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The Health and Safety of Great Britain

EEF response to the Health and
Safety Executive's consultation

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About EEF

EEF is the representative voice of manufacturing, engineering and technology-based businesses with a membership of 6,000 companies employing nearly 1 million people. EEF is one of the leading providers of business services in employment relations and employment law, health, safety and environment, manufacturing performance, education, training and skills.

Executive Summary

- EEF welcomes the consultation on the draft strategy. Following the merger of HSC and HSE, now is the right time to reset direction.
- The broad structure, content and tone of the strategy are good. Clarification in some areas would improve the document and indicate clearer direction.
 - The strategy needs to make clear that Britain has a mature legislative framework and action needs to focus on making this effective in practice, not on new legislation. This is particularly true for directors' responsibilities.
 - Worker consultation and involvement is an important component of good health and safety management, but not a replacement for it. The strategy should emphasise that workers have both rights and responsibilities where health and safety is concerned.
 - HSE has made some good efforts to improve communication with SMEs; this good practice needs to be spread more widely in HSE's work. To support this there needs to be specific reference in the strategic goals to reducing unnecessary paperwork.
 - The strategy should make explicit that work on wider health and wellbeing should be delivered chiefly by DoH and DWP.
- EEF has a strong partnership with HSE. EEF will work with HSE to produce a joint plan for delivery under the strategy.
- The strategy cannot be delivered by HSE and local authorities alone, many organisations need to play their part. There is the potential for some insurers to play a greater role in both promoting good practice and reducing unnecessary paperwork.
- HSE is building upon a strong foundation, however to deliver the strategy it needs to act differently in a number of ways:
 - It needs to be stronger in resisting ill-conceived legislation, particularly from the European Commission.
 - Better regulation and sensible risk approaches need to be spread to all parts of HSE.
 - Consistency, proportionality and targetting by local authority regulators needs to be improved; both inspection resource and business resource are currently wasted as a result. All authorities need to come up to the standard of the best
- Finally HSE needs to be adequately financed to carry out its functions effectively.

Detailed Response

1. EEF welcomes the consultation on the draft strategy. Following the merger of HSC and HSE, now is the right time to reset the direction of health and safety in Great Britain.

The strategy document and its goals

2. EEF agrees with the broad approach taken in the strategy document and its stated goals. The strategy confines itself to genuinely strategic issues, avoiding some of the detail that was a weakness in its predecessor. However, there are a few areas where it is too high level and consequently lacks a clear sense of direction. Clarification of these issues as identified below would improve the document and better communicate the direction of travel. Amendment as suggested would enable EEF to fully support all of the goals of the strategy.

Legislative priorities

3. The foreword recognises the maturity of the health and safety legislative framework. However EEF is disappointed that there is no explicit commitment to making existing legislation work in practice whilst resisting new legislation unless there is a compelling case for change and its aims cannot be met by other means.
4. There remains a great deal to be done in communicating existing requirements, driving and supporting compliance. More also needs to be done to ensure a level playing field where some cannot gain short-term advantage over responsible firms by flouting the law. We need stability and consolidation to bring this about and need to resist pressures for poorly thought-out new legislation.
5. We believe this approach reflects the intention of the HSE Board, but urge that it be stated clearly in the strategy. Clarifying the point would send a signal that businesses can focus on fully embedding compliance with existing requirements without worrying that they will change in the near future. EEF suggest that a further goal is added reading:

‘To improve understanding of, and compliance with, mature and stable legal requirements, resisting new legislation unless there is an overwhelming case and its aims cannot be achieved by other means.’

Leadership

6. EEF agrees with the need for strong leadership and fully supports the two associated goals. Good leadership is critical to both reducing harm and challenging excessive risk aversion and unnecessary bureaucracy within organisations. EEF is committed to encouraging and supporting effective leadership of health and safety.
7. However, imposing additional specific duties on directors would be counter-productive as they would tend to promote tick-box attitudes or even scape-goating instead of leadership. Statutory requirements to, for example, appoint a single health and safety director would encourage other directors to relax their own involvement and commitment. There already exists in Section 37 of the HSW Act 1974 a provision for holding

to account directors whose personal actions or neglect cause their company to commit an offence.

8. EEF's Health and Safety Survey 2008 showed the current approach, launched in 2007 of promoting and supporting leadership within the existing legislative framework can and does work. Key actions, such as regular discussion of health and safety at Board meetings and monitoring of objectives were being implemented in around three quarters of companies, representing a significant increase on the position three years previously.
9. EEF urges HSE to continue with the current approach, but with renewed vigour and supporting the existing guidance with continued high-profile campaigning. For its part, EEF will continue to promote, support and measure the importance of good leadership of health and safety.

Competence

10. EEF agrees on the importance of building competence and supports the goal as stated in the consultation draft. However the text that follows focuses exclusively on the competence of those giving health and safety advice. It fails to mention the necessity for competence within line management, staff and contractors. There is a need to improve understanding of health and safety amongst non-specialist managers, from the Board down. This should be made explicit in the final strategy and supported by action to promote competence through existing skills training and effective, practical communication.

Worker involvement

11. Health and safety management is only truly effective when all work together to a common aim. Good worker involvement is therefore important and EEF welcomes inclusion of a goal relating to this theme. However we do question assertions that worker representation in general and trade union representation in particular in themselves improve health and safety. The evidence shows an association with health and safety performance, not a causal link. This is just as well explained by the nature and structure of organisations likely to have recognised trade unions as by the activity of the unions.
12. There is a risk that some could believe worker representatives are a replacement for good health and safety management, rather than one of its important contributory parts. It would be helpful if this could be clarified in the document.
13. It is also vital that this theme focuses upon both the rights of workers and their responsibilities. Some employers who are trying hard to improve health and safety experience difficulties in getting workers to play a full and constructive part in the process. HSE, employers' organisations and trade unions could do more to promote the balance between rights and responsibilities. It is important that this balance is explicitly recognised in the strategy document.

Small and medium sized enterprises (SMEs)

14. EEF welcomes the commitment to customise and adapt approaches to help SMEs comply with health and safety legislation. However, the goal

omits a vital facet. EEF's 2009 survey of health and safety in member companies found that unnecessary bureaucracy was the biggest issue of concern to our member companies. HSE's own polling carried out between 2004 and 2008 consistently shows the same finding. Unnecessary paperwork both distracts employers from taking action and gives health and safety a bad name.

15. HSE is in practice carrying out work to address this issue, this needs to continue and have the full support of the strategy. We suggest amending the 8th goal so that it reads:

‘To adapt and customise approaches and reduce unnecessary paperwork demands, to help the increasing numbers of SMEs in different sectors comply with their health and safety obligations.’

EEF's contribution to delivering the strategy

16. EEF and HSE have a strong partnership and we are committed to building upon this to help deliver the strategy. The partnership does not mean that we will agree on every issue. Where we do disagree we will continue to provide a robust but constructive challenge – a healthy and necessary part of the policy-making process. We will discuss the issues face to face and seek a solution.

17. EEF is one of the largest providers of health and safety training and consultancy in Britain, with more than 50 health, safety, climate and environment professionals based in a network of offices across the country. They help improve health and safety by providing information, advice, training, specialist services and developing policy. EEF is working with HSE officials to consider the content of the strategy, identify priorities for the manufacturing sector and agree a joint delivery plan to help turn the strategic goals into realities.

Key roles in delivering the strategy

18. As the draft strategy rightly identifies, HSE cannot achieve the strategic goals on its own. A range of organisations need to be involved. Some are already playing a full part, others need to do more or to refocus their actions.

Business organisations

19. Organisations representing businesses should be active in promoting and supporting sensible management of health and safety. We have an important role to play in help businesses to dismiss trivial issues and myths and then focus their attention on practical actions that manage the real risks.

Trade Unions

20. Trade unions have an important part to play in developing competence amongst health and safety representatives. They should also do more to communicate the need for balance between rights and responsibilities, encouraging workers to be actively and constructively involved in improving health and safety.

Insurers

21. The insurance industry has a critical role to play, not only in driving improvement, but also in promoting a sensible approach to risk that avoids imposing unnecessary burdens and bureaucratic requirements. Some insurers have provided a lead, but this is far from universal. EEF would like to see the insurance industry working much more closely with HSE.

Standard-setting bodies

22. Standards setting bodies should apply the principles of better regulation to their activities. Whilst standards do not formally carry the weight of law, they become in practice de facto regulations. Without compliance contracts are lost and they are used as the legal benchmark in both civil and criminal cases. Some standards, particularly those for management systems, are becoming unnecessarily complex and bureaucratic.

Professional Bodies

23. Competence is key to managing health and safety effectively and proportionately. Professional bodies have an important role to play in driving up competence and this should include a willingness to challenge those who overstate legal requirements or provide poor advice. EEF welcomes voluntary actions to further this aim, but is opposed to any statutory registration of health and safety professionals. The meaning of competence varies widely according to the nature and scale of the risks and business involved.

Pre-qualification schemes

24. Pre-qualification schemes can help exert a very positive influence on the supply chain. However, the current variations in requirements between the different schemes mean that employers can be required to produce new paperwork for each scheme – covering the same processes and risks. Common requirements, based upon relevant statutory requirements should be agreed. Both local and central government have,

through presence as the major users of such schemes, the leverage to bring about such a change.

HSE and Local Authorities – what they should do differently

25. A great deal of HSE's work needs to continue with only relatively minor adjustments; a consultation on the strategy is not the place to address such incremental change. However there are a few areas where HSE, and particularly local authorities, do need to make significant changes.

Resisting ill-conceived regulation

26. In recent years a number of EU health and safety directives have sought to impose new requirements and bureaucratic requirements with little or no improvements in health. The Electromagnetic Frequencies Directive and Artificial Optical Radiations Directives are case studies in bad regulation. HSE's own impact assessments for both indicate that they would bring no benefits at all to health and safety.
27. EEF is very pleased that HSE has in recent months listened to its concerns and become active in trying to rectify the damage these directives would cause. However, it would have been far more effective had HSE been more active in opposing the directives before they were adopted.
28. Further directives are likely to emerge, HSE, ministers and the UK Representative to the European Commission need to be far more active and robust in opposing ill-conceived Directives at an early stage.

Spreading better regulation and sensible risk approaches to all parts of HSE

29. It is not for HSE to 'spoon feed' duty holders, but it does need to provide clear direction and support. HSE has carried out some good work to simplify requirements and communicate more concisely and with less equivocation. HSE should ensure that this approach spreads to all parts of the organisation.
30. Overly-long and complex guidance continues to be produced and some inspectors continue to interpret requirements in a manner that is unnecessarily mechanistic and bureaucratic. Action is needed to spread the existing good practice and embed it throughout the organisation.

Improving consistency proportionality and targeting amongst local authorities

31. EEF remains concerned that enforcement by a significant proportion of local authorities fails to follow the principles of better regulation. This damages the reputation of good local authorities, health and safety in general, and by association HSE. It also imposes unnecessary burdens on businesses and distracts their attention from their most significant risks.
32. As the Better Regulation Executive's 'Improving outcomes from health and safety' report identified the frequency of inspections runs completely contrary to the level of risk – even when inspections for non-health and safety matters are discounted. Given finite resources this is very concerning. Low risk premises are being visited unnecessarily whilst much higher risk premises are left untouched for long periods. This appears to be an effect of the split in enforcement and the very different appreciations of risk by LA and HSE inspectors.

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33. The HSE / Local authority partnership has brought improvements. EEF also looks forward to the further improvements as a result of the establishment of the Local Better Regulation Organisation. However, the rate of improvement needs to either accelerate rapidly or the split in enforcement needs to be reconsidered
34. HSE should be more robust in directing the activities of local authorities, holding local authorities to account for delivering against the recently revised Section 18 guidance and holding to account those who depart from a better regulation approach. HSE should be joined in this by the other main local authority stakeholder organisations.

Supporting initiatives and guidance from others

35. HSE has an important role in producing guidance as well as running campaigns and other initiatives to promote good health and safety management. HSE is right to recognise that other organisations also have important roles to play. EEF would like to see HSE offer greater support to other organisations in their delivery of the strategy. To do this effectively there needs to be sufficient resource within HSE to prioritise requests and provide the necessary oversight to enable HSE to provide formal endorsement and support.

Resourcing

36. HSE needs to be adequately resourced to carry out its functions effectively, including inspection, advice, enforcement, investigation and consideration of safety cases. Responsible businesses need good advice and information, they also need adequate inspection and enforcement to ensure that they cannot be undercut by disreputable rivals seeking short – term advantage. Safety cases need to be processed promptly to avoid unnecessarily holding back enterprise and improvement.

Goals best delivered by others

37. HSE has been very successful in bringing a focus to health, work and wellbeing, bringing together activity within the Department of Health (DoH) and the Department of Work and Pensions (DWP) and other organisations into a coherent and coordinated whole. HSE can be justifiably proud of the work it has done on this extremely important agenda.
38. EEF agrees with the view expressed by HSE's Chair at the London launch of the strategy consultation that it is now time for HSE to hand over the lead to other organisations. HSE's remit is to reduce ill health and injury caused by work activities. A great proportion of the Health, Work and Wellbeing agenda relates to conditions that are wholly or mainly caused by non-occupational factors.
39. Therefore DWP and DoH must now take on the bulk of the work, with HSE involved in a supporting role only in issues that have an appreciable work-related component. EEF believes that the final version of the HSE strategy should make the change in involvement explicit as this represents a strategic change in direction.

Conclusion

- EEF welcomes the consultation on the draft strategy. Following the merger of HSC and HSE, now is the right time to reset the direction of health and safety in Great Britain.
- The broad structure, content and tone of the strategy are good. It does well in avoiding minutiae and is pitched at a genuinely strategic level. However, in a few areas it is too general. Clarification of these areas would improve the document and give clearer strategic direction.
- With these changes EEF would be able to fully support all of the strategic goals and is keen to work with HSE to deliver further improvements under the strategy.

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