



The manufacturers' organisation

EEF Response to Discussion on Proposed Statement by the Health and Safety Commission on the Public Safety Role of the Health and Safety Executive

Louise Ward
Health and Safety Adviser

September 2005

**Consultation
Response**

contents

	page
ABOUT US	3
EXECUTIVE SUMMARY	3
INTRODUCTION	3
DRAFT PRINCIPLES FOR HSE'S REGULATION OF PUBLIC SAFETY ..	5
Principle 1	5
Principle 2	5
Principle 3	6
Principle 4	6
Principle 5.....	7
Principle 6.....	7
CONCLUSION.....	8

ABOUT US

EEF, the manufacturers' organisation, has a membership of 6,000 manufacturing, engineering and technology-based businesses and represents the interests of manufacturing at all levels of government. Comprising 11 regional Associations, the Engineering Construction Industries Association (ECIA) and UK Steel, EEF is one of the UK's leading providers of business services in health, safety and environment, employment relations and employment law, manufacturing performance, education, training and skills.

EXECUTIVE SUMMARY

1. EEF support HSC's aim to promote a coherent approach to the regulation of public safety, and greater clarity of responsibilities for the agencies involved. Our members are keen to see HSE maintain focus on workplace health, safety and welfare and to target resources accordingly. However they acknowledge that HSE has a contribution to make to make in the area of public safety, and support this provided it is not to the detriment of core work programmes. More definition would be useful around the discussion points relating to HSE involvement in national emergencies. Based on the information contained within the discussion document, it would seem appropriate for HSE to take a high level and strategic role. But again, this should not be allowed to detract from their primary areas of work.
2. It is sensible for HSE to manage public safety issues which are related to major hazard industries. However, there is no clear benefit associated with active prioritisation of situations where workers and the public are exposed to the same hazard.
3. Our members support initiatives to promote joined up working between regulators in order to improve the coherence and clarity of the regulatory regime, in accordance with the principles of better regulation. However it is important to ensure that the independence and objectivity of regulation and enforcement are not compromised.
4. EEF are keen to see HSE actively engage in initiatives to move the risk culture on to a position of risk acceptance, since this will benefit competitiveness in the UK. However we feel that the suggestions in this discussion document do not go far enough and urge HSC to push for a more proactive approach in this area.

INTRODUCTION

5. Issues of public safety and risk culture are receiving much attention at the moment in media and political circles, so a statement regarding the appropriate level of involvement for HSE would be timely.
6. EEF support HSC's aim to promote a coherent approach to public safety and greater clarity of responsibilities for the agencies involved in this area, with particular reference to HSE's role in protecting the public from work related risks. It will be important to ensure that the discussion process remains focused on this objective and is not diverted by related discussions on specific issues of risk aversion and risk culture.

7. HSE have a wealth of risk management experience and expertise to bring to the table, but resourcing must be considered as a key issue in deciding on an appropriate level of involvement for HSE in public safety. HSE's primary responsibilities lie within the field of workplace health, safety and welfare and EEF agree that resources must be targeted accordingly.
8. The discussion document identifies that there are a large number of other regulators with responsibility and experience in particular areas of public safety. Within their specialised areas these organisations are likely to have greater expertise than HSE, however there is definitely a need for a more co-ordinated approach and better joined up thinking among regulators with responsibilities for public safety.
9. In terms of specialist input, HSE must focus on the workplace. This is their area of expertise, responsibility and accountability. They must resist the urge to be drawn in to other areas, such as crowd safety, clinical decision making, or any other area where there is an existing and more appropriate system of regulation. This will allow HSE to effectively manage their resources and to ensure clear understanding of their role, and consistency of their message. However, in their role as regulators of workplace health and safety, the HSE have experience of risk management activities within a diverse range of occupational and industrial settings. Bearing in mind this diversity of risk management competence, and their role following the Hampton Review as a Super Regulator, HSE would be well positioned to offer risk management advice and support to other public safety regulators. They would also be well placed to act in a co-ordinating role, in order to improve the clarity and consistency of approach in the regulation of public safety. The resource implications of such a role are likely to be minimal as the function would be largely administrative; however support would also be available from HSE's established team of experts who could provide technical expertise, where necessary, to develop public safety regulation.
10. The discussion document states that HSE does not want to discourage people from taking responsibility for their own actions. This is an extremely important principle, particularly in the area of public safety. Effective risk management does not automatically equate to elimination of risk, but allows for risks to be properly assessed and controls introduced to balance the level of risk against the potential benefits of the activity. Robust communication and implementation of this principle is key to the effective regulation of health and safety, in both the private and public sectors. However it will be necessary to manage expectations here too. When people take calculated risks it is inevitable that they will sometimes get it wrong and that accidents will occur. Such situations must be managed carefully in order to control any drive for blame and retribution, whilst also ensuring that lessons can be learnt and applied to prevent a recurrence.
11. HSE are starting to explore this debate themselves, but there is room for improvement in all areas of public safety regulation. The goal is a culture of risk acceptance, and the route to achieving it is simple, honest and effective communication of a robust regulatory position.
12. In summary, EEF support the key strategy points, as set out in the discussion document, that HSE should;
 - Work with other regulators who have public safety responsibilities to ensure that their expertise is used to best effect
 - Move away from intervening in those areas of public safety that may be better regulated by others or by other means
 - Ensure that overlaps in public safety provision are minimised, leading to a coherent overall approach to public safety

- Help identify perceived ‘gaps’ in public safety provision, to ensure that there is clarity of responsibilities among efficient, effective regulators who possess appropriate enforcement powers
13. These should be set in the context of: HSC’s vision, strategy; goal of sensible health and safety; belief in firm but fair enforcement of the law; their joint mission with HSE; HSE’s priorities and the wider regulatory framework.

DRAFT PRINCIPLES FOR HSE’S REGULATION OF PUBLIC SAFETY

Principle 1 – HSE will provide public assurance that health and safety risks in the major hazards industries are properly managed

14. Regulation of major hazard industries is a core function of HSE work. Within these sectors the stakes are high and a mistake can have catastrophic implications. Consequently HSE has traditionally channelled a significant portion of it’s available resource into the regulation of these industries. Regulation in this context is often a two-way process. Organisations undertaking high risk work are generally engaged and actively working with HSE to minimise risks to workers, the public and the environment.
15. Historically there has been much public concern associated with major hazard industries, and it seems highly appropriate that the HSE should be actively involved in addressing this proactively. They are well placed to communicate with the public over the tight controls and positive engagement which are in place to effectively manage risks within this sector.

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

16. It is sensible and entirely appropriate, for HSE to continue to work with other regulators that have public safety duties, and specific expertise, to promote a coherent, overall approach to public safety, in line with the principles of better regulation.
17. Clarity of responsibilities among regulators with public safety responsibilities is essential, and forms a key component of the principles of better regulation. It is impossible to identify gaps or overlaps in regulation without a clear understanding of the operations undertaken by each and every regulator.
18. Concerns over confusion and perceived ‘gaps’ in the regulation of public safety should not lie with HSE. Legislative or regulatory gaps, or inadequacies in the enforcement provision, should be addressed through Parliament to the agency with responsibility for regulatory review. If HSE has any role to play here it would be to identify any such situations to the appropriate Government department, or to provide risk management guidance to assist government bodies in understanding the scale of the problem, or identifying a solution.
19. HSE should be very concerned over any suggestion that it is, or should be, the enforcer of last resort. However, if the areas outlined above are properly addressed then this situation should not arise. Clarity of responsibilities, joined up working and action to address gaps and overlaps should ensure that there is a planned and appropriate way in which to deal with every regulatory

situation. Until this position is attained, HSE should be extremely cautious about stretching resources too far or acting outside its own experience and competence by picking up regulatory issues which fall outside of its own scope of work.

20. Establishing criteria to set priorities for involvement in public safety protection would be beneficial to HSE. Definition is key to effective regulation.

Principle 3 – HSE will not unnecessarily restrict the liberty of people to engage in certain hazardous activities, should they wish to do so

21. “HSE considers that a risk free society is both unattainable and undesirable. Rather, it wants to promote a society where risk is properly understood, managed and appreciated – and where people are free to engage in activities, of their own free will, that carry a measure of risk.”
22. “HSE will, of course, continue to expect organisations that provide access to such activities” to “comply fully with their legal requirements to ensure that risk is effectively controlled, so far as is reasonably practicable. But risk management does not equate to risk” elimination “ and health and safety should not be blamed when organisations make unpopular decisions for quite unrelated (and often financial) reasons”
23. EEF members wholeheartedly support these assertions, as set out in the discussion document, and feel that HSE must be robust and overt in evangelising this message throughout the regulatory sector. However, if regulation is to follow this principle then there is going to be a learning curve for the public. Currently there is a climate of risk aversion and a claims culture in the UK. People don’t want the state to intervene in their lives and activities until something goes wrong. But, when it does they want to hold someone accountable, to sue and to attain retribution. Fearing this backlash, individuals and organisations are becoming more reluctant to place themselves in a situation where they could become a target for such blame.
24. It will be possible to lead people on from this position into a culture of risk acceptance, but it will be very important to manage expectations along the way. It is inevitable that where people take calculated risks they will make mistakes, and that accidents will occur. At this stage in the process HSE will need to take a robust position, defending sensible risk management decisions, and helping people to learn from their mistakes and move on, whilst accepting their own liability for the situation in which they find themselves. HSE will set the tone for any such culture change, and the significance of this role must not be underestimated.
25. EEF members feel that HSE should be taking a proactive role here, encouraging people to learn how to accept risk at a manageable level in their lives, and to reap the benefits of well managed involvement in potentially hazardous activities. This goes beyond the principle suggested within the discussion document which is really a passive undertaking not to prevent people from participating in such activities.

Principle 4 – HSE will give particular priority to intervention when the risks to the public from a work activity and the risks to workers from that same work activity are linked

26. The discussion document does not clearly identify what benefits would be gained by establishing a link between risks to public safety from a particular activity and the risks to workers from that activity.

27. HSE must concentrate on its primary area of responsibility, health, safety and welfare in the working environment. This may lead on to issues of public safety, as effective risk management requires that potential risks to all stakeholders are considered as part of the process. In this way HSE may find themselves regulating in situations where risk management of a work activity requires consideration of public safety issues, but it should be this way around, with workplace safety leading on to public safety rather than vice versa.
28. Risk management is not an exact science, and every case must be considered individually in every respect, including the ways in which stakeholder groups interact with the hazard to create risk. There is no obvious benefit associated with automatic prioritisation of situations where both workers and members of the public are exposed to the same risk.

Principle 5 – That where possible and appropriate, risks to public safety that arise in a particular locality be dealt with by those within that locality

29. There are obviously benefits to involving personnel with local knowledge in the regulation of public safety. It is also widely accepted that local authority regulation teams have a significant depth and breadth of risk management experience. However, the current system of regulation provides for HSE to oversee health and safety risk management in operations managed and controlled by local authorities, and visa versa. This system has been established in order to maintain the independence and impartiality of the regulatory function.
30. Local authority personnel utilise their expertise in ensuring public safety within their own operations through their established risk management processes. The role of HSE is to objectively regulate this process. Consequently it would be inappropriate to involve local authority personnel in this process, as this could potentially compromise the objectivity of the regulatory function.
31. EEF members are in favour of better joined up working between HSE and Local Authority enforcement functions in order to make best use of the available expertise and local knowledge. However, care must be taken to ensure that the objectivity of the regulatory function is maintained at all times.
32. In terms of the level of priority that HSE should attach to the regulation of public safety in operations controlled by local authorities, this should be established purely by the individual circumstances of each activity. HSE should employ the same enforcement criteria and ‘targeting’ principles as they would to any other operation, and then regulate accordingly.

Principle 6 – HSE will, where circumstances demand, apply its unique expertise in controlling and managing risk to pressing issues of public and national concern

33. Improved definition of the phrase ‘pressing issues of public and national concern’ would be required in order to comment fully on this principle. However, it would seem entirely appropriate for HSE to apply their risk management expertise at a strategic level to a public emergency or similar extraordinary situation. Care must be taken in terms of resourcing. HSE resources are finite and their primary responsibilities relate to promoting health, safety and welfare in the workplace. It would be essential to ensure that core activities in this area did not suffer as a result of any reallocation of resources to assist in extraordinary situations. Consequently, where such situations occur outside of HSEs primary area of work, their involvement should be in high level

strategy, planning and advice rather than in the more prolonged and resource intensive implementation phase.

34. The discussion document states that "HSE does not treat occupational road related risk as a priority because it views the Police involvement, using legislation which HSE would generally consider to be more appropriate, as generally satisfactory in managing any breaches of road legislation.
35. EEF members support this position and are in agreement that breaches of road and transport legislation are most appropriately dealt with by the Police. The Police services have greater knowledge, experience and resource available to them and are therefore better placed to respond promptly and appropriately to road traffic incidents.
36. This is a good example of the way in which HSE should channel its available resource to the areas of most effect, avoid duplication of work, and recognise situations where other regulatory bodies are better equipped to address areas of public safety.

CONCLUSION

37. The primary area of responsibility and competence for HSE is promotion of health, safety and welfare in a workplace setting. It is essential that they maintain their focus, and prioritise their resources in this area. Having said that, HSE has accumulated a vast breadth and depth of risk management expertise through work in these core areas, and applies this in the regulation of public safety, although this should be done with caution. HSE must be careful not to stray outside of its areas of competence or to overstretch finite resources to the detriment of core work programmes.
38. HSE should take steps to move the risk culture on to a situation of risk acceptance, through clear leadership and effective and robust communication on risk issues. This will require a proactive approach from HSE across all areas of work and responsibility.
39. EEF are always supportive of joined up working between regulators, and agree that the principles of better regulation should govern relationships between public safety regulators in order that a more coherent and comprehensive regulatory regime might be established.
40. Every risk management situation is individual and must be managed and addressed accordingly. Risk assessment should be an enabling mechanism, the means by which activities and operations can be carried out safely, for a beneficial outcome. Care must be taken to ensure that regulatory regimes take account of this, and work proactively towards more effective and integrated risk management within the field of public safety.