



The manufacturers' organisation

EEF Response to the Consultation on Evaluation of HSC Enforcement Policy Statement

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**Consultation
Response**

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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.

CURRENT POSITION

1. Enforcement of health and safety in the Britain is currently at a crossroads and it is the task of the HSC to listen to stakeholders and determine which route will be the way forward. In order to achieve this objective, the HSC need to determine the purpose of enforcement. Is it to be a tool which will be used to exact maximum retribution, or a tool to be used to drive improvements in health and safety at work? The current situation is unclear.
2. If the objective of health and safety enforcement is retribution, then increased prosecutions, higher penalties, introduction of administrative fines and the use of adverse publicity orders may meet the objective. However this would be a very negative process. It could alienate business from the regulator and could create a culture of secrecy and cover up. It would reinforce the image of health and safety as a burden on business and enforcers as 'the enemy' out to make life as difficult as possible for businesses, whilst imposing penalties to line the Treasury's coffers. The imposition of many fines for minor offences could even be regarded as an additional method of taxation on business.
3. We believe that this is contrary to the path that the HSC has embarked upon in recent months. Initiatives linked to 'sensible health and safety', and 'health and safety as an enabler' have been gathering momentum recently. We welcome these developments.
4. In our view the nature of health and safety legislation is such that it does not lend itself to exacting retribution for the consequences of failure. Legislation and good practice in health and safety are intended to establish a baseline of performance and drive progress through a continuous improvement cycle. If this is the message that the HSC want to take to business, then they must choose the second path at this crossroads and set about establishing an enforcement strategy which will underpin the message that good health and safety is good business. The key to this will be firm but fair enforcement where the regulator is clear about the motivation for their action, and about the outcome that they wish to achieve.
5. One criticism recently levelled at HSE is that their enforcement activities tend to be events driven rather than proactive. There will obviously always be a need for inspectors to react when certain incidents do occur, however if the HSC do wish to dispel this reactive image then it will be necessary to increase the number of proactive and planned inspections undertaken by the HSE. Proactive inspection has the potential to drive improvements in health and safety performance as problems and breeches can be identified before an incident occurs. However the positive benefits of proactive inspection could be undermined if sanctions are imposed on employers for petty breeches in an aggressive or over zealous manner. Consequently it will be essential to ensure that inspectors are provided with robust guidelines and a framework for enforcement in proactive inspection to facilitate a consistent and proportionate approach.

FUTURE ENFORCEMENT OPTIONS

Prosecution

6. Prosecution through the courts should remain the most appropriate mechanism for addressing serious breaches of health and safety legislation. The Judiciary should retain the flexibility to impose penalties which will act as a deterrent to non-compliance for all areas of business and all sizes of organisation, consistently and in proportion to the offence. In the context of these most serious breaches of health and safety legislation, there would be no place for alternative sanctions alone.
7. The mostly likely outcome from a health and safety prosecution is a financial penalty. Currently the revenue from fines returns directly to the exchequer, however it may be beneficial for this situation to be reviewed. If the Government were to adopt hypothecation of fines for health and safety offences the revenue could be directed to HSE where it could be employed to support the regulatory programme, possibly by increasing the number of inspectors available to engage in advisory services, proactive inspection and in other regulatory activities. It would surely be more motivating for the regulator to see some benefit from their enforcement activity, and more relevant for businesses to see the funds paid in fines being used to strengthen the regulatory system.

Other Types of Enforcement

8. Prosecution is only one aspect of enforcement. Prohibition and improvement notices are also used extensively to address identified breaches of health and safety legislation. These continue to be a useful enforcement tool, but our members are keen to see improved consistency in the way that such notices are issued by inspectors, as there is currently no measure for proportionality of enforcement action in the context of the nature or severity of the breach. HSC could assist here by publishing a document which states and exemplifies the type of offence which might attract each level of enforcement action. Business would benefit from an improved understanding of the boundaries of enforcement, and the regulator would benefit from improved transparency.

Alternative Sanctions

Administrative fines

9. We understand the term 'administrative fines' to refer to 'on-the-spot' or 'fixed penalties' for minor breaches (eg. late submission of a reporting form) which would operate on a similar basis to parking or speeding tickets. Our members feel that administrative fines of this nature could undermine the promotion of effective and proactive health and safety management. They could re-focus attention away from the delivery of real and practical management of workplace risk to the effective completion of paperwork, which of itself does not improve health and safety performance, and increase the perception that health and safety is all about bureaucracy. If small fixed penalties like this were to become established, organisations may even start to 'accept' that they will incur a certain number of these in any given year. We feel that one off, petty infringements such as this do not warrant any form of enforcement.

Adverse Publicity Orders

10. We do not support the use of adverse publicity orders which could undermine proactive health and safety management, prompting a culture of secrecy and animosity whilst delivering no benefit. We are not aware of any evidential basis for positive improvement delivered by such penalties. The consequences of such an order would be grossly inconsistent and contrary to the principal of equality before the law. To a big public company the adverse publicity could cause significant losses in terms of reduced public confidence, but to a private company, government agency or utility the repercussions would be minimal. There is also no balance in this proposal. How would good performance be acknowledged?

Restorative Justice

11. We understand the term 'restorative justice' to refer to a process of dialogue where the employer might engage with the injured party to apologise for the incident which has occurred and for the associated injury or loss, to explain the investigation process, identify the causative factors and to explain how the remedial action taken will prevent a reoccurrence.
12. Restorative justice programmes can promote mediation and the involvement of employee representatives, alongside the employer and the regulator, in evaluating the issues surrounding a failure of the health and safety management system, and in the planning of remedial action. These programmes can be positive and proactive, building a culture of trust, openness and involvement. They allow an organisation to identify and apologise for mistakes and to introduce remedial action to prevent a reoccurrence in line with a cycle of continuous improvement, in a manner which could promote effective and realistic management of health and safety in the workplace.
13. EEF do support further exploration of initiatives such as restorative justice. These could be used in conjunction with traditional penalties for serious breaches, and in isolation for more minor offences which may have attracted an improvement or prohibition notice from an inspector.

Other Regulatory Activities

14. Enforcement is only one part of the wider process of regulation. Our members understand the importance of enforcement, but they are also keen to see the HSC developing other regulatory initiatives in order to drive more proactive improvement in the field of health and safety.
15. EEF are supportive of initiatives discussed in other consultation exercises, which are designed to increase the amount of time available for proactive inspection and feel that these are complimentary to enforcement. We are keen to see further development of programmes that identify and recognise organisations which do manage health and safety effectively, allowing the regulator to withdraw from proactive inspection. Such schemes carry huge incentive value for organisations keen to achieve and maintain their position as 'recognised' companies. At the same time, regulatory resource can be freed up and reallocated to other priority programmes. This goes back to the objective of enforcement as a tool drive improvement.

CONCLUSIONS

16. To deliver 'sensible health and safety' in Britain, the HSC must place the enforcement policy at the cutting edge of their strategy. The focus must be on the big picture and continuous improvement, encouraging, supporting and advising businesses to see health and safety as a facilitator rather than an obstacle. Any new regulatory initiatives should have a firm evidential basis. Restorative justice, recognition schemes and partnership initiatives are well established as drivers for positive change, and have been used extensively in many areas of regulation across the world. The timetable for effecting change must be realistic.
17. The current debate is, in our view, too focussed on larger employers. However, evidence suggests performance is poorest in small and medium sized organisations. It is not clear how this might be addressed going forward. The HSC must decide if the initiatives discussed here could be extrapolated effectively into this sector, or whether alternative interventions will be required. It will be essential to ensure that the positive health and safety message reaches SMEs in order to avoid a two-tier situation occurring in terms of performance and enforcement.

18. EEF recognise that enforcement is an important, and in specific circumstances an appropriate part of HSE's regulatory toolkit. However we urge that enforcement is used sparingly and in conjunction with other regulatory activities, in order to achieve the best results and to promote health and safety as a positive driver for business.
19. We believe that it is relatively straightforward for the HSE to increase or decrease the amount of enforcement action that they take. However, it will be a key challenge for the Regulator to fundamentally change the general business perception of health and safety legislation so that rather than being perceived as a barrier, as is currently all too often the case, it comes to be regarded as an enabler. Achievement of this objective will be underpinned by the judicious use of a transparent enforcement policy, the aims of which are widely supported.