical vision for an improved regulatory enterprise framework for the next ten years, building on the Government’s already strong record on Better Regulation. Health and safety regulation will be considered in the key new policy proposals for regulatory ‘budgets’, exemptions and improving the quality of guidance.


Box 1.7: Anderson Review of Guidance

To address the concerns business has raised over the reliance which can be placed on guidance, the government has asked Sarah Anderson to lead an independent review into the best way to deliver clarity and certainty in guidance. The review will explore the potential to give small business greater certainty that when they have followed guidance that they have complied with the requirements of the law.

The review will report in late Autumn 2008 and will cover guidance in all areas of policy, starting with employment law.

Improving penetration rates and distribution of support on health and safety

1.30 These initiatives have been welcomed by business and business representative groups almost universally. But evidence we have collected during the review suggests that there is scope to improve both knowledge and understanding of them, especially among smaller firms. Finding further ways to improve both access to and awareness of the existing work of regulators was frequently suggested by people we spoke to during the review. For example, we heard high praise for “example risk assessments” in focus group research, but found hardly any small firms had heard of them, even when they were members of the relevant trade association. Some firms found the HSE website intimidating or confusing to navigate. Others struggled to receive clear advice from their local authority or were frustrated that they could not receive more tailored support when they called Infoline.32

1.31 A campaign in Scotland to promote ‘Healthy Working Lives’ may provide a model that could improve business recognition of available Government support. The Scottish Centre for Healthy Working Lives initiative on safer and healthier working provides a free and confidential occupational health and safety service for small and medium sized enterprises.33 It provides simple, tailored single page guidance on specific issues, forms that are free to download, and interactive risk assessments. It had over 30% recognition in its first year and its reach has increased significantly over the last 12 months. Hits and downloads doubled over the last year and 16,500 model forms and documents were downloaded for free in February 2008 alone. While figures should be handled with care, penetration levels appear to be c. 8-9% of Scotland’s 277,000 businesses. If this level of distribution were reached in England and Wales, the distribution of information such as example risk assessments could be boosted by around three times.

1.32 The possible benefits of increased distribution of effective, high-quality information on health and safety both in terms of injury and ill health outcomes and cost for business are large. Reducing the time it takes enterprises in relatively low risk sectors to comply with the administrative requirements of the Management of Health and Safety at Work Regulations by five hours a year would save them more than £150 million pa.34

33 See http://www.sahw.co.uk/.
34 This is based on evidence from the administrative burden measurement exercise. This calculated that it took business 20.5 hours each year at an average wage cost of £18 per hour to comply with the Management of Health and Safety at Work Regulations. Annex B identifies that over 2 million enterprises are within sectors of the economy of relatively overall lower risk of injury and ill health.
Box 1.8: Transformational Government

Sir David Varney, the Prime Minister’s adviser on public sector transformation is leading an ambitious programme of action that will be the foundation for public services that are more personalised to the needs of businesses.

As part of this programme, the number of government websites will be rationalised – by closing down the majority and moving their content to the Government’s two single access websites, Directgov and Businesslink.gov.uk. This will give customers access to the information and services they need with greater speed and ease.

Conclusion

1.33 This chapter has set out the basic regulatory framework for health and safety in the UK. In terms of outcomes, the UK has one of the most successful health and safety records in the world.

1.34 The goal-setting approach at the heart of the UK’s system of health and safety regulation provides important flexibility for many businesses. Larger businesses in particular benefit from the ability to tailor how they meet their obligations to the working practices of their business. Some smaller businesses also fare well under the current system. But for others the regulatory framework creates challenges. It costs smaller enterprises more to comply on a per employee basis than larger ones. Smaller firms are less likely to understand and meet their health and safety obligations, and may not know what support is available from regulators.

1.35 These issues are recognised by HSE and local authorities who provide a variety of information, advice and guidance to help businesses and this support is regarded highly by those that use it. But it is not as well known as it could be. An initiative in Scotland to promote ‘Healthy Working Lives’ may provide a model that could improve penetration rates.

1.36 Improving the distribution of free health and safety support could both improve outcomes and save enterprises in relatively lower risk sectors over £150m pa if it led to a reduction of five hours in the time it takes firms to comply with the administrative requirements of the Management of Health and Safety at Work Regulations.

1.37 Improving the distribution of the existing support available from the Health and Safety Executive and local authorities is also important because of the increasingly wide and complex range of influences on workplace health and safety. More and more employers pay third parties such as private consultants for help on health and safety even when more authoritative support is already available for free from HSE and local authorities. They associate requirements imposed by insurers to secure liability cover and by procurers when they bid for contracts with health and safety regulation. Some are influenced by media coverage which portrays health and safety as trivial and bureaucratic. The result is confusion among enterprises about the scope of the health and safety regulatory regime and what it does – and does not – require that they do.
Chapter 2: The Growth of the Health and Safety System and the Impact of Third Parties

“...whether a disproportionate requirement is imposed by HSE, a Local Authority or by an insurer, a client, a college or training body or a funder or investor it still represents wasted resource which could be better used elsewhere and it may...bring legitimate Health and Safety into disrepute.”

Introduction

This chapter covers:

• the development of the health and safety system since 1974, focusing especially on the increasingly important role played by third parties as sources of health and safety support;

• how and why some businesses struggle to know when – and when not – to pay for support on health and safety from third parties, and the impact this has on them and on workplace health and safety; and

• the impact of health and safety requirements that third parties require of employers, focusing in particular on procurement “pre-qualification” schemes and insurers.

The health and safety system has developed significantly since 1974

2.1 The Health and Safety at Work Act set out clear roles and responsibilities for employers, employees, union safety representatives, the public, the Health and Safety Commission and the Health and Safety Executive (now the merged Health and Safety Executive) and local authorities.

2.2 It established a fairly simple health and safety system rooted in the relationships between regulators, employers and their employees and trade unions.

2.3 But the influences on workplace health and safety have extended significantly beyond the relationships set out in 1974. There is now a complex network of sources of health and safety support, advice and information available to both employers and workers which are largely outside the direct control of either the Health and Safety Executive or local authorities (see Box 2.2).

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Third parties are playing an increasingly important role

2.4 Employers are increasingly turning to trade and professional bodies and business networking groups – some with specific health and safety consultancy arms – as key sources of health and safety advice. Business consultants and health and safety experts, lawyers, financial service companies, and occupational health professionals are further important sources of support. As well as the Trade Union Congress and individual unions, workers can turn to representatives of employee safety alongside trade union appointed safety representatives for advice.

2.5 For both employers and workers, the media – at national and local level – serve as both sources of information and significant shapers of opinion for both employers and workers.36 The influence of media coverage is discussed in Chapter 3 and Annex C.

Growth in paid-for health and safety support

2.6 We estimate that there may be more than 1,500 specialist health and safety consultancy firms in the UK – not including general business or financial service consultancy firms that also provide health and safety support to employers.37 Estimates of how many businesses pay for support on health and safety range from under 20% to over 70% depending on size and sector.38

2.7 According to recent analysis, the market in health and safety business support services is worth over £700 million pa in sales and may be approaching £1 billion. It is one of the fastest growing business to business sales sectors in the UK with services to SMEs a key growth area. Much of the support offered is based on the provision of a basic core service, focusing on management systems – including for risk assessment – and helping businesses to meet the requirement for competent advice rather than more specialist or technical support.39 A key part of the offer from some consultants is support for a business if specific problems arise. The helpline of one large consultancy, for example, receives 20,000 more calls a year than HSE’s Infoline (although this also provides employment law advice).40

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36 See, for example, Vanilla Research “Perceptions of the Health and Safety Regime” (2008), p.12.
37 Estimate based on searches of FAME and KOMPASS databases.
Chapter 2: The Growth of the Health and Safety System and the Impact of Third Parties

Figure 2.1: An illustration of the range of organisations that influence health and safety outcomes

- Law and enforcement (including inspection):
  - HSE
  - EU-OSHA
  - LSC
  - Local authorities
  - EU
  - Fire auths
  - SCHWL
  - Workboost Wales
  - NHS+

- Third party organisations (private sector, trade associations, certification bodies, trade unions, insurers etc):
  - Consultants & experts
    - ISCA
    - IOSH
    - ROSPA
    - BSIF
    - IIRSM
    - BSC
  - Insurers
    - FSB
  - Lawyers
    - Accountants
  - Sectors
    - Employer groups
  - Trade unions
  - PPE suppliers
  - CA
  - ECIA
  - SSCs
  - First Aid, eg St John's Ambulance, Red Cross
  - Construction Skills
  - CITB
  - General Training Providers
  - SFEDI
  - Quality Institutions, eg BSI, ILO

- General business advice/support (including some OSH advice):
  - RDAs
  - SBS
  - LSPs
  - B. Link
  - GOs
  - NHS+

- Training:
  - Banks
  - Lawyers
  - Insurers
  - Accountants
  - Employers
  - Sectors
  - Employer groups
  - Trade unions
  - PPE suppliers
  - IOD
  - OSS
  - LEAs
  - NHS+

- Supply chain management (procurement, pre-qualification schemes):
  - LSC
  - LA schemes
  - Investors
  - Companies
  - PSL

- Government/agency:
  - HSE
  - EU-OSHA
  - RDAs
  - SBS
  - LSPs
  - B. Link
  - GOs
  - NHS+

- OGC

- Pre-qualification schemes, e.g.
  - CHAS, SAFE
  - CONTRACTOR, Trade assoc
  - schemes

- Unions, schools & vocational institutions

- Quality Institutions, eg BSI, ILO
Figure 2.2: An illustration of the major influences on workplace health and safety

1. Regulators e.g. HSE, LAs, EU, Fire Authorities
2. Other central and local government bodies
3. Business professionals e.g. lawyers, bankers, accountants etc
4. Training organisations/award bodies
5. Employee organisations
6. Organisations for business, e.g. FSB, CBI
7. OSH specialist advisors, e.g. ROSPA, IOSH, BSC
8. Supply chain organisations
9. Certification and Standards Bodies
10. Trade/sector associations, e.g. BPIF, ECA, FMB
Figure 2.3: Sources of information on health and safety

Source: Lancaster et al, Costs of Compliance with health and safety regulation in SMEs
The cost and impact of health and safety support

2.8 Consultancy and support fees vary significantly. A consultant aiming for a salary of £30,000 a year is likely to charge around £50 an hour or around £350 a day.\(^{41}\) Highly specialised consultants can charge thousands of pounds per day – especially when they provide support on particularly hazardous activities.\(^{42}\) One online health and safety training course aimed at small and medium-sized office firms costs £500 + VAT while a risk assessment package from the same firm is over £600.\(^{43}\) On-going support can be significantly more. One HSE inspector discovered a laundry spending £200 a month for health and safety support that did not even include specialist help with risk assessment.\(^{44}\) In addition, both consultancies and business associations also publish general all-in-one health and safety guides for employers to buy – although the market for these guides may be falling.\(^{45}\)

Growth in membership of professional health and safety organisations

2.9 Since the early 1990s, there has been a significant increase in the number of health and safety professionals. Membership of the Institution of Occupational Safety and Health (IOSH), for example, has increased from 6,000 to around 33,000 since the early 1990s. About 11% of members are based outside the UK and around 5,000 are in the ‘affiliate’ category of membership and may not be practising as health and safety professionals.

2.10 IOSH estimates that approximately 3,500 of its members are self-employed consultants or working within consultancies.\(^{46}\)

Quality of paid support is variable

2.11 There is a role for consultants and other third parties in providing paid support to business on health and safety regulation.\(^{47}\) Where they have detailed knowledge of a particular industry sector, it can be more efficient for third parties to help an employer turn their general duties under the *Health and Safety at Work Act* and the *Management of Health and Safety at Work Regulations* into actions that reflect the specific circumstances of the employer’s workplace than for the employer to attempt this task themselves. They can also provide employers with access to competent advice on specific health and safety issues where this is not already available in-house. Using consultancy services is likely to be cheaper for firms than undertaking the tasks in-house when they relate to activities that are uncommon in that firm.

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\(^{42}\) Response to Call to Evidence no. 61 reported £6,000 plus VAT for a few days of specialist consultancy regarding the Dangerous Substances and Explosive Atmospheres Regulations.

\(^{43}\) Croner charge almost £700 for their risk assessment and telephone support package and almost £600 for a package of health and safety support in offices, “Office Safety Trainer”.

\(^{44}\) Personal verbal evidence to the review


\(^{47}\) See Department for Business, Enterprise and Regulatory Reform, *“Regulation and Business Advice: A report by the Better Regulation Executive”* (2007).
2.12 But the experience of employers who use consultants for health and safety support is variable. While some report good experiences, others pay for support they could undertake in-house more cheaply or take action, on the advice of consultants, that is not required by the law and which provides little or no benefit to workplace health and safety.48

Box 2.1: Guidance about taking advice

“You probably already deal with most issues yourself, with the help of your staff, and develop the necessary expertise in-house. You should do the same for health and safety – managing it is good for your business.”

HSE, Getting Specialist Help with Health and Safety

Employers struggle to act as informed consumers of consultancy support

2.13 In many cases employers struggle to act as informed consumers of consultancy support because they believe both the cost of managing health and safety in-house and the benefits of help from a third party are higher than they are. Smaller businesses in particular struggle to act as informed consumers of third party advice: knowing when – and when not – it is in their interest to buy in health and safety support. This is because:

• they may not know what the law does – and does not – require;49

• partially because of this lack of knowledge of their legal responsibilities, they are vulnerable to third parties who exaggerate what the law requires and / or the difficulties of self-compliance50 (see Box 2.3);

• they may not know what free advice and support is available from the HSE or have concerns about asking for help from a regulator for fear it could lead to enforcement action;51

• the cost of finding out what they need to do and what government advice is available can be high;52 and

• even if they are unhappy with the service they receive, they can find themselves tied into a contract for a number of years before they can move.53


51 Wright et al, A literature review of interventions to improve health and safety compliance (HSE RR 196), p. 38.


Box 2.2: Quotes from the websites of health and safety consultants

“We are living in an increasingly litigious society and managers and owners face a
growing number of responsibilities and obligations especially in the field of Health
and Safety which is increasingly complex and is crucial to the smooth running of
any organisation.” 54

“Health & Safety is complicated – our service is not.” 55

“Health and safety compliance in the workplace has never been more important, the
need for enterprises to comply to [sic] the increasing raft of legislation is motivated
by the Health and Safety Executive, Factory inspectors and the legal profession.” 56

2.14 Third party support can be more than financially expensive. Poor quality advice and
support can also lead some to become unduly complacent, believing – wrongly – that
their consultant has enabled them to meet health and safety regulatory requirements.
Instead, they may have instigated overly bureaucratic processes or actions that are
disproportionate, and which do not make their workplaces, their employees or the
public, safer.

2.15 Unions and employers, and inspectors and health and safety professionals all report
examples of poor quality advice leading businesses to undertake overly bureaucratic
activity in the name of health and safety. Employers are paying for folders of written
generic risk assessments and health and safety policies with little or no relevance to
their specific workplace as well as for complex paperwork trails which are not
appropriate for a straightforward, low-risk business. They are paying to test all of their
electrical equipment every year, for instance, when this is not a regulatory requirement
and training all staff in manual handling even when this is not required. 57 Sometimes
the consequences of poor advice from consultants can be fatal as shown by the 2005
death of a gardener in Yorkshire. 58

Helping employers become more informed consumers of consultancy support would improve outcomes and save them money

2.16 Helping employers of firms where the risk of injury or ill health is relatively low become
more informed consumers of support from consultants would both improve health and
safety outcomes and save them money.

54 Source: http://www.croner.co.uk.
55 Source: http://www.uksafetycompliance.co.uk.
56 Source: http://www.healthandsafety.co.uk/#search. See also www.indicator.co.uk.
57 See, for specific examples, British Furniture Manufacturers response to call for evidence; Charlotte Faint response to the call
for evidence; Usdaw response to the call for evidence; Federation of Small Businesses response to the call for evidence;
Hereford and Worcester local authorities response to the call for evidence.
58 Source: http://www.yorkshirepost.co.uk/news/Yorks-council-to-pay-40k.3980257.jp.
2.17 If between 10 – 20% of the enterprises in low risk sectors turned to the HSE, local authorities or other sources of government support instead of paying for a day’s basic health and safety consultancy it would save them between £70 and 140 million a year. 59

**The experience of employers who have received poor quality support also helps fuel negative perceptions of health and safety**

2.18 The experience of employers who have received poor quality health and safety advice has an impact beyond their individual workplaces. It tarnishes their views of health and safety more widely, adding to the belief already discussed in Chapter 1 that the volume of – and bureaucracy associated with – health and safety regulation is increasing.

2.19 Evidence to the review suggests employers do not easily distinguish between the advice and recommendations of the consultants they employ, and legal requirements. As one response puts it, an employer who has been persuaded to test all of their portable electrical equipment every year, and to keep extensive records of it “could well argue that ‘health and safety’ is over-bureaucratic and requires too much form-filling…[when] the law itself does not require that much bureaucracy.” 60 Similarly, an office-based employer that has paid hundreds of pounds for multiple risk assessment documents when only one is necessary is just as likely to view the legal requirement in the Management of Health and Safety at Work Regulations as the reason for their excessive paperwork as the consultant they employed.

**Box 2.3: Business can struggle to act as informed consumers of health and safety third party support**

“…managers can easily fall prey to doing things that are bureaucratic but easily measured rather than managing risk…[for example] there are still organisations going around trying to persuade employers that the law requires them to PAT test all portable electrical equipment every 12 months…[it is] easy to see that a small business who has fallen for this, pays an expert to come… and keeps extensive records of the testing could well argue that ‘health and safety’ is over-bureaucratic and requires too much form-filling. But the law itself does not require that much bureaucracy…many organisations invest heavily in ‘manual handling training’ for their staff and keep meticulous records of who has attended because they believe this is a requirement…much of the training is pointless and they would be far better investing money and time in ways of reducing the manual handling risks in the first place.”

Usdaw response to the call for evidence

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59 Based on an assumption that c. 40% of enterprises in these sectors currently pay for support from consultants, and on a consultant charging £350 a day.

60 Usdaw response to the call for evidence.
Third parties increasingly imposing health and safety standards of their own

2.20 In addition to being important sources of health and safety support, third parties are increasingly imposing their own health and safety requirements on business. More and more often, procurers, insurers and training providers demand health and safety assessment, compliance and/or forms of pre-qualification from clients that want to work with them. For many of the employers that face them, these requirements have become a significant source of health and safety bureaucracy.

Pre-qualification schemes

2.21 Pre-qualification schemes assess health and safety standards in firms when tendering for work with clients. These assessments look for evidence of contractors’ basic health and safety credentials. In theory, businesses should benefit from these schemes. Instead of having to go through the same (or a very similar) process every time they bid for work, firms can point to their membership of a scheme to demonstrate that they meet the health and safety standards required.

2.22 But, as recent work by the National Occupational Safety and Health Committee of the Royal Society for the Prevention of Accidents (“RoSPA”) has shown, there are now multiple different pre-qualification schemes covering different industry sectors and client groups which rarely recognise each other. This means a business may be able to show the required health and safety standards under one scheme but there is generally no recognition of this under the criteria of a second scheme. The result is firms paying to submit the same or similar supporting evidence on different forms to different schemes.61

2.23 Most schemes are driven by existing legal requirements, including those in the Management Regulations and the Health and Safety at Work Act as well as by regulations specific to a sector or task. But they can require firms in lower risk sectors to meet standards rightly required in higher risk sectors, like construction. For example, while the Contractors Health and Safety assessment scheme (“CHAS”) aims to cover anybody who wants to trade with a local authority, “some of its questions are mainly or fully applicable only to construction companies.”62

Pre-qualification schemes have the potential to improve health and safety outcomes

2.24 The assessment process undertaken by pre-qualification schemes has the potential to drive up standards of health and safety. Each year, scheme assessors are in contact with tens of thousands of firms. CHAS alone has over 17,000 registered firms, two thirds of whom are either micro or small employers. Much of the contact between assessors and firms is focused on helping employers meet scheme requirements as a majority of firms are likely to fail their initial assessment.63

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63 CHAS estimate that 70% of contractors fail on their initial application to the scheme. See “Transcript of Proceedings, 23 May 2007”, p. 16.
But also increase bureaucracy and can serve as a barrier to firms bidding for work

2.25 But while they can help drive up health and safety standards overall, pre-qualification schemes add to the bureaucracy firms face and can also serve as a barrier to some – especially smaller firms – bidding for work. Almost all schemes charge firms for assessment with fees ranging from just over £100 a year to well over £500. They also require firms to produce significant – usually written – supporting evidence. And at least some – and in many schemes, all – of the assessment of firms is desk-based rather than face-to-face so the possible benefit of personal and tailored support is lost.64

2.26 Moreover, it can lead to a number of different standards being applicable and an associated uncertainty about the appropriateness of different standards/schemes for different clients/sectors. Apart from adding to additional paperwork in subscribing to multiple schemes, it can lead to duplication of effort, wasted time, as well as additional financial cost for SMEs. Not surprisingly this can result in frustration. More broadly however these requirements can serve to undermine the business case for better health and safety, and can reinforce negative stereotypes of health and safety as a burden.

2.27 As with the information and advice support provided by consultants, some firms struggle to distinguish between the standards of pre-qualification schemes and genuine legal requirements, especially as many of the schemes make direct reference to specific regulations.

2.28 As RoSPA’s recent work argues, the burden pre-qualification schemes generate for firms could be eased by the development of mutual recognition and a more common approach between schemes. This would remove unnecessary bureaucracy for firms while also helping them to improve workplace health and safety and avoid excessive and costly consultancy support. For example, mutual recognition of only 2 of around 35 national “pre-qualification schemes” could save the c. 30,000 members of the schemes between £3.5 and £12.5 million pa in fees alone.65

2.29 In addition, and although it is beyond the scope of this review, the use of health and safety pre-qualifications schemes by public sector organisations raises the issue of whether, in certain cases, the use of pre-qualification schemes has an impact on government efforts to enable small firms equal access to procurement opportunities in the public sector.


65 Based on membership of CHAS and Safecontractor.
Box 2.4: Anne Glover’s review on improving SME access to Government contracts

Anne Glover, Chief Executive of Amadeus Capital Partners, is leading an independent government inquiry to identify and examine the barriers faced by small firms when bidding for government contracts, and the practicality of setting a 30% monetary target for government procurement opportunities to be secured by small firms.

The review will provide advice to the Chancellor and Secretary of State for Business, Enterprise and Regulatory Reform on:

- how much progress has been made on implementing the recommendations in the 2003 report Government: Supporter or Customer, produced for Government jointly by the Better Regulation Task Force and the Small Business Council;
- what impact these and other actions taken in the last 5 years have had on improving SME access to Government contracts, with particular reference to innovative young companies;
- how SMEs’ success in winning public sector contracts, including sub-contracting, could be more reliably measured;
- the practicality of setting a goal for small and medium enterprises to win 30 per cent of all public sector business in the next five years; and
- what actions Government should take in order to make further progress over the next 5 years, within the scope of EU procurement rules and the overarching policy objective of value for money.

Insurers

Insurers as a significant and quasi-regulatory influence

2.30 Insurers and insurance brokers play a significant role in the health and safety system. Some responses to the review argue that they have even become “the main regulators in the regime.”66 We found a widespread awareness among firms that insurers take an interest in health and safety arrangements.

2.31 Insurer interest in issues covered by health and safety regulation chiefly stems from their provision of employers’ liability insurance, engineering insurance67 and group income protection or health-related cover. Employers’ liability compulsory insurance (ELCI) pays for compensation and legal costs if an employer is sued and judged responsible for death, injury or illness to an employee. ELCI is compulsory for private

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66 The Association for British Furniture Manufacturers response to call for evidence. See also R.F. Kitley response to call for evidence; Thompsons Solicitors response to call for evidence.

67 Engineering insurance is packaged with testing services that fulfil requirements for independent checks on equipment that could fail disastrously, such as lifts and heavy machinery.
and third sector organisations employing anyone other than their owner and his or her family. We estimate that 18 – 31% of SMEs in our low risk sectors require cover, and this includes all firms employing more than a few people. The proportion of small low risk firms with engineering insurance or group income protection or health-related insurance is believed to be fairly low.

2.32 Given the confusion among some firms about what health and safety involves, as described in Chapter 1, it may well be that some of the influence attributed to insurers is associated with other products that they provide. Property/fire, public liability, product liability and motor vehicle cover insure against risks that were among those which some firms linked to health and safety in talking to us. There is very widespread take-up of these products as they are often required as a condition of doing business.

2.33 In order to manage their exposure to risk, insurers take on a number of roles that are similar to those of a regulator:

- they stipulate conditions on employers which, if not met, may lead the insurer to charge more, or in extreme cases to withdraw or invalidate their cover;
- they may require employers to demonstrate compliance through completion of forms and submission of evidence before they agree to provide cover;
- they provide personalised advice to firms after visiting, through the use of risk advisors and brokers; and
- they provide general advice and guidance on health and safety issues.

2.34 Insurers and insurance brokers are in fairly regular contact with their clients. Insurers write to clients regularly and also employ risk advisors who visit firms. One insurer estimates it visits over 40,000 firms a year across all its liability business. Insurance brokers tend to visit their clients at least annually.

Benefits and disadvantages of insurer influence on health and safety

2.35 The influence of the insurance industry brings both benefits and challenges.

2.36 Insurers share an interest with regulators in reducing injury and illness in firms. They work to prevent harm to employees in firms holding ELCl or group health insurance, and to members of the public who interact with firms holding public liability insurance.

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68 Estimate method: the range of the estimate is chiefly due to uncertainty over how many firms will be exempt from ELCl requirements due to employing only close family members. We have assumed all firms with 5+ workers will need cover, and from 25% to 75% of firms employing 1-4 people, given that exemption. Low risk enterprises worked out as private sector firms in our low risk sectors (SIC G,H,J,K,M) plus 45% of non-profit organisations across all sectors (as no sector breakdown available and 45% of ALL enterprises are in those low risk sectors). Lower bound is: (low risk enterprises employing 5-249 people) + (25% of low risk enterprises employing 1-4 people) / all low risk enterprises. Upper bound calculated as before but with 75% of low risk enterprises employing 1-4 people. On this basis, the proportion of firms which require ELCl varies considerably by sector, with coverage in the Hotels & Restaurants sector especially high at 43% to 70%. HSE research suggests compliance with the requirement to have ELCl is high, c. 99%.

2.37 They offer guidance and advice to their clients. They produce specialised publications and interactive tools aimed at specific business types, e.g. shops, salons, offices, hotels, or restaurants. Some insurers provide free web-based advice and risk management training. At least one insurer offers a health and safety telephone advice-line free to its customers. Insurance brokers often promote guidance developed by other organisations, whether insurers or HSE. Some insurance brokers negotiate to get their clients advice from the risk advisors in insurers, and some arrange for health and safety training or consultancy at free or reduced rates.

2.38 Insurers try to link firms’ premiums to their risk level to provide an incentive for responsible behaviour. This can lead them to reward good health and safety performance or investments. Large firms, in particular, can benefit from premium reductions that are significant enough to motivate action.

2.39 But the interests of the insurance industry and health and safety regulators diverge in important ways. For example, the prime purpose of ELCl is to “ensure employers have funds to meet costs arising from employees’ litigation for compensation, and...not to motivate health and safety or rehabilitation”. Insurers and brokers are primarily motivated by profit, and their interest in preventing harm is secondary. And while insurance products can provide incentives for firms to manage health and safety well, the way the market works means these incentives are weakest for small firms and they can fluctuate.

2.40 Insurers do not always match premiums precisely to risk, which weakens the financial incentive for good practice. This occurs among small low risk firms, where the cost of accurately estimating risk generally outweighs the benefit to the insurer. For a premium of less than £10,000, insurers are highly unlikely to visit a firm as part of their assessment of its risk. For small firms with good records it can be very frustrating to be assessed alongside other firms in their industry with less good records when insurance prices are set. Some trade associations have developed schemes under the ABI’s “Making the market work” programme to give low-cost evidence of good performance, but even for participants the financial incentive is likely to be significantly less than for large firms.

2.41 The insurance industry is cyclical and risk prediction is difficult, especially for employers’ liability. This can lead to price shocks for clients. From 2002 onwards, steep rises were seen to premiums for Employers’ Liability Compensation Insurance cover following a long period of unprofitable returns (see Box 2.7).

2.42 Insurers are keen to limit their exposure to risk and advising caution is fairly cost-free for them. They also have an interest in keeping records that could be helpful in the event of a court case. This may lead to their advice being at odds with that of regulators. The requirements insurers ask firms to meet may be more burdensome than required by health and safety regulation – even though some experts have told us they

70 See Association of British Insurers response to call for evidence.
71 Wright and Marsden, Changing business behaviour – would bearing the true cost of poor health and safety performance make a difference? (HSE CRR436/2002), p xi.
72 Verbal evidence from insurer to review team.
doubt that some of the requirements insurers ask firms to meet would provide much advantage in the event of a claim being made.

2.43 The ABI’s “Making the Market Work” scheme is clear that firms must be able to demonstrate clearly that they meet HSE guidance on best practice rather than minimum standards. During the call for evidence, businesses have complained of their insurer requiring additional paperwork, more detailed risk assessments of minor hazards and elaborate storage facilities for materials which an HSE inspector would not demand.

2.44 Firms can view insurer advice as flowing directly from Government requirements. Employers are often unaware of when they are being asked to do something by an insurer because it is a regulatory requirement, and when it is to provide protection in the event of any possible future action or claim against liability insurance cover. This leads to HSE potentially being both blamed for advice it would not endorse and associated with a focus on paperwork it does not require.

Box 2.5: UK liability insurance – key performance figures

ELC1 insurance has not been profitable for the insurance industry over recent years, before investment is considered. The figures below show key ratios on which insurers evaluate their profitability.

Figure 2.4: graph of underwriting result (profit indicator) on liability insurance

Source: ABI (general liability statistics). NB 2006 data available but not shown due to affect of a one-off transfer.
Conclusion

2.45 Third parties play a significant role in shaping how employers experience and feel about health and safety. Helping employers become better informed consumers of support from consultants and easing unnecessary burdens from procurement pre-qualification schemes and insurers would both improve health and safety outcomes and save businesses money.
Chapter 3: Media Coverage of Health and Safety

Introduction

This chapter examines media coverage of health and safety. In particular:

- the tone and extent of media coverage of health and safety in the UK;
- its possible impact on views of health and safety in three areas:
  - Underpinning criticism of the current health and safety regulatory regime;
  - Linking health and safety to regulatory regimes and activity outside of the control of the Health and Safety Executive; and
  - Influencing how some employers calculate the likely impact of the risks they face, especially from civil claims; and
- existing efforts by the HSE and local authorities to respond to media coverage of health and safety.

Media coverage of health and safety in the UK

3.1 The tone of much of the media coverage of health and safety frustrates health and safety professionals of all types – it has been highlighted as an issue throughout responses to our call for evidence. But that alone does not mean that it is important. The key question for the review is whether these stories matter. Is there evidence that they are having an impact on the behaviour of employers or the public in a way that harms health and safety outcomes? Is the coverage undermining the confidence of society in our health and safety system?

More coverage of health and safety than equivalent regulatory regimes

3.2 It appears that health and safety receives more attention than is given to other similar regulatory regimes. There are approximately 48,000 written articles referring to health and safety published in the UK each year.

3.3 In an average month, there is three times more media coverage of health and safety than of “food safety” and “red tape” combined.
Some media coverage of health and safety incidents and broader issues is serious and in-depth. Local newspapers are more likely than national ones to report accidents at the workplace, their impact on families and prosecutions of employers for health and safety violations. Radio coverage is also more likely to focus on serious issues – and explore them in greater depth. Coverage that mentions the Health and Safety Executive is more likely to be positive in tone than that of ‘health and safety’ more broadly.

Nonetheless, journalists often portray health and safety in a trivial way or as either unnecessarily bureaucratic or overly complicated, especially in written articles in the national press. Some exaggerate or appear to distort facts.

**Box 3.1: Examples of media stories**

- “Health and safety purge of the park benches that are 3 inches too low”
  *Daily Mail* 2 June 2007

- “Health and safety rules trip up pancake race”
  *Daily Telegraph* 7 February 2008

- “Firefighters banned from using stepladders”
  *Evening Standard* 18th January 2007

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74 Based on analysis of Lexis Nexus search over 90 days before 9 April 2008.
76 TUC, “Health and Safety Myths.”
3.6 One example is the claim that health and safety regulators have banned conkers (or require goggles be worn to play conkers). This has been presented as an evidenced fact in many media articles but is actually a myth. The claim appears to have its real-life basis in an incident in October 2004 when the head teacher of a primary school in Carlisle bought some safety goggles for pupils to wear when they played conkers. He argued it was a “sensible” precaution to address the possibility of litigation if a child were to be injured by bits of conker getting into their eyes.\(^{77}\)

3.7 HSE did not support this individual decision. In fact, with support from the TUC and others, it has continually challenged the idea that it is a legal requirement to wear goggles when playing conkers: “if kids deliberately hit each other over the head with conkers, that’s a discipline issue, not a health and safety problem.”\(^{78}\) A health and safety professional body sponsored the world conker championship last October. In spite of these efforts, the claim has continued to reappear periodically, and is frequently used by those who wish to make negative arguments about health and safety.\(^{79}\) Other similar media stories are examined in Annex C.

3.8 As the history of the conkers story shows, articles on health and safety can leave a significant impression which can be difficult to correct once created.\(^{80}\) As the Chair of the Health and Safety Executive has recently suggested, “there is a lot of press coverage of what tend to be one-off incidents, but which very quickly get turned into common practice, and interpreted as such in the media”.\(^{81}\)

3.9 The tone of media coverage of health and safety in other countries appears to be different. As the CBI noted in its response to the review “there are wide ranges of health and safety systems across EU Members States and internationally…at present they do not appear to be suffering from the type of ridicule that is currently seen in the UK.” We have not discovered the same trivialisation of health and safety issues by the media in Australia, the USA, the Netherlands, Germany or Spain.\(^{82}\)

**The impact of media coverage of health and safety**

3.10 It is hard to demonstrate a direct link between media coverage of health and safety and the behaviour of specific firms.

3.11 There is evidence, however, that media articles help to shape perceptions of health and safety and of regulation more broadly, among both employers and the wider public. This is important for three reasons:

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\(^{78}\) See [http://www.hse.gov.uk/myth/september.htm](http://www.hse.gov.uk/myth/september.htm). Further examples of the trivialisation of health and safety are in Annex C.

\(^{79}\) See [http://www.hse.gov.uk/myth/september.htm](http://www.hse.gov.uk/myth/september.htm); TUC, “Health and Safety Myths: looking at the truth behind the headlines” (2006); Mail on Sunday “Now pupils are banned from throwing paper planes,” 18 June 2006; Ian Pierce, Playing it Safe: The Crazy World of Britain’s Health and Safety Regulations (The Friday Project, 2007).

\(^{80}\) MORI, Attitudes towards health and safety: a quantitative survey of stakeholder opinion.


\(^{82}\) CBI response to call for evidence. Review team analysis of USA, Australia, Spain, Germany and the Netherlands.
• articles that trivialise health and safety appear to have an influence on how some employers view the current health and safety regulatory regime, those who enforce it and regulation in general;

• articles that link health and safety to areas that are outside the responsibility of the regulator make the Health and Safety Executive appear accountable for activity over which it has no control, as well as add to the confusion of some employers about their responsibilities under health and safety legislation, already discussed in chapters 1 and 2; and

• media coverage can have a disproportionate effect on how some employers calculate the likely impact of the risks they face, especially from civil claims.

**Some media coverage trivialises health and safety regulation**

3.12 Stories that trivialise health and safety do not appear to be having a significant impact on business or public views of the importance of ensuring workplaces minimise the risk of injury and ill health to workers and the public. As we have already discussed, there remains overwhelming consensus that protecting employees and the public at work is important.

3.13 But specific articles may have an impact on the views of health and safety regulation of those that read them. There is evidence that some criticisms appear to be based on media reports rather than personal experience. For example, in research produced for this review, some small and micro business owners complained that health and safety regulation too often focused on trivial issues – like banning children playing conkers or threatening public firework displays. These responses were unprompted and occurred even where their business activity had nothing to do with these issues.83

3.14 Unions and campaigning groups, business representative bodies, inspectors and health and safety professionals all argue that media coverage is undermining support for health and safety regulation. The British Chamber of Commerce believe that media coverage “has helped to fuel negative perceptions and cynicism about health and safety and its value or lack of it.”84 Campaigners suggest that by focusing on trivial issues – like schools banning conkers – and by skating over serious ones – like the number of deaths or serious injuries of employees at work – journalists encourage not only employers but the wider public to underestimate the importance of workplace health and safety.85

3.15 Environmental Health Officers believe that media coverage which portrays them as overzealous or overly bureaucratic can also have an impact on their efforts to foster a sensible safety culture at some workplaces.86 They argue that it means employers are less likely to view them in the same way as fire officers – as people whose key role is to save lives or protect people from harm. This leads some businesses to take their advice

84 BCC response to the call for evidence.
85 Telephone interviews with members of FACK in March 2008.
86 Dumfries response to call for evidence; Berkshire response to call for evidence. See also West Midlands response to call for evidence; Merseyside response to call for evidence; Coventry response to call for evidence; Avon response to call for evidence.
less seriously than they should. One response to the call for evidence contrasts the speed with which businesses respond to practical requests from a fire officer to similar requests from a local authority health and safety officer.87

**Media coverage adds to confusion about the scope of health and safety regulation**

3.16 Only around a quarter of UK print stories that refer to health and safety mention the Health and Safety Executive.

3.17 Journalists often use health and safety as a convenient tagline to convey arguments on broader issues like levels of bureaucracy or the burden of regulation. They also associate health and safety with activity required by insurers to secure insurance cover or issues for which regulators other than the HSE are responsible, like food hygiene or building regulations.88 Equally, in some cases, restrictions on and cancellations of activities are unfairly attributed to insurers when in fact the issue is either that cover has not been bought, or the overall cost. Recent examples range from the possible introduction of new labels on wine bottles to the need for a signed disclaimer before a customer can take home food from a restaurant, to changes to the height of a park bench.89

3.18 This coverage is important because it helps to further fuel the divergence between the actual responsibilities of the Health and Safety Executive, and public and business perception of the boundaries of health and safety regulation (as already discussed in chapters 1 and 2). It can add to business confusion about the scope of health and safety regulation and what they need to do to meet their responsibilities. And it appears to have the most impact on those businesses that are the main focus of this review – low risk, smaller firms who are both less likely to have contact with health and safety regulators and to know what the law actually requires.90

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87 Avon Environmental Health Officers response to call for evidence.
88 See, for examples, responses to the call for evidence from FACK, TUC, and the ABI.
90 See, for example, Vanilla Research, “Perceptions of the Health and Safety Regime,” esp. pp. 15-16.
Box 3.2: Views of media coverage from responses to the Call for Evidence:

“Most media stories critical of the H&S system are misinformed, exaggerated or distorted. Very rarely does the issue they report relate to regulations or regulators; usually it features H&S officers who, if the report can be believed, have misinterpreted law or guidance, or are driven by fear of claims…..”

 Avon Environmental Health Officers

“Most media stories about health and safety do not actually relate to H&S in the workplace but to public safety, food hygiene and restrictions imposed by insurers and others but blaming them on health and safety has become a convenient but false excuse.”

 FACK

“An analysis of virtually all the stories in the press relating to “health and safety” are actually nothing to do with occupational health and safety.”

 TUC

“Unfortunately there is a regular stream of media articles that are critical of our health and safety system and/or allege that insurers are blocking events due to health and safety reasons. In our experience, these stories are rarely based on fact. Often organisers are blaming health and safety reasons or insurers when they have wanted to cancel events for other reasons.”

 ABI

The impact of media coverage on how some employers calculate the likely impact of the risks they face, especially from civil claims

3.19 It is four years since the Better Regulation Task Force concluded that the “compensation culture” was a myth but that the perception of its existence – driven by media coverage – had a significant impact on the behaviour of both public and private employers.91

3.20 The position appears to be the same today. While the Association of British Insurers has recently referred to “an increasingly litigious culture” and there is evidence that employers in some places in the UK are more likely to face a claim than others, the overall number of employers’ liability claims fell to a five year low in 2006/7.92 Personal injury claims rose by 5.4% in the same year – but this was because an increase in the number of motor-related claims masked a decline in workplace claims. These have fallen by around a quarter overall since 2001/2.93

However, nine out of ten workers who are made ill or injured at work still do not receive any compensation at all. When they do, the average settlement is around £7,500 with most less than £5,000.\textsuperscript{94} ABI figures suggest that around 40% of each settlement is used to pay legal fees, and it may be as much as 93% for claims under £5,000.\textsuperscript{95} This makes insurers inclined to settle cases rather than contest them which may fail to deter unfounded claims. The costs of increasing pay-outs by insurers are passed onto businesses through higher premiums – whilst each actor in the system is behaving rationally, the cumulative effects of this may be unsatisfactory.

**Box 3.3: Number of claims notified to DWP Compensation Recovery Unit**

These figures include all compensation claims made, whether they were rejected, settled or litigated. Source: DWP

<table>
<thead>
<tr>
<th>Year</th>
<th>Clinical Negligence</th>
<th>Employer liability</th>
<th>Public Liability</th>
<th>Motor</th>
<th>Other</th>
<th>No liability</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000/01</td>
<td>10,890</td>
<td>97,675</td>
<td>94,000</td>
<td>401,740</td>
<td>2,882</td>
<td>4,933</td>
<td>612,120</td>
</tr>
<tr>
<td>2001/02</td>
<td>9,773</td>
<td>97,004</td>
<td>100,663</td>
<td>400,434</td>
<td>1,843</td>
<td>4,409</td>
<td>614,126</td>
</tr>
<tr>
<td>2002/03</td>
<td>7,973</td>
<td>92,915</td>
<td>109,441</td>
<td>398,870</td>
<td>2,168</td>
<td>4,179</td>
<td>615,546</td>
</tr>
<tr>
<td>2003/04</td>
<td>7,109</td>
<td>79,286</td>
<td>91,177</td>
<td>374,740</td>
<td>1,881</td>
<td>2,993</td>
<td>557,186</td>
</tr>
<tr>
<td>2004/05</td>
<td>7,196</td>
<td>77,765</td>
<td>86,966</td>
<td>402,892</td>
<td>2,194</td>
<td>2,269</td>
<td>579,282</td>
</tr>
<tr>
<td>2005/06</td>
<td>9,301</td>
<td>74,977</td>
<td>81,305</td>
<td>460,085</td>
<td>2,958</td>
<td>1,355</td>
<td>629,981</td>
</tr>
<tr>
<td>2006/07</td>
<td>8,573</td>
<td>70,783</td>
<td>79,503</td>
<td>518,817</td>
<td>3,397</td>
<td>1,425</td>
<td>682,498</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Clinical Negligence</th>
<th>Employer liability</th>
<th>Public Liability</th>
<th>Motor</th>
<th>Other</th>
<th>No liability</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000/01</td>
<td>11</td>
<td>121,508</td>
<td>1,883</td>
<td>17</td>
<td>238</td>
<td>154</td>
<td>123,811</td>
</tr>
<tr>
<td>2001/02</td>
<td>6</td>
<td>73,550</td>
<td>326</td>
<td>11</td>
<td>110</td>
<td>186</td>
<td>74,189</td>
</tr>
<tr>
<td>2002/03</td>
<td>4</td>
<td>90,427</td>
<td>341</td>
<td>22</td>
<td>122</td>
<td>235</td>
<td>91,151</td>
</tr>
<tr>
<td>2003/04</td>
<td>12</td>
<td>211,924</td>
<td>276</td>
<td>21</td>
<td>188</td>
<td>636</td>
<td>213,057</td>
</tr>
<tr>
<td>2004/05</td>
<td>9</td>
<td>175,737</td>
<td>281</td>
<td>32</td>
<td>265</td>
<td>269</td>
<td>176,593</td>
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<tr>
<td>2005/06</td>
<td>20</td>
<td>74,977</td>
<td>310</td>
<td>12</td>
<td>274</td>
<td>110</td>
<td>44,441</td>
</tr>
<tr>
<td>2006/07</td>
<td>2</td>
<td>43,715</td>
<td>338</td>
<td>4</td>
<td>125</td>
<td>122</td>
<td>28,286</td>
</tr>
</tbody>
</table>


\textsuperscript{95} See http://www.abi.org.uk/bookshop/researchreports/pi_reform.pdf
3.22 Yet on average there is an article published every day that refers to the UK’s compensation culture. Almost ten times more refer to compensation claims. Few of these articles put compensation claims in context. Even when they do, they may still mislead.96 A recent article in a local newspaper claimed that compensation claims against a council remained a huge problem even though the number of claims had fallen by over a half in three years, the number of successful claims had fallen from 41 to 1, and the amount paid out annually had fallen from £160,000 to £1,000.

Box 3.4: Media coverage of compensation culture

MP slams “compensation culture”
4th April 2008, Manchester Evening News

Commuter claims £1.5m after slipping on ‘killer’ petal outside florist
Tuesday, 18 July 2007, the Daily Mail

Beware of compensation culture
Jan 18 2008, Birmingham Post

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96 Based on analysis of Lexis Nexus search over 90 days before 9 April 2008, there were 94 articles that made reference to a “compensation culture” and 847 that made reference to “compensation claims”; Wigan Evening Post, “Taxpayers fork out for compo claims”, 8 April 2008.
Box 3.5: Quotes from businesses on compensation

“IT’s always at the back of your mind, as these days people can be straight down the solicitors who will tell them they can sue for thousands”
Micro-business, Tailor

“I think the sue and blame culture is becoming the norm”
Professional, Consultant

“The tendency to sue forces you to be more draconian and say: you can’t do this for health and safety reasons”
SME, Property Management

3.23 Media articles help to reinforce the belief among businesses that there is a developing compensation culture in the UK.

3.24 This may have an impact on how they both view and treat the risks they face, especially the likelihood and impact of a possible civil claim. A belief that there is a “tendency to sue” leads some business owners to be “more draconian and say you can’t do this for health and safety reasons.” They may also miscalculate the likely impact of a claim: small and micro business owners interviewed as part of this review believed that a typical award could be as much as £250,000. And they may confuse the actions they take to mitigate the possibility of a civil action with meeting the requirements of the law.

Existing efforts to respond to media coverage of health and safety

3.25 The Health and Safety Executive and local authorities increasingly challenge the coverage of health and safety in the media.

Box 3.6: Quote from Judith Hackitt, Chair of HSE

We are “being much more public about explaining our position than we have in the past”

3.26 The HSE writes a response on every issue that they believe has been misleadingly presented in the national press, including challenging when they are held to account over an issue that has nothing to do with regulation. Over the last four years, they have responded to an average of 2 – 3 stories a month in the national media it believes are misleading. In addition, HSE has launched the Myth of the Month campaign which responds to enduring myths. In its first year from April 2007 to March 2008, the pages

98 Ibid.
received over 800,000 page requests. They now attract around 30,000 unique visitors a month. The material is also shared widely with local government and industry press.

3.27 The HSE and local authorities are also actively promoting the benefits of health and safety and of a sensible approach to risk management, and have developed a tagline for the sensible risk management programme: “we’re here to save lives, not stop them”.

3.28 HSE evaluates the impact of these initiatives through a biennial survey of attitudes towards health and safety regulation and monitoring web site usage. It recognises, however, that changing attitudes is a slow process – and it that there is likely to be a significant lag between its activity and the corresponding impact.

Conclusion

3.29 This chapter has addressed the tone and extent of media coverage of health and safety in the UK, and its impact in shaping both employer and the wider public’s perception of the existing regulation regime, including their views of risk and the likelihood of civil litigation. With a large volume of predominantly negative and frequently misleading coverage, it is concerning that such coverage does appear to shape attitudes. And it is notable that attitudes may have particular resonance with those who have less contact with other influences – the small and low risk firms.

3.30 HSE and local authorities are actively highlighting the benefits of workplace health and safety and attempting to tackle negative media coverage – although they acknowledge that this work is difficult and there is still a way to go to tackle the trivialisation of health and safety.

3.31 The next chapter examines how firms are currently inspected and enforced against by the HSE and local authorities, especially how greater flexibility in the inspection and enforcement regime could improve health and safety outcomes.
Chapter 4: Health and Safety Inspection and Enforcement

Introduction

This chapter covers:

• the current division between Health and Safety Executive and local authority (LA) inspection and enforcement, including its historical origins, current levels of HSE and local authority activity and its relationship to levels of injury and ill health;

• the benefits as well as the challenges arising from the current division; and

• whether current health and safety inspection and enforcement resource could be used more effectively, including possible ways in which recent HSE and LA initiatives could be built upon to target more activity on workplaces where the risk of injury and ill health is relatively high.

Current division of responsibilities between HSE and local authorities

Summary of the division and its history

4.1 Inspection and enforcement of health and safety regulation is divided between the HSE and local authorities on the basis of the main activity undertaken at a workplace. HSE inspectors are responsible for workplaces which historically have a higher risk of workplace injury, including construction, agriculture, and manufacturing as well as specialist inspection of major hazard industries, like nuclear and off-shore sites. Local authority inspectors enforce in workplaces at historically lower risk of workplace injury, including offices and retail premises. Because of the division and the nature of their activities, some multi-site employers deal with both HSE and one or more local authorities.

4.2 The division of responsibility between HSE and local authorities is longstanding. Before 1974, the principal legislation on workplace health and safety was contained in two Acts from the early 1960s: the Offices, Shops, and Railway Premises Act 1963 enforced by local authorities and the Factories Act 1961 enforced by the government inspectorates that were the predecessor organisations of the HSE.

4.3 This division was transferred with little alteration into the arrangements for enforcement of the 1974 Health and Safety at Work Act.\(^{101}\) Minor amendments were last made in 1998 but the division remains largely as it was in the early 1960s.

HSE and local authority inspectors

4.4 HSE inspectors have to be trained to at least post graduate (level 5) level. Local authority inspectors have to be trained to at least graduate degree (level 4) level and develop their knowledge and understanding of health and safety as part of a broader qualification in environmental health.

4.5 Local authorities employ over three fifths of full-time equivalent (FTE) health and safety inspector resource. They employ 1,100 FTE inspectors in comparison to c. 660 FTE inspectors in the HSE’s Field Operations Directorate (see figure 4.1). Because of the other responsibilities of Environmental Health Officers, local authority inspectors tend to spend only part of their time on health and safety. This explains why an even higher proportion of inspectors who undertake health and safety activity are in local authorities.

**Figure 4.1: Numbers of HSE and local authority inspectors**

<table>
<thead>
<tr>
<th></th>
<th>HSE FOD</th>
<th>Local Authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>H&amp;S inspectors</td>
<td>698</td>
<td>3,320</td>
</tr>
<tr>
<td>FTE inspectors</td>
<td>657</td>
<td>1,100</td>
</tr>
</tbody>
</table>

Source: HSE HR; LAE1 returns.\(^{102}\)

Local authority enforced sectors of the economy have growth since the 1970s

4.6 Since the late 1970s, levels of employment and numbers of businesses have grown in the sectors of the economy that are inspected by local authorities. In 1978, local authorities enforced in sectors of the economy that provided around 41% of all jobs. Today, local authority enforced sectors of the economy contain over half of all premises and around 50% of workers.

Levels of HSE and local authority inspection

4.7 Local authority inspectors undertake between three and four times the level of preventative inspections undertaken by HSE, excluding HSE’s inspections of specialist high hazard industries, like nuclear and off shore sites. Local authorities undertook around 121,000 preventative inspections in 2006/7.\(^{103}\) HSE undertook around 36,000 inspections in the same year.\(^{104}\) But, although the overall number of HSE preventative inspections has declined since 2002/03, HSE inspectors are spending significantly more time per inspection with each business they visit.\(^{105}\)

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\(^{102}\) HSE response to data request March 2008, source: HSE HR (position at 11 Jan 2008, count of all inspector grade staff employed in FOD, a small proportion of whom will not do operational work); LAE1 returns (for 2006/07, counts both Environmental Health Officers and Technical Officers, hence slightly wider remit than for HSE; response rate for the LAE1 returns was 92% and data for missing LAs has been imputed).

\(^{103}\) Data from HSE statisticians.

\(^{104}\) Hansard, House of Commons Written Answers for 4 June 2007.

Box 4.1: Local authority enforced sectors of the economy

Estimate of relative responsibility levels

<table>
<thead>
<tr>
<th></th>
<th>LAs</th>
<th>HSE</th>
<th>Total</th>
<th>HSE o/w not FOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premises, HSE est (exc farms); 000s</td>
<td>1,498</td>
<td>851</td>
<td>2,349</td>
<td></td>
</tr>
<tr>
<td>Premises, HSE est (exc farms); %</td>
<td>64%</td>
<td>36%</td>
<td>26.1</td>
<td></td>
</tr>
<tr>
<td>Employees, HSE est, million</td>
<td>12.8</td>
<td>13.3</td>
<td>3,320</td>
<td></td>
</tr>
<tr>
<td>Employees, HSE est, million; % of total</td>
<td>49%</td>
<td>51%</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Premises, BRE est; 000s</td>
<td>1,410</td>
<td>1,148</td>
<td>2,558</td>
<td>109</td>
</tr>
<tr>
<td>Premises, BRE est; %</td>
<td>55%</td>
<td>45%</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Employees, BRE est; %</td>
<td>48%</td>
<td>52%</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>

Source: HSE estimate derived from ONS survey data (‘ABI’ c2006, using a best-fit allocation on SIC, detail unknown). BRE estimate uses ONS survey data (‘ABI’ c2006), allocated to main enforcer on SIC down to four digit level on best-fit as advised by HSE, and adding DEFRA estimate of number of farms in England – c210,000.

Figure 4.2: Approximate inspection activity by workplace type

Source: Review team using HSE supplied data
4.8 The data available does not allow for precise comparison between HSE and local authority inspection levels. But, as figure 4.2 shows, it appears that local authorities undertake more preventative inspections of several of their sectors than HSE preventative inspections of manufacturing sites.

4.9 HSE inspectors also appear to have less flexibility than local authorities in how they allocate their time between preventative and reactive inspection work, not least because they have more fatal and serious injury investigations to undertake. Over recent years, HSE’s aim has been for a ratio of 60:40 between proactive and reactive activity by their inspection force – although this is not a requirement in HSE’s new financial settlement from the Department of Work and Pensions.106

4.10 There is an ongoing debate – including in responses to our call for evidence – about overall levels of health and safety inspection and enforcement activity especially about whether HSE should increase its numbers of inspection and enforcement activity.107

Both HSE and local authorities take account of risk in determining their levels and approach to inspection

4.11 The current HSE inspection programme is driven by assessment of risk.108 HSE uses outcome data extensively in targeting its inspection activity including:

- fatal and non-fatal injury risk;
- ill health risk;
- outcome trends over recent years;
- judgements about whether residual risk in a sector can be effectively targeted;
- evidence on efficacy of inspection in securing compliance in particular sectors or on particular issues; and
- levels of public concern.

4.12 This is in addition to using the priorities it has established under the Fit3 programme to guide and focus inspections and its risk-rating of individual businesses against four criteria – competence and attitude of management; safety compliance and actual risk; health compliance and actual risk; welfare compliance gap – at the end of each inspection.109 HSE is attempting to further prioritise its inspection activity through a “Fine Tuning review”.

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109 Ibid., p. 21.
4.13 Local authorities also take account of relative risk when they allocate inspection resource. This includes considering the Fit3 priorities as well as detailed guidance from HSE, national injury and ill health outcomes and confidence in management to target resource where it is likely to have the most impact in their local area.\(^{110}\)

**Additional influences on local authority inspection activity**

4.14 Local authorities take into account other factors in determining their health and safety inspection activity.

4.15 Because the responsibilities of an Environmental Health Officer extend beyond health and safety, some of their inspections cover issues outside of the health and safety regulatory regime. This is especially true of visits to food / catering premises. 60% of visits to catering premises in 2002/3, for example, were joint food and health and safety inspections.

4.16 Local authorities also respond to specific local concerns, including to issues raised by their citizens and to the expectations of local councillors. They are likely to take risks to the safety of the public in their local areas especially seriously. Some local authorities follow up every public complaint as a matter of course. Local issues may well be more important than national concerns especially when a business sector that is targeted for a national campaign is not seen as an area of local concern.\(^{111}\)

**Relationship between health and safety inspection and levels of fatal injury, non-fatal injury and ill health**

4.17 Levels of fatal injury, non-fatal injury and work-related illness are all lower in sectors of the economy which are largely local authority enforced (see figure 4.3).

4.18 Levels of fatal injury to workers are far lower in local authority enforced workplaces than in HSE enforced ones. Levels of non-fatal injury are below average across most sectors which are enforced by local authorities. In spite of some of their sectors facing particularly challenging health risks, it does not appear to be true – as some have claimed in responses to our call for evidence \(^{112}\) – that workers in local authority enforced sectors of the economy are at higher risk of occupational ill health overall.

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\(^{110}\) Ibid; LACORS response to the call for evidence; Kent Environmental Health Managers and Kent Branch Chartered Institute of Environmental Health Officers Health and Technical Group response to call for evidence; Derek Allen, Evidence to the Department of Work and Pensions Select Committee, 5 March 2008.

\(^{111}\) Solihull Metropolitan Borough Council response to the call for evidence; Charlotte Faint response to the call for evidence.

\(^{112}\) See, for example, LACORS response to the call for evidence.
Figure 4.3: Work-related injury and illness by industrial sector

Bubble size indicates no. of private sector workers in industry category (public and 3rd sector not shown)

- All Industries*
- Personal & Social Services
- Agriculture etc & Fishing
- Manufacturing
- Construction
- Wholesale, Retail & Repair
- Hotels & Restaurants
- Transport, Storage & Comms
- Finance & business
- Public Admin & Defence
- Education
- Health & Social Work

Source: HSE from worker self-report (LFS), injury 04/06-06/07 avg, illness 03/04-05/06 avg

Industry category summary of enforcement

<table>
<thead>
<tr>
<th>Code</th>
<th>Industry category</th>
<th>Enforcers</th>
<th>Lead</th>
<th>Remit of non-lead enforcer – in summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>A, B</td>
<td>Agriculture, Hunting and Forestry; Fishing</td>
<td>HSE/LA</td>
<td>HSE</td>
<td>LA – animal care and accommodation</td>
</tr>
<tr>
<td>C, E</td>
<td>Mining and Quarrying; Electricity, Gas and Water Supply</td>
<td>HSE</td>
<td>HSE</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>Manufacturing</td>
<td>HSE/LA</td>
<td>HSE</td>
<td>LA – bakery for single shop</td>
</tr>
<tr>
<td>F</td>
<td>Construction</td>
<td>HSE/LA</td>
<td>HSE</td>
<td>LA – minor internal works</td>
</tr>
<tr>
<td>G</td>
<td>Wholesale and Retail Trade; Repairs</td>
<td>LA/HSE</td>
<td>LA</td>
<td>HSE – motor vehicle repair, TV repair</td>
</tr>
<tr>
<td>H</td>
<td>Hotels and Restaurants</td>
<td>LA/HSE</td>
<td>LA</td>
<td>HSE – B&amp;Bs, farm/construction accommodation, HMOs</td>
</tr>
<tr>
<td>I</td>
<td>Transport, Storage and Communication</td>
<td>HSE/LA</td>
<td>HSE</td>
<td>LA – travel agencies</td>
</tr>
<tr>
<td>J</td>
<td>Financial Intermediation</td>
<td>LA</td>
<td>LA</td>
<td></td>
</tr>
<tr>
<td>K</td>
<td>Real Estate, Renting and Business Activities</td>
<td>HSE/LA</td>
<td>LA</td>
<td>HSE – property sales, lets and development by private individuals (LA does estate agency), hire of equipment, research &amp; development</td>
</tr>
<tr>
<td>L</td>
<td>Public Admin</td>
<td>HSE/LA</td>
<td>HSE</td>
<td>LA – HSE premises</td>
</tr>
<tr>
<td>M</td>
<td>Education</td>
<td>HSE</td>
<td>HSE</td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>Health and Social work</td>
<td>HSE/LA</td>
<td>HSE</td>
<td>LA – child care outside home or school, residential care homes not LA-run</td>
</tr>
<tr>
<td>O</td>
<td>Other Community, Social and Personal Service Activities</td>
<td>LA/HSE</td>
<td>LA</td>
<td>HSE – dry-cleaners, funeral homes, sewage/waste, ski slopes, fairgrounds, TV/cinema production and display</td>
</tr>
</tbody>
</table>
But there are still significant risks with local authority inspected workplaces (see figure 4.4). For example, stores / warehouse keepers ranked as the 5th riskiest occupation for injury (out of 49) in a 2005 study prepared for the HSE by the Warwick Institute for Employment Research while staff in food preparation and sales assistants were both significantly riskier than average. And occupations at low risk of injury at work can still be relatively risky in terms of health outcomes. Hairdressers are almost 50% less likely to suffer an injury at work than average but face significant ill health risks from dermatitis.\(^\text{113}\)

**Benefits of the current division of enforcement responsibility**

The current system has considerable benefits:

- it is stable. For well over a century local authorities have had a public health role while national bodies have controlled conditions in higher risk workplaces such as factories and mines. The current split is set out in Health, Safety (Enforcing Authority) Regulations 1998. It has rarely changed more than once a decade, with earlier versions of those regulations in 1989 and 1977. And the division is uniform across Britain. Stability helps regulatory bodies plan their activities. This stability and uniformity help businesses to learn who their enforcement body is likely to be;

- it allows knowledge of the local community to influence regulatory activity. As already highlighted, devolving responsibility to local authorities enables their regulatory activity to respond to local concerns and issues. It also allows local knowledge to help regulators target their enforcement activity, for example on particular groups of businesses where there are known issues. It is especially helpful in the identification of rogue businesses unlikely to reply to standard statistical enquiries. And, because they cover a relatively small area, it takes Environmental Health Officers less time to reach workplaces when a decision has been taken to visit or inspect;

- it allows for joined-up inspection and enforcement by local authorities. As local authorities also enforce a number of other pieces of law, they can offer more of a joined-up service to firms. Joint inspections of health and safety and food hygiene for example are fairly common for food retail businesses;

- it allows HSE inspectors to develop specialist skills. Inspectors in HSE Field Operations Division can share training sessions, spread intelligence through networking and develop expertise in inspecting specialist workplaces. The additional training which HSE inspectors receive compared to Environmental Health Officers allows them to inspect premises which tend to have a wider range of hazards. It is also easier to ensure both the consistency and the quality of inspection within the HSE than over 400 local authorities. This is especially important in the sectors for which HSE is responsible, where managing safety is more likely to require a technical solution and the risk of injury or ill health are higher; and

\(^{113}\) Davies and Jones, *Trends and context to rates of workplace injury* (HSE RR386, 2005), p. 64.
Fatal and non-fatal injury rates in premises enforced by local authorities

Figure 4.4: LAs – level of inspections compared to non-fatal injury rate

In 02/03 60% of visits to 'Catering' premises were joint food inspections

Figure 4.5: LAs – level of inspections compared to fatal injury rate

In 02/03 60% of visits to 'Catering' premises were joint food inspections

Source: Review team using HSE supplied data
• having HSE lead centrally on guidance and information is widely agreed to be an efficient way to generate tools for general use and to consult particularly expert groups on their needs and views.

**Issues raised by the current enforcement division**

4.21 But the current division also gives rise to significant challenges and issues:

• it limits the ability of regulators to target overall inspection resource on workplaces where the risk of injury and ill health is highest. Local authorities have approximately 3 to 4 times more contact overall with workplaces where the relative risk of injury and ill health is lower than HSE has with relatively higher risk workplaces;

• the current division is complex. The guide to the allocation of premises between HSE and local authorities currently runs to over twenty pages and includes explanations for the division between coin-operated laundrettes (local authorities) and non-coin operated laundries and dry cleaning (HSE) as well as for ten different types of warehouse (split between HSE and local authorities). There is evidence that confusion about the allocation of a workplace can create delays in the smooth running of enforcement action;

• it makes co-ordination at a local level difficult. The HSE, through its c. 20 offices in the English regions, Scotland, and Wales, works with over 400 individual local authorities. This creates significant practical hurdles to attempts to join-up or co-ordinate management, resource, or data and information-sharing for both HSE and individual local authorities, especially if they are based a significant distance away from the nearest HSE office;

• it leads to inconsistency in inspection activity across the country as a whole. As figure 4.6 shows, there is a wide variation in levels of inspection between different local authorities;

• it potentially restricts the ability of HSE to investigate serious accidents or ill health in workplaces that are allocated to local authorities. Except in cases where HSE inspectors have been given warrants that apply to local authority enforced premises, only local authorities can investigate accidents and ill health in workplaces allocated to them.

4.22 These challenges raise the question: could health and safety inspection and enforcement resource be used more effectively?

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116 EEF response to call for evidence.
Could health and safety inspection resource be used more effectively?

Building on the HSE / Local Authority Partnership

4.23 In 2004 a new “statement of intent” was agreed between the then Health and Safety Commission, the HSE, and local authority representative bodies from England, Scotland and Wales which committed local authorities and HSE to join-up and focus resource on priority areas.\(^{117}\) HSE invested in managers to support the partnership at a local level. Local authorities seconded staff to the HSE. Both established new oversight and communication bodies to facilitate the new arrangements.

4.24 Since then, the HSE/Local Authority partnership has led to a variety of joint-working initiatives. These have included trials in which businesses which were previously inspected by HSE have been transferred to a local authority; pilots of joined-up inspection and accident investigation between local authority and HSE inspectors of businesses within local areas; the development of a lead authority partnership scheme to tackle possible inconsistencies in enforcement faced by businesses with workplaces in more than one local authority area; new local authority health and safety training and advice and information services targeted at small businesses; and efforts to promote improved health and safety through Local Strategic Partnerships and the Local Area Agreement process.

4.25 These initiatives have been a success. Independent evaluation of a trial in Peterborough in which dry cleaners and motor vehicle repair shops were transferred from HSE to local authority enforcement responsibility concluded it improved both the utilisation of inspection resource and health and safety outcomes.\(^{118}\) A free and confidential advice and support service that targets SME businesses and individual workers in Kirklees has delivered a 15% reduction in new claims for incapacity benefit (1,650 fewer claims) and a similar reduction in the number of working days lost to ill health (660,000 fewer days) in two years.\(^{119}\) “Flexible warranting” – when a local authority inspector is given the ability to enforce in premises allocated to the HSE or vice versa – has enabled HSE and local authority inspectors to undertake joint targeted enforcement on specific high risk issues like higher than average asbestos death rates in four districts in Suffolk and combined resource for accident investigation in Medway in Kent to focus it on the most serious incidents. Nationally, the “moving goods safely” project has joined-up HSE and local authority resource to target three areas that cause the majority of injuries and ill health to workers: workplace transport, slips and trips and musculoskeletal disorders.\(^{120}\)

4.26 The scale of the pilots that have been launched under the partnership has, in the main, been small. But they demonstrate both the possible practical benefits of pooling local authority and HSE inspection resource and show that Environmental Health Officers can inspect successfully in some of the workplaces currently allocated to the HSE, especially


\(^{118}\) Wilson and Tyers, An evaluation of the local authority programme joint authorisation pilot project (HSE RRS86, 2007).

\(^{119}\) LACORS, “Improving the health, work and well-being of local communities” (2008), pp. 6-7.

\(^{120}\) See http://www.hse.gov.uk/movinggoods/; Usdaw response to the call for evidence; LACORS response to the call for evidence.
when they have benefited from specialist additional training or support. Some local authorities are keen to go further. In a response to our call for evidence, for example, local authorities in Kent stress that they are keen to pilot flexible warranting on a county-wide basis. There is also support for the pooling of all HSE and all local authority database information to target rogues.  

4.27 New guidance issued earlier this year under Section 18 of the Health and Safety at Work Act seeks to build on this partnership work, including requiring HSE and local authorities to seek opportunities to work across geographical boundaries, to join up delivery of enforcement activity and to train staff together to joint standards. Work that will support joint training is already underway: the Chartered Institute for

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**Figure 4.6: Variation in local authority inspection levels**

![Figure 4.6: Variation in local authority inspection levels](source)


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121 Kent Environmental Health Managers and Kent Branch Chartered Institute of Environmental Health Officers’ Health and Safety Technical Group response to call for evidence.

122 Responses to call for evidence from Dorset Local Authorities Health and Safety Group and Environmental Health Merseyside.

Environmental Health, HSE and LACORS are developing a joint competency framework for health and safety inspectors.

**Revision of the Enforcement Regulations**

**4.28** The work of the partnership to date, however, has not led to more fundamental revision of the existing inspection and enforcement division between local authorities and the HSE. Instead it has focused on finding practical ways, in specific areas or on specific issues, for HSE and local authorities to work more closely together.

**4.29** While the work of the partnership over recent years has been welcomed, many of the responses to this review have stressed that they would support more fundamental revision of the current regulatory structure.

**4.30** Some argue that more responsibility should be passed to the HSE.\(^{124}\) The EEF, for example, are keen for the HSE to be clearly established as the standard setting body for health and safety across the country. They are also concerned about potential confusion arising from flexible warranting initiatives, especially for employers and others about who is responsible for regulating them.\(^{125}\)

**4.31** Others – especially responses from Environmental Health Officers – argue that more responsibility should pass to local authorities. Almost all responses from local authorities argue for some form of change in the current division, including some who believe that only enforcement in major hazard, specialist and technical workplaces should remain the sole responsibility of the HSE.\(^{126}\) They complain that the current division limits their ability to provide face-to-face advice to firms where the impact of that advice could be greatest. And they stress the limits it places on their ability to join-up their enforcement activity with other areas of local authority responsibility even when the health and safety risks are known to be high – for example on small construction sites.

**Conclusion**

**4.32** The current division between HSE and local authority inspection is as much a product of history as of logic or design. It provides some clear benefits – not least in the stability it provides. But it is also confusing and complex and places a barrier to targeting overall health and safety inspection and enforcement resource on workplaces where the risk of injury or ill health is greatest.

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\(^{124}\) EEF response to call for evidence; IOSH response to call for evidence.

\(^{125}\) EEF response to call for evidence.

\(^{126}\) See responses to call for evidence from Dorset Local Authorities Health and Safety Group; Kent Environmental Health Managers and Kent Branch Chartered Institute of Environmental Health Officers’ Health and Safety Technical Group; Jayme Carne; local authorities in Hereford and Worcester; Environmental Health Merseyside; Stuart Oakey; Stewart Brock.
4.33 Through their partnership work in recent years, the HSE and local authorities have piloted practical ways to overcome some of the challenges. These pilots have, in the main, been limited in scope and size. There is scope for expansion of this work given the desire from some local authorities to trial flexible warranting on a larger scale or in a larger number of workplaces. Such expansion would also reflect the policy direction established by the recent guidance issued under section 18 of the *Health and Safety at Work Act*.

4.34 There is also a strong case for review of the current enforcement regulations. As many of the responses to our call for evidence highlight, the current position – with more overall resource being targeted at workplaces where the risk of injury and ill health is relatively lower – seems odd. One possibility would be for the HSE to take more control for overall health and safety inspection and enforcement, including using its powers to direct local authorities more actively. This could help address issues of inconsistency in approach. But it would threaten the successful partnership that the HSE and local authorities have forged in recent years and be at odds with the broader direction of government policy on localism. It is also difficult to envisage how HSE could control such a system in a practical sense: how would their c. 20 regional or national offices be able to oversee over 400 local authorities, especially given the other responsibilities of Environmental Health Officers?

4.35 The other possibility would be for local authorities to take on more responsibility for some higher risk workplaces as originally envisaged in the report by Lord Robens that led to the establishment of the current regulatory regime. The current initiatives for additional training of Environmental Health Officers would need to be successful, and issues around consistency, especially for multi-site businesses, would need to be addressed. But the potential benefits would be large: more enforcement and inspection activity, more closely linked to local knowledge, harnessed where it can be more effective in protecting workers and the public; more joined-up inspection and enforcement activity, including provision of more face-to-face advice to relatively higher risk workplaces; and an ability for HSE to concentrate even more on specialist and expert activity where risks are highest.

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Annex A: Responses to the Call for Evidence

Abrahams, Mike
Albert Bartlett
Amber Valley
Anderson, John
Association of British Insurers
Association of Personal Injury Lawyers
Astrum
Avon health and safety liaison group
Bamford, John
Barlex, Ian
Berkshire health and safety liaison group
Bexley Education Business Partnership
British Chamber of Commerce
British Furniture Manufacturers
British Occupational Hygiene Society
British Safety Council Services
Brock, Stewart
Cambridge Regional College
Challoner, Jimmy
Charities Safety Group
Charity Trustee Network
Chartered Institute of Environmental Health
Chichester District Council
Common Sense Safety Solutions
Confederation of British Industry
Construction Plant Hire Association
Construction Skills, The Sector Skills Council for the Construction Industry
Coventry City Council
Cumbernauld College
Derby College
Designers Initiative on health and safety
Dorset health and safety liaison group
Dumfries and Galloway Council
East Riding of Yorkshire Council
Eastleigh Borough Council health and safety liaison group
EEF, the manufacturers' organisation
Environmental Health Merseyside
Essex health and safety liaison group
Evans, John
Faint, Charlotte
FACK, Families Against Corporate Killers
Federation of Master Builders
Federation of Small Businesses
Forum of Private Business
GHP consultancy
Glasgow South West Regeneration Agency
Greater Manchester H & S Core Group
Hampshire and Isle of Wight Chief Environmental Health Officer’s Health & Safety Advisory Group
Healthy Working Lives
Helios Safety & Rescue Products Ltd
Hereford and Worcester local authorities
Hull City Council
Hutin, Mike
Independent Schools’ Bursars Association
Industria Sonae
Industrial Health Control
Infowire
Institute of Occupational Safety and Health
Institution of Engineering and Technology
J.S. Harvie & Co
Jason Lear
John Radcliffe Hospital
JRB Consulting
Kennet & Avon Canal Trust
Kent Environmental Health Managers and Kent Branch Chartered Institute of Environmental Health Officers Health and Safety Technical Group
Kitley
LACORS, Local Authorities Coordinators of Regulatory Services
Langmead Masonry
Lindsay, Toby
London Borough of Greenwich
Lucas, Andy
Mid-Sussex District Council
Murgatroyd, John
NASUWT, National Association of Schoolmasters Union of Women Teachers
National Federation of Retail Newsagents
National Federation of Roofing Contractors
National group on Homeworking
NFU, National Farmers Union
Nilfisk Alto
Norfolk Fire Service
Oakbase
Office of Rail Regulation
Patrick, Ken
Pearce, Martin
Penny-Anne Cullen & Associates
Perennial - Gardeners’ Royal Benevolent Society
Professional Contractors Group
Prospect
Protector International
Public and Commercial Services Union
Pulsar Developments
Annex A: Responses to the Call for Evidence

Road Haulage Association
ROSPA, Royal Society for the Prevention of Accidents
Royal College of Nursing
RPS Group
Russell Papermakers
Safety Business Services
Safety Services Direct
Salisbury Cathedral
Sewell, Craig
Solihull Metropolitan Borough Council
Southwark Council
Stafford Borough Council
Stephens, David
The Anthony Williams Consultancy
Thompsons Solicitors
Trade Union Congress
Tremelling, John
UCATT, Union of Construction, Allied Trades and Technicians
UNISON, Queen Elizabeth Hospital NHS Trust
UNISON, the public services union
UNISON, Westminster City Council
UNITE
United Kingdom Accreditation Service
USDAW, Union of Shop, Distributive and Allied Workers
Vehicle Builders and Repairers Association Ltd
VIRIO risk
West Midlands health and safety liaison group
Westmoreland, John
Workers health advice team
Workplace Health Connect
Wright, Dorothy
Annex B: Low Risk

Background

1. The focus of the review is low risk businesses, especially low risk SMEs. This raises the question: how to classify a business as low risk?

2. In our call for evidence, we did not address this question in detail. Instead, we asked respondents to share evidence on the level of risk, and their perception of it, in their workplaces. The message that came back clearly from respondents was that we needed a more developed definition of low risk. We have since explored a variety of data to consider the low risk question from a number of perspectives. Our analysis is summarised in this annex.

3. We have sometimes used “low risk” in the sense it would be used by a layperson: to indicate a lower possibility of undesirable events occurring. We are aware of the technical definition of risk used by health and safety professionals, where risk is understood to mean a judgement that always draws on both the likelihood of harm occurring and the severity of that harm should it occur. However here, we are sometimes only considering the likelihood of harm, and not severity, when we talk about low risk.

4. There are a variety of societal expectations about efforts to limit risks to workers and the public in the workplace. These include:
   - preventing work-related injury and ill health to workers;
   - preventing injury or ill health to members of the public exposed to work activities (e.g. visiting work sites, at shops or leisure facilities);
   - diagnosing work-related health problems as quickly as possible so help can be given promptly (e.g. monitoring those exposed to asbestos, fumes, noise);
   - rehabilitating injured or ill workers, and good management of sickness absence; and
   - controlling high hazard operations to prevent major health, economic, security or other impacts (this element is not within scope of our project).

5. The focus of this annex is primarily on the first and second of these expectations, due to limitations in available data.

Levels of risk as indicated by injury and ill health incidents

6. Evidence about injury and ill health incidents can help identify sectors of the economy where there are relatively low levels of harm to workers. While we do not know why there are fewer incidents – good risk management and fewer hazards are both possibilities – it does help to show sectors where risk can be considered relatively low.
Industry category rankings on injury and ill health according to the Labour Force Survey

The major regular Government survey of workers – the Labour Force Survey – includes questions about injury and ill health which the respondent believes were caused or made worse by work. This is a good source of data on work-related injury and illness because it is consistently collected across all industries. Its main limitation is that it reports perceptions: workers may incorrectly believe their problem was work-related, or may not realise that a health problem they experienced was linked to work. Because it is a sample survey estimates also become less accurate when they are broken down to small sub-categories.

Figure B1: Ill health rate by industry section (LFS)

Source: LFS, annual rate from 2003/04-2005/06
Ill-health

Figure B1 shows variations in ill health rates between 12 broad industry categories. This shows significant variation between sectors. The lowest rate is in the Hotels & Restaurants sector, where 2190 workers per 100,000 report work-related ill health in a year. The highest is in the Health and Social Work sector where the level is more than double, at 4,590. These levels equate to a range from c. 2% to c. 4% in percentage terms.

Figure B2: Injury rate by industry category (LFS)

Source: LFS, annual rate from 2004/05-2006/07

1 These are standard Industry Sections from SIC92 where possible, with three combined due to small sample sizes.
Injury

9 Figure B2 shows variations in injury rates across the same 12 industry categories. There is much greater variation between sectors than for ill health. The lowest rate is in the Finance & Business section, where 320 workers per 100,000 report work-related injury in a year. The highest is in Agriculture, Hunting, Forestry & Fishing where the level is more than six times higher at 1,960 workers per 100,000. Data for the category ‘Extractive & Utility Supply’ is not available as a low sample size prevents an estimate of the level of injury.

Industries where reported levels of injury and ill health are below average

10 Figure B3 shows relative levels of both injury and ill health by industry category. Three categories are below average on both illness and ill health – Hotels & Restaurants, Wholesale, Retail & Repair and Finance & Business. Education appears as well below average for injury, and only slightly above with regard to ill health.

A cost weighting of injury and ill health

11 The number of reported cases of injury and ill health does not take into account their severity, however.

Figure B3: Relative levels of work-related injury and ill health by industry sector (LFS)
One way to approach this issue is to take into account the cost burden of injury and ill health. Figure B4 shows number of injury and ill health cases per 100,000 workers for each industry category multiplied by the cost of an average injury or incident of ill health. Injuries were costed at £12,100 each and illnesses at £8,300 each, on the basis of HSE economic analysis. This has the impact of weighting injury as more significant than ill health, at a ratio of injury cases to ill health cases of 1.45:1. Again, no figure is available for Extractive & Utility Supply, because low sample size prevents a sound estimate of the level of injury.

The results are similar to those shown in Figure B3. The categories at the lower end are Finance & Business, Hotels & Restaurants and Wholesale, Retail & Repair. The main category of note is Education. This is below average on injury cost but slightly above average on illness cost. However, it is below the average of combined injury and ill health costs.

Figure B4: Estimate of cost of injury and ill health by industry sector (LFS based)

Source: HSE

Reported injury and ill health (RIDDOR)

14 Firms are obliged to report cases of serious injury or illness to their workers under regulations on ‘Reporting of Injuries, Diseases and Dangerous Occurrences’ (RIDDOR). The RIDDOR dataset has two key advantages over LFS: it makes it possible to analyse smaller industry categories and it contains more detail about the circumstances of the incident. However, the dataset has the disadvantage of high levels of under-reporting in certain sectors and particularly poor reporting of illness cases.

15 Figure B5 shows RIDDOR reported injury levels for industry categories alongside the LFS estimate for the same period which provides a sense of levels of underreporting. This shows six categories as below average: Education, Finance & Business, Hotels & Restaurants, Personal & Social Services, Wholesale, Retail & Repair and Health & Social Work.

Data on workplace-related injury and ill health to members of the public

16 We reviewed RIDDOR data on work-related injury and ill health incidents to members of the public, but it is not possible to interpret this effectively. There is no good denominator available on the number of people visiting work premises who are exposed to risk. In common with other RIDDOR data, experts believe the data suffers from under-reporting but are unable to estimate the extent of this.

Figure B5: Reported injury rate per 100,000 employees (RIDDOR)

3 Currently, it is estimated that just under half of all such injuries to employees are actually reported, with the self-employed reporting a much smaller proportion. See http://www.hse.gov.uk/statistics/sources.htm#riddor.
Levels of risk as indicated by evidence on risk management

17 Data on levels of risk management provides further evidence of the relative level of risk in different workplaces. Evidence that a workplace has successful risk controls in place suggests that the objective of preventing injury and ill health is being met.

18 There are limitations to the use of data in this area: where controls have been checked by an expert (e.g. enforcement data) the sample studied is partial, and where the sample is more representative the judgement is made by non-experts.

Enforcement notices and prosecutions

19 Formal enforcement notices and prosecutions indicate that qualified inspectors have identified breaches of health and safety regulations.

20 Figure B6 shows the number of enforcement notices issued by the HSE and local authorities in 2005/06. Figure B7 shows levels of prosecutions undertaken by the HSE and local authorities. HSE undertakes more prosecutions than local authorities, although each issued a similar number of notices. It is hard to draw conclusions from this given that inspectors visit only a small proportion of firms each year and enforcement approaches may vary.4

Figure B6: Number of notices issued by HSE and local authorities in 2005/06

<table>
<thead>
<tr>
<th></th>
<th>HSE</th>
<th>Local Authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improvement notice</td>
<td>3,925</td>
<td>5,220</td>
</tr>
<tr>
<td>Deferred prohibition notice</td>
<td>38</td>
<td>80</td>
</tr>
<tr>
<td>Immediate prohibition notice</td>
<td>2,630</td>
<td>1,470</td>
</tr>
<tr>
<td>All notices</td>
<td>6,593</td>
<td>6,770</td>
</tr>
</tbody>
</table>


Figure B7: Number of H&S prosecutions taken by HSE and local authorities, 2005/06

<table>
<thead>
<tr>
<th></th>
<th>HSE</th>
<th>Local Authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offences prosecuted</td>
<td>1,056</td>
<td>257</td>
</tr>
<tr>
<td>Of which, convictions</td>
<td>840</td>
<td>247</td>
</tr>
</tbody>
</table>


4 Variation in enforcement approaches is however not necessarily inconsistent with the Enforcement Policy Statement which binds both HSE and local authorities and allows for inspectors’ discretion to take account of the specific circumstances they find at their visits.
Formal enforcement rate for HSE inspected premises

We sought data by sector on the proportion of firms subject to enforcement action. HSE statisticians kindly supplied data for HSE-enforced sectors on the proportion of premises visited in different industry divisions, which were recorded as also having had enforcement action taken against them in the same year as the visit. No data was available for local authorities.

Figure B8 presents this data, highlighting that premises found to be seriously in breach of their duties were most commonly found in Industry Divisions within the wider manufacturing category. However, the data is affected by a number of factors, particularly the sample of premises inspected. Inspectors visit firms for a variety of reasons, ranging from responding to requests for advice to carrying out enforcement-led campaigns.

Worker judgements on adequacy of H&S management (‘Fit3’)

The largest survey we identified that captures workers’ views about health and safety management is HSEs ‘Fit3’ survey. The sample was selected to be representative of UK workplaces, and over 9,000 workers responded.

Results, shown in Figure B9, indicate that workers in the ‘Retail, Wholesale & Repair’ and ‘Hotels & Restaurants’ sectors are more dissatisfied with their employers than average. This survey shows that generally those working in smaller workplaces tend to be more dissatisfied with their employers than those in larger ones. Public sector employees tend to be more satisfied. However, as Chapters 1 and 3 discuss, there is considerable confusion about the scope of health and safety regulation and some respondents may associate it with other issues such as fire, food and smoking regulations.

Data from HSE Risk Control Indicators

HSE inspectors rate the extent of risk control in workplaces they visit with regard to HSE priority topics, these being workplace transport, falls from a height, slips and trips, musculoskeletal disorders, handarm vibration syndrome, noise, stress and asthma. This data was not considered in detail due to the acknowledged limitations of drawing conclusions from them.

Our definition of low-risk and its extent

The self-report (LFS) data on extent of injury and ill health, plus the consideration that injury appears to merit a greater weighting due to its severity, as shown in average cost, led us to classify four industry categories as ‘low risk’. These are the categories that are below average on both injury and ill health incidence: Hotels & Restaurants, Wholesale, Retail & Repair and Finance & Business, plus Education which is well below average on injury incidence and only slightly above average on ill health. When severity

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5 For an overall report on this survey see Thompson and Wake, First Findings from Wave 1 of the FIT3 Employer & Worker Surveys (HSE, undated c2007).

6 See HSE (undated) ‘Trends in Workplace Risk Control: detailed analysis of Risk Control Indicator data collected by HSE inspectors between April 2002 and September 2005’ for more on this.
### Figure B8: Per cent of sites visited in 2006/07 which also underwent enforcement in the same year by SIC
(Note: only SICs with at least 100 sites visited are shown)

<table>
<thead>
<tr>
<th>SIC code at 2-digits</th>
<th>SIC description</th>
<th>Per cent of sites visited in 06/07 with enforcement in same year</th>
</tr>
</thead>
<tbody>
<tr>
<td>27</td>
<td>Basic metals manufacturing</td>
<td>24%</td>
</tr>
<tr>
<td>21</td>
<td>Paper manufacturing</td>
<td>24%</td>
</tr>
<tr>
<td>20</td>
<td>Wood manufacturing</td>
<td>21%</td>
</tr>
<tr>
<td>36</td>
<td>Furniture manufacturing and manufacturing nec</td>
<td>19%</td>
</tr>
<tr>
<td>34</td>
<td>Manufacture of motor vehicles</td>
<td>19%</td>
</tr>
<tr>
<td>28</td>
<td>Fabricated metal product manufacture</td>
<td>18%</td>
</tr>
<tr>
<td>37</td>
<td>Recycling</td>
<td>17%</td>
</tr>
<tr>
<td>45</td>
<td>Construction</td>
<td>17%</td>
</tr>
<tr>
<td>51</td>
<td>Wholesale</td>
<td>17%</td>
</tr>
<tr>
<td>15</td>
<td>Food manufacture</td>
<td>16%</td>
</tr>
<tr>
<td>26</td>
<td>Manufacture of non-metal mineral products</td>
<td>16%</td>
</tr>
<tr>
<td>29</td>
<td>Manufacture of machinery &amp; equipment nec</td>
<td>16%</td>
</tr>
<tr>
<td>25</td>
<td>Rubber &amp; plastics manufacture</td>
<td>15%</td>
</tr>
<tr>
<td>64</td>
<td>Post &amp; telecomms</td>
<td>15%</td>
</tr>
<tr>
<td>17</td>
<td>Textile manufacture</td>
<td>14%</td>
</tr>
<tr>
<td>63</td>
<td>Transport support activities</td>
<td>14%</td>
</tr>
<tr>
<td>1</td>
<td>Agriculture</td>
<td>13%</td>
</tr>
<tr>
<td>92</td>
<td>Recreational activities</td>
<td>13%</td>
</tr>
<tr>
<td>35</td>
<td>Manufacture of other transport equipment</td>
<td>12%</td>
</tr>
<tr>
<td>22</td>
<td>Printing &amp; publishing</td>
<td>12%</td>
</tr>
<tr>
<td>31</td>
<td>Electrical machinery manufacture</td>
<td>12%</td>
</tr>
<tr>
<td>60</td>
<td>Land transport</td>
<td>11%</td>
</tr>
<tr>
<td>50</td>
<td>Sales, maintenance &amp; repair of motor vehicles</td>
<td>11%</td>
</tr>
<tr>
<td>74</td>
<td>Other business activities</td>
<td>10%</td>
</tr>
<tr>
<td>14</td>
<td>Other mining &amp; quarrying</td>
<td>10%</td>
</tr>
<tr>
<td>90</td>
<td>Sewage &amp; refuse collection</td>
<td>10%</td>
</tr>
<tr>
<td>70</td>
<td>Real estate</td>
<td>10%</td>
</tr>
<tr>
<td>93</td>
<td>Other services</td>
<td>8%</td>
</tr>
<tr>
<td>85</td>
<td>Health &amp; social care</td>
<td>8%</td>
</tr>
<tr>
<td>80</td>
<td>Education</td>
<td>6%</td>
</tr>
<tr>
<td>75</td>
<td>Public administration</td>
<td>5%</td>
</tr>
<tr>
<td><strong>All sites visited</strong></td>
<td></td>
<td><strong>15%</strong></td>
</tr>
</tbody>
</table>

Source: HSE (from management records). Notes: SIC is Standard Industrial Classification 1992. NEC means “not elsewhere classified”.
is considered through overall cost per 100,000 workers of both injury and ill health.

Education is below average.

27 The Labour Force Survey data represents the most reliable data source for developing a simple indication of relatively lower risk industry sectors due to under-reporting issues affecting RIDDOR and the limitations of datasets on the likelihood of poor risk controls. We are reassured that most other statistical sources also suggest the selected sectors to be lower risk. An important exception is ‘Fit3’ data on worker judgements of the quality of their employers’ health and safety management. This shows below average worker perception of the health and safety arrangements in the ‘Retail, Wholesale & Repair’ and ‘Hotels & Restaurants’ sectors.

28 The four sectors we have identified contain c. 2 million enterprises (45% of all private sector enterprises) and at least 12 million workers (>42% of all workers) and generate about half of turnover. Enterprises which are both in low risk industries and are SMEs represent at least 44% of all enterprises and at least 22% of workers and 28% of turnover. This is calculated using the latest BERR Small Business Statistics from 2006.7

Figure B9: Workers rating of their employers’ health and safety management

<table>
<thead>
<tr>
<th>INDUSTRY</th>
<th>Per cent rating employer as poor or very poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>5%</td>
</tr>
<tr>
<td>Extraction</td>
<td>3%</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>12%</td>
</tr>
<tr>
<td>Construction</td>
<td>9%</td>
</tr>
<tr>
<td>Retail &amp; Wholesale</td>
<td>12%</td>
</tr>
<tr>
<td>Hotel &amp; Restaurants</td>
<td>12%</td>
</tr>
<tr>
<td>Transport</td>
<td>12%</td>
</tr>
<tr>
<td>Finance &amp; Business</td>
<td>9%</td>
</tr>
<tr>
<td>Public Administration</td>
<td>6%</td>
</tr>
<tr>
<td>Education</td>
<td>9%</td>
</tr>
<tr>
<td>Health</td>
<td>7%</td>
</tr>
<tr>
<td>Other services</td>
<td>9%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>10%</strong></td>
</tr>
</tbody>
</table>

Source: HSE, Fit3 worker survey, 2006. Notes: responses in annual worker survey to question “How would you rate the overall effectiveness of health and safety management by your employer?”

7 ‘Enterprises’ include sole traders, partnerships and limited companies, and many (c72%) have no employees. The worker estimates are for private sector only employment in these industry categories. It is impossible to split the public and third sectors by industry category, meaning the scope of ‘low risk’ could be considerably higher in worker terms, because those sectors have 7 million workers but relatively few enterprises and low turnover.
Figures B10 and B11 below indicate the significance of these different industry categories to the economy. They locate industry categories as represented by coloured dots along two axes, one for injury and one for ill health outcomes. They also, through the shaded areas surrounding the dots, give an indication of the number of firms or workers within each category. As an injury rate is not available for the sector category Extractive & Utility Supply it is not shown. The Finance & Business and the Wholesale, Retail & Repair sectors have both the largest number of enterprises and levels of employment. Hotels & Restaurants is fairly substantial in employment terms though it has fewer micro firms. Education employs the fewest private sector workers out of these categories – though it is likely to have a substantial share of the 6.9 million public and third sector workers.

Limitations of our broad definition

Our definition should be considered a broad brush one. The industry categories are wide-ranging, capturing sub-sectors with quite different mixes of activities and occupations. It remains vital to have regard to specific high-risk activities within predominantly lower risk sectors. To highlight this point, we have analysed LFS ill health data at lower levels of disaggregation. We show ill health data rather than injury data because there are more cases.

Figure B10: Work-related injury and illness by industry category, with indication of number of private enterprises

Source: HSE from worker self-report (LFS), injury 04/05-06/07 avg, illness 03/04-05/06 avg
Figure B11: Work-related injury and illness by industry category, with indication of private sector employment

Source: HSE from worker self-report (LFS), injury 04/05-06/07 avg, illness 03/04-05/06 avg

31 Figure B12 ranks ill health rates across all industries broken down to a lower level of detail than category. ‘Sewage & refuse’ is the Division with the highest ill health rate – this did not show up before because it forms part of the larger ‘Personal & Social Services’ category and has a relatively low number of workers.

32 At this lower level of detail, there are two Divisions within categories which we define as low risk which have above average ill health rates – ‘Higher Education’ (80.3) and ‘Secondary Education’ (80.2).

33 Figure B13 illustrates the even greater variation seen when we look at ill health for the lowest possible industry subgroups (with 30+ sample respondents in LFS). Unlike Figure B12, all available categories are used here, meaning there is overlap and high-level industry categories appear as well as their sub-sections. The graph highlights a widening in the range of rates at the lower level of detail. The highest rate is seen in the ‘other human health activities’ category (which includes activities of para-medical practitioners such as nurses, physiotherapists). The next highest rates are seen in ‘national postal services’ then ‘postal and courier services’ which in our analysis by broad industry categories (e.g. see Figure B1) were subsumed into ‘Transport, Storage and Communications’.
Figure B12: Illness level to SIC2/3 showing some variation hidden by categories

Source: HSE
Figure B13: Work-related illness rate

Annex C: Media Examples

The following cases are some of the most frequently repeated patterns of stories about health and safety.

Ripon Cathedral: pancake race

- There are no health and safety regulations or guidance which prohibit pancake races. However, it was widely reported that the Ripon Cathedral pancake race that is part of a 600-year-old tradition has been stopped because of “health and safety rules”.

- It seems that there were a number of factors involved in the decision. The organisers themselves acknowledged that:
  - Insurance companies had demanded risk assessments;
  - The expense of road closures was a deterrent;
  - It was becoming increasingly difficult to find volunteers willing to help as marshals.

- HSE refuted the story, yet despite this, the decision was attributed to “health and safety killjoys”. The final link to the Ripon Gazette below reports that the race was not in fact banned and will go ahead next year.

Cited


- February 2008:

- February 2008:

- February 2008:
  http://www.ripongazette.co.uk/ripon-news/Battered-but-unbowed-pancake-races.3756274.jp
**Park benches**

- There are no health and safety regulations relating to the height of park benches. However, it was reported that park benches across the UK will have to be replaced at a cost of up to £160 million because they are too low due to new health and safety regulations.

- This was in fact a very strict interpretation of disability discrimination law – which in any case ignores the provision in that legislation which says that the costs of any changes to conform with the law must be taken into account, and must be reasonable.

**Cited**

- June 2007:  

**Hanging baskets banned**

- There is no general ban of hanging baskets. But, in February 2004, Suffolk County Council banned hanging baskets over fears that they would make some lampposts unstable.

- HSE have stated that removing hanging baskets is “an overly-cautious reaction to a low risk”. Initially, the council had stated that they felt compelled to act to avoid being “taken to the cleaners”. The decision was reversed within weeks.

- There remain a handful of repeated incidents periodically, but these are reported as though they happen every day all over the country – and as though hanging baskets have been banned by the regulator.

**Cited**


- January 2008:  
New regulations would require trapeze artists to wear hard hats

- There are no health and safety regulations requiring trapeze artists to wear hard hats when performing in circus acts – despite this it was claimed that new regulations require this.

- The story was frequently linked to the new Work at Height regulations, however there was at no time any requirement to wear hard hats to protect people from falling.

- The European Commission ‘Press Watch’ newsletter pointed out that the story broke while the Moscow State Circus (referenced in the stories) was on tour, and that the story may have generated sales.

Cited


Goggles to play conkers

- There is no requirement in health and safety law to wear goggles to play conkers. As HSE stated: “if kids deliberately hit each other over the head with conkers, that’s a discipline issue, not a health and safety problem.”

- Head teacher made children wear goggles to play conkers – it is unclear why. Subsequently a minority of schools appear to have banned conkers on “health and safety” grounds or made children wear goggles.

- Despite the repudiation from HSE, this story is still repeated on occasion to illustrate wider points about health and safety.

- A health and safety professional organisation sponsored and competed in the World Conker Championships in October 2007: http://www.timesonline.co.uk/tol/news/uk/article2658184.ece

Cited

- October 2004: http://news.bbc.co.uk/1/hi/england/cumbria/3712764.stm

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