



House of Commons
Work and Pensions Committee

**Government Response
to the Committee's
Fourth Report into the
Work of the Health
and Safety Commission
and Executive**

Third Special Report of Session

2003–04

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Work and Pensions Committee

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

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Committee staff

The current staff team of the Committee is Philip Moon (Clerk), Gosia McBride (Second Clerk), Maxine Hill (Committee Specialist), Djuna Thurley (Committee Specialist), Louise Whitley (Committee Assistant), Emily Lumb (Secretary), John Kittle (Senior Office Clerk).

Contacts

All correspondence should be addressed to the Clerk of the Work and Pensions Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 5833; the Committee's email address is workpencom@parliament.uk

Third Special Report

1. The Work and Pensions Committee agreed its Fourth Report of Session 2003-2004 on 14 July 2004. The Report was published on 23 July 2003 as House of Commons Paper No.456.
2. We have now received in the form of a letter from the Secretary of State for Work and Pensions, the Government's Response to the Report, which is printed as an Appendix to this Special Report.

Appendix

The Government welcomes the fourth report of the Work and Pensions Select Committee, Session 2003-04, entitled *The work of the Health and Safety Commission and Executive*, which was published on 25 July 2004. The Committee acknowledges that the Health and Safety Executive (HSE) is a high quality organisation and that Great Britain has one of the best health and safety records in Europe. It is also supportive of the current legislative framework for health and safety.

Whilst the majority of recommendations of the Committee are related to activities of HSE's Field Operations Directorate, over 40 per cent of operational activity within HSE is aimed at major hazards such as those arising from the nuclear or chemical industry. The work carried out in this area is aimed at meeting the targets for controlling risks from major hazards and provides the assurance that risks to workers and the public associated with major hazards are properly controlled.

The approach to managing health and safety in Great Britain is risk based. This has stood the test of time and has wide support from stakeholders. This means that we will not have a 'risk free' society, and that we will not adopt a 'risk averse approach' to the way we manage risks in the workplace. Instead the Government's approach is one where risks are sensibly managed and the measures, including resources, are targeted and proportionate to the degree of risk.

The Government is committed to further improvements in health and safety and recognises that national performance has plateaued since the mid 1990s. In response to this, the Government launched the Revitalising Health and Safety initiative in 2000 setting specific targets to be met over a ten year period.

In February 2004, the Health and Safety Commission (HSC) launched its Strategy for workplace health and safety in Great Britain to 2010 and beyond (hereafter referred to as the HSC's workplace strategy). The Government gave details of the main themes of this strategy to the Committee in its written evidence. The Government continues to endorse this strategy, seeing it as providing the strategic direction needed to achieve the improvements we all seek in the changing world of work, and remains committed to seeing it fully implemented. As details of the various work strands in this strategy are developed and tested, this will better inform the requirements for HSE resources.

The government approach on resources is to focus them on areas where they will have the greatest impact on improving health and safety, rather than to apply a blanket increase across the board. HSE will need to use the resources provided to achieve this impact through prioritising and targeting its activities. Health in particular is a complex area and one in which the impact of interventions is seen only over a much longer period than safety issues. HSE has started a number of pilots which will better inform decisions on what works best and provide the evidence base on which to resource and roll out the successful aspects of the pilots.

The Government strongly supports the view, recognised by all key stakeholders in the health and safety system that the people best placed to understand and manage the risks in the workplace are the workers and managers that work in them. The Government has, in particular, promoted the involvement of workers' safety advisers in the workplace. The Secretary of State for Work and Pensions recently announced schemes awarding financial support from the Workers' Safety Adviser Challenge Fund, which makes available £3M over a three year period.

The Government has examined carefully the commitments on legislation in the Revitalising Health and Safety and has prioritised them. The Government is preparing proposals for removal of Crown immunity and greater penalties for health and safety offences to be introduced as soon as Parliamentary time allows.

CONCLUSIONS AND RECOMMENDATIONS

BACKGROUND

We recommend that, in context of Spending Review 2004, the HSE inspectorate be recognised as a front-line service and protected. (Paragraph 20)

The Government does recognise HSE as a front line service and will ensure that it has resources to carry out its duties effectively.

TARGETS

The Committee recommends that the HSE use an annual workplace health and safety survey to obtain data to enable it to publish evidence of trends on such issues as the proportion of employers (a) conducting risk assessments, (b) providing occupational health support and (c) training on health and safety issues. (Paragraph 41)

The Government supports the idea of a workplace survey and notes that HSE is currently undertaking work to pilot one along the lines proposed by the Committee. A decision on whether to run the full survey and then whether to repeat it annually or at longer intervals (with smaller-scale studies of specific subjects in intervening years) will be taken following an analysis of the success and the results of the first survey.

The Committee views with concern the limited progress that appears to have been made in reaching targets and does not believe that there is any realistic prospect of achieving the 2004 targets. In its view this lack of progress must, inevitably, raise questions about the present system's capacity to secure significant future improvements in standards of workplace health and safety. (Paragraph 50)

The Government shares the Committee's concern about not meeting the interim targets for 2004, but does not share the view that this raises questions about securing future improvements.

Setting specific targets has given a focus to what is achievable. It has promoted more effective ways of working, and better evidence of what works and what does not. It is precisely this process that has led HSC to advise Ministers that a new strategic approach was required to meet these targets. The Government accepted that advice, and supported HSC in developing its workplace strategy, which will provide the strategic direction in achieving the improvements that we are all seeking.

In particular, HSE has organised itself around strategic programmes which are aimed specifically at achievement of the targets, informed through an improved evidence base which will develop as these programmes are rolled out. The Government will ensure that the programmes are resourced to achieve their aims of bringing about the improvements set in the targets.

The Committee is also concerned that the Public Service Agreement target to 'improve health and safety outcomes' by 2008 appears to be vague and unmeasurable. We recommend that the Government produces and publishes specific details of what this target is and how it is to be measured. (Paragraph 51)

The Government has published this information as the Public Service Agreement technical note (www.hse.gov.uk/aboutus/plans/sr2004.htm). This Note sets out how each performance target will be measured and the criteria for meeting it against which it can be judged.

Progress will be measured against the following targets:

- That the three health and safety outcome indicators used for the Revitalising Health and safety (RHS) targets will reduce over the SR2004 period (2005-06 to 2007-08) by proportions consistent with HSE's published ten-year targets. This means the following target reductions against a 2004-05 baseline:
 - o the incidence rate of work-related fatal and major injuries: 3 per cent by 2007-08;
 - o the incidence rate of work-related ill health: 6 per cent by 2007-08;
 - o the number of days lost due to injuries and ill health: 9 per cent by 2007-08.

- That the numbers of recorded major hazard precursor incidents will reduce by levels as previously agreed and published in joint HSE and industry targets for onshore hazards, offshore hazards and the nuclear industry. These targets are published in HSC's Business Plan 2004-05, which is at www.hse.gov.uk/aboutus/index.htm

Information on progress against all PSA targets will be available at www.hm-treasury.gov.uk from April 2005. The PSA target will be considered to be fully met only if all the targets listed above, i.e. the three RHS sub-targets and the three major hazards sub-targets are achieved separately.

The PSA target will be considered partly met if:

- one or more of the sub-targets are achieved; and
- the indicator for each sub target moves in a favourable direction; and
- indicators of risk control move in a favourable direction, indicating that risks are being better controlled and as a result health and safety failures are declining.

LEGISLATIVE FRAMEWORK

The Committee is concerned at the length of time it is taking the Government to resolve any outstanding issues concerning reforms of the law on corporate killing and recommends that by 1 December 2004; the Government publishes a Bill on corporate killing. (Paragraph 53)

The Government remains fully committed to reforming the law on corporate manslaughter. This is a very complex area of law and it is crucial that the issues are thought through carefully. The Government had expected to settle its position before now but working through these issues has taken longer than expected. We intend to publish a draft bill this autumn. Criminal law is a devolved matter in Scotland and Scottish Ministers, who are also considering this area of the law, have said that if there is a need to reform then they will not hesitate to bring forward proposals to do so.

The Committee recommends that commitments to legislate made in Revitalising Health and Safety in 2000 should be honoured by a Government Bill in the next session of Parliament. (Paragraph 55)

The Government is committed to introducing legislation for removal of Crown immunity and greater penalties for health and safety offences. Beyond this, it has no plans to introduce legislation resulting from the Revitalising Health and Safety Commitments and does not, therefore, see the need for a new Government Bill.

The removal of Crown immunity and greater penalties for health and safety offences will be introduced as soon as Parliamentary time allows.

The Committee recommends that the Government reconsiders its decision not to legislate on director's duties and brings forward proposals for prelegislative scrutiny in the next session of Parliament. (Paragraph 60)

The Government believes that there is already an appropriate balance of legislative and voluntary responsibilities on directors for occupational health and safety, and has no immediate plans to legislate as recommended. It, along with HSC, will continue to encourage and persuade directors in organisations across all sectors to take their responsibilities seriously and to provide leadership on occupational health and safety.

While the evidence is clear that growing numbers of board directors, in the private, public and voluntary sectors, are taking responsibility and providing leadership, there is still some way to go to achieve the goal of all boards exercising corporate responsibility. There is an estimated one in six organisations in which boards do not provide direction or take responsibility, and have no plans to do so.

A key theme in HSC's workplace strategy is helping people to understand and benefit from sensible health and safety policies and practices. HSC has been asked to build on and invigorate the current voluntary measures in place.

This includes publicising examples of best practice, the benefits of board-level corporate responsibility and the persuasive evidence of the benefits, economic and social, that director leadership brings.

The Government has asked HSC to undertake further evaluation to assess the effectiveness and progress of the current measures in place, legislative and voluntary, and to report its findings and recommendations by December 2005.

HEALTH AND SAFETY COMMISSION AND EXECUTIVE CONSTITUTIONAL FRAMEWORK

The Committee recommends a wide ranging and open review of the role and effectiveness of HSC's Industry Advisory Committees to help to address concerns that they are being downgraded. (Paragraph 72)

The Government and HSC greatly value the contribution of its Advisory Committees (ACs) and have no plans to downgrade them. It believes it right, however, that HSC has an effective mechanism for constant review to ensure that ACs remain relevant to the changing industrial and commercial landscape, and focused on delivering outcomes in the form of improved health and safety.

ACs provide HSC with an additional and major source of expertise and advice on specific health and safety issues, and have a key role in delivering HSC's workplace strategy. ACs may be concerned with health and safety in a particular industry or sector, or with particular hazards that may be present across a range of industry sectors, but all ACs support HSC's aims by:

- translating and disseminating HSC's priorities to their constituencies; and
- engaging stakeholders in appropriate accident/ill-health reduction programmes.

All ACs are periodically reconstituted, at which time they are reviewed. In 2003, HSC considered how ACs were managed, and the criteria against which they should be reviewed. Its views are set out in a guidance note, 'A Guide to managing HSC Advisory Committees' (GAP 2), which is available on HSE's web site at www.hse.gov.uk.

HSC wants all ACs to now concentrate on how they can best improve health and safety performance in the sphere for which they have responsibility. Proposals to constitute or reconstitute an AC should explain how it will contribute to achieving strategic outcomes and the planned timescale, so that progress can be monitored. Such proposals also have to demonstrate that indicative criteria, developed by HSC to use as a basis for prioritising resources to support ACs, have been met. These criteria are also set out in GAP2.

It is also important to be sure that an AC, as a specific form of stakeholder engagement, is the most appropriate for the particular sector.

Between 2003 and 2005, all existing ACs will have undergone this review process. A number, such as agriculture, construction and health services, have already been reconstituted.

We endorse the view of Prospect that the number of inspectors in HSE's Field Operations Directorate should be doubled (at a cost estimated by them as £48 million a year after 6 to 7 years). We recommend that substantial additional resources are needed in the next three years. (Paragraph 82)

Governments approach to resourcing HSE.

The Government will support HSE to achieve improvements in health and safety in Great Britain and meet its PSA target. It notes, though, that simply doing more of what HSE has done before will not deliver the significant improvements needed.

It is for this reason that HSC's workplace strategy was developed, part of which is to prioritise and target resource where it will have the greatest impact. Enforcement still has a key role and the Government does not wish HSE to move away from enforcement. The challenge will be to achieve the right mix of activities to optimise desirable outcomes from the resources used. To this end, HSC has developed a discussion document on an interventions strategy for HSE and LAs, which has recently been launched for electronic consultation. This explores further views on what is the best mix to adopt. It also considers the ways in which different forms of intervention complement one another. It is clear that inspection, investigation and enforcement will remain central to the resulting interventions strategy.

As the interventions strategy is implemented and rolled out there will be improved evidence of which interventions are effective and which not so effective. It will take time for the evidence to build up particularly on health issues.

Doubling of Inspectors in Field Operations Directorate (FOD)

The Government wishes to see any increases in resources targeted at specific activities backed up by evidence of its effectiveness. HSE is doing this by setting up strategic programmes of work in areas where it will have the greatest impact. HSC's Business Plan 2004-2005 gives details. There is no evidence at this stage that a blanket doubling of FOD inspectors would be the most effective or efficient way to achieve significant improvements in health and safety or meet the targets.

DEVOLUTION

The Committee recommends that HSE should actively promote joint resource planning, risk prioritisation and programme working across the devolved legislatures in Great Britain. (Paragraph 88)

The Government will ensure that arrangements are in place to promote joint planning, risk prioritisation and programme working where it is appropriate and sensible to do so, and notes that in areas of devolved government, HSE is already working with a range of stakeholders. The Government supports this work.

The Government recognises that the devolved administrations offer opportunities — because of their size and focus — for innovative approaches, which can be of broader interest. HSE and LAs have already initiated partnerships or projects with a broad range of stakeholders and intend to continue to develop this approach in a structured way. Joint projects have been developed to tackle priority sectors and topics in an integrated way under the strategic programme with LAs; this has involved detailed planning of the resource contribution that HSE and LAs can make. HSE and LAs are also working together on other issues and initiatives, including the development of standards in the local authority and jointly enforced sectors.

HSC&E's broad risk priorities are the same for England, Scotland and Wales but there is a commitment to tackle them in ways which meet the needs of the economies, communities and cultures in devolved areas. Local and regional partnerships help to do that. HSE intends to be more involved in joint planning to understand better and manage expectations and the resources that are available across a range of stakeholders; and to deliver defined outcomes based on the evidence.

HSE in Scotland is exploring if better stakeholder engagement can be secured by establishing a group of key stakeholders with an interest in health and safety whose aim will be to ensure the delivery of the HSC's workplace strategy in an efficient and effective manner, based upon the evidence of risk. It will also play a full part in the development of the Scottish Executive's "Healthy Working Lives" initiative, which aims to deliver an integrated approach to improving the health of the working age population.

HSE in Wales has developed good working relationships with the Welsh Assembly Government, the Welsh Local Government Association, and others who can make a difference to health and safety performance in Wales. Joint initiatives and projects are in progress, for example a Manual Handling Passport scheme for those engaged in the health care sector has been developed.

HSE in London, recognising the city's distinct and complex identity, has taken substantial steps here too to build partnerships and deliver an integrated approach.

CHANGING WORLD OF WORK

The Committee recommends the HSE adopts a more proactive approach to enforcement action towards employers who disproportionately rely on temporary agency workers. (Paragraph 98)

The Government is satisfied that HSC's Enforcement Policy Statement and HSE's approach to proactive enforcement are already determined by a range of risk factors of which the status of workers is just one part.

HSC has considered the question of agency, and similar, workers and concluded that health and safety legislation provides them with equal and adequate protection.

In accordance with HSC's Enforcement Policy Statement, enforcement action is generally focused on the duty holders who are responsible for the risk, and who are best placed to control it. In most cases this is the duty holder in whose business the work is being carried out.

The employment of large numbers of agency or temporary workers does not automatically mean that health and safety management is inadequate, or that the workers are more at risk.

However, during visits to businesses supplying or hiring agency workers, HSE makes it clear to those involved that their duties include taking whatever action is required to ensure the health and safety of both agency and non-agency workers.

To assist such employers further, HSE is preparing information and guidance for employment businesses, hirers and agency workers, which is expected to be available on the HSE website later this year.

We recommend that, for all its major procurement contracts, the Government sets a good example and only buys from suppliers who have proved to the Government that they comply with UK health and safety legislation and who have satisfactory health and safety procedures and practices in place. (Paragraph 105)

The Government believes that procurement is an effective route through which to improve health and safety standards and has asked a Ministerial Task Force, set up to oversee a programme for establishing government as an exemplar of health and safety, to implement this recommendation.

More specifically, HSE's Construction Programme has worked with the Office of Government Commerce to produce procurement guidance for construction projects commissioned by Government. The guidance takes account of the health and safety performance of all those involved in the procurement chain. Lessons learnt from the construction experiences will assist in developing guidelines for other areas of procurement.

As a result of the recent review of Employers' Liability Compulsory Insurance (ELCI), the Government produced a new procurement guidance for Government Departments in April 2004. The aim is to ensure that all bodies that contract with the public sector have valid ELCI insurance.

The Committee is seriously concerned at the level of risk to which migrant workers are currently exposed. We recommend that urgent research is needed to improve our understanding of the occupational health and safety risks faced by migrant workers so that a targeted strategy to manage those risks for this particularly vulnerable group can be effectively implemented as soon as possible. (Paragraph 111)

The Government shares the Committee's concern and has already recognized the need for more evidence in this area. It notes that HSC has asked HSE to undertake a programme of work to determine whether - and to what extent - migrant workers are at significantly greater risk than other categories of worker. The composition of the work programme, which includes a significant research element, was endorsed by HSC in June this year. Proposals on how best to take this research forward are currently being considered, alongside an evaluation of what HSE is already doing to identify and address the needs of migrant workers. An interim report on progress is due to be made to HSC in December. In the light of the findings, HSC will consider how it can most effectively help to safeguard the health and safety of migrant workers.

As regards the Gangmaster (Licensing) Act, HSC will work with the Government, particularly Department for Environment, Food and Rural Affairs, on the supporting regulations to ensure that migrant workers are not exploited, nor their health and safety put at risk.

The Committee is concerned that there does not appear to be an all-embracing strategy to address the changing world of work and recommends that such a strategy must be developed as a matter of urgency. This should include, in particular, measures to reduce the health and safety risks faced by agency workers and migrant workers. By 31 December 2005, clear, comprehensive and appropriate guidance should be published by the HSC/E on health and safety where the workplace is a private home. In particular, and more urgently, local authorities should issue guidance on the Employer's Liability (Compulsory Insurance) Act 1969 to those employing carers directly in their own homes, and assist in arranging appropriate cover. (Paragraph 120)

Earlier this year, the Government endorsed an all-embracing strategy – HSC's workplace strategy - which recognised as its principal challenge the modern and changing world of work. This strategy has been welcomed by a broad range of stakeholders and the Government sees no need to revise that strategy at this time.

HSC's strategy is for the health and safety system as a whole, and is based in part on an analysis of how the world of work has and continues to change. It sets out clearly how HSC&E should discharge their responsibilities, but does not, by its very nature, include policies about protecting specific groups of workers. The Government's position on agency and migrant workers is set out in its responses to recommendations 11 and 13.

It is not appropriate for HSC or HSE to publish guidance on care workers employed by private householders under direct payments scheme, because in most cases, neither the worker nor the private householder will owe duties under Health and Safety at Work Act (HSWA) by virtue of s51, nor will the local authority owe a s3 HSWA duty to the worker. However, in 2003 the Government (the Department of Health) published Direct Payments Guidance, aimed at assisting local councils in making direct payments. This guidance includes a section on health and safety and makes reference to HSE's general guidance Handling Home Care.

INSPECTION AND ENFORCEMENT

The evidence supports the view that it is inspection, backed by enforcement that is most effective in motivating duty holders to comply with their responsibilities under health and safety law. We therefore recommend that the HSE should not proceed with the proposal to shift resources from inspection and enforcement to fund an increase in education, information and advice. (Paragraph 142)

The Government is satisfied that HSE has no proposals to shift resources in the way described in the recommendation. Further, the Government will continue to support HSE as it maintains its balanced mix of advice and persuasion, enforcement and business incentives, and continues to evaluate them to ensure their efficiency and effectiveness

The discussion paper referred to at paragraph 131 of the Committee's Report was one of many contributions, from within HSE and beyond, to the consultation and debate that

informed the development of HSC's workplace strategy. The Government accepts the Committee's conclusion in paragraph 141 that there is not a simplistic either/or choice as to whether to emphasise guidance or enforcement in policies for achieving compliance. They both have their place and it is a question of determining the best mix with the resources that are available.

The Government also recognises that there is good evidence of the effect of the mature techniques such as inspection and enforcement, and that these should remain at the heart of HSE's approach. However, there is a developing body of evidence, presented to the Committee, that other forms of intervention also make an impact, particularly when backed by programmes of inspection. The Government fully supports HSC's workplace strategy which, in aiming to develop and deploy a broader range of intervention techniques, drew upon this evidence and upon the responses of a very wide range of consultees. It also notes that HSC is seeking views on the best mix of interventions to adopt via the discussion document referred to under Recommendation 9.

The Committee is concerned both at the low level of incidents investigated and at the low level of proactive inspections and recommends that resources for both are increased (see paragraph 82). (Paragraph 150)

The Government welcomes the work that HSE is doing to improve both the effectiveness and efficiency of its interventions. These measures will result in more time being available for proactive activities, as well as reactive work being completed more efficiently.

HSC has consulted on the criteria which should be used by HSE to select incidents for investigation and these have been applied since April 2001. The introduction of these criteria, together with the increasingly complex investigation procedures required, has resulted in the time spent on investigations (reactive work) increasing from 30 per cent in 1997/98 to 50 per cent in 2002/03. HSC's view is that this balance is wrong as HSC&E's primary aim is prevention, and that HSE should be aiming to reduce the figure for reactive work to 40 per cent. The Government supports this view.

In 2003, HSE took action to streamline and improve its investigation procedures and to pilot revised incident selection criteria. The revised criteria aim to target better the selection of incidents to those resulting in the most serious harm and to those arising from the hazards that cause the greatest number of injuries. The pilot was completed at the end of June 2004 and is currently being evaluated. A report will be made to the HSC by end of 2004.

The Government, in line with HSC's workplace strategy, recognises the importance of proactive inspections being prioritised and targeted at those organisations which have the worst records in health and safety. The discussion document on an interventions strategy, referred to under Recommendation 9, explores the case for identifying areas where HSE and LAs will be less proactive with better performers. However, where inspections are undertaken they will – as now – be targeted at those workplaces where they will have the greatest impact.

Many HSE staff, other than inspectors, are employed in frontline activities and they make an important contribution to meeting HSE's operational objectives. A set of initiatives is

currently being implemented to broaden the range of such staff and to increase operational productivity. For instance, exercises are under way to increase through internal recruitment the number of Health and Safety Awareness Officers (HSAOs) to around 90, and to recruit an additional 18 inspectors which would maintain FOD's operational inspector numbers at around 500.

All frontline staff will continue to work closely together. For example, in contacting new premises to provide advice and raise awareness, HSAOs will be responsible for identifying those businesses which merit/require full inspection, by an inspector. In addition, a range of efficiency measures is in train to improve productivity levels and to increase the proportion of HSE's workforce in frontline roles. The supplementary information submitted to the Committee by HSC&E following oral evidence contains further information about the role of HSAOs and about the efficiency improvements being introduced in FOD.

The Committee believes that before adopting a policy of reduced inspection for employers with an established record of good practice, there is a need for clear and thorough evidence-based analysis to ensure that the reduction does not lead to negative outcomes such as improper pressures to achieve a reduction in accident reporting. (Paragraph 153)

The Government agrees with the Committee's view. The discussion document on an interventions strategy referred to under recommendation 9, explores the case for identifying areas where HSE and LAs will be less proactive with better performers. It invites views as to whether HSE and LAs should give public recognition for good practice and performance, and the criteria that could be used for assessment. The discussion document refers explicitly to the Committee's recommendation. The Government agrees that stakeholders should be content that any scheme allowing organisations to be subject to less proactive intervention, will not jeopardise health and safety, for example by distorting incident reporting. Piloting and evaluation will be undertaken to validate any proposals.

PROSECUTION

Given the HSE's limited resources, if safety representatives were empowered to enforce health and safety law in the workplace, we believe this would have a powerful effect in improving standards. We also believe this power to take action, should include not just criminal prosecutions but also improvement and prohibition notices, subject to the usual right of appeal to the Employment Tribunal and as to terms on legal costs. (Paragraph 176)

The Government believes that safety representatives and the employees they represent make a vital contribution to maintaining and improving health and safety.

It remains of the view that empowering safety representatives to enforce occupational health and safety law in the workplace would not lead to improved standards. The correct balance needs to be struck between rights and responsibilities, and the role of safety representatives should remain focused on representing employees within their constituencies. They should continue to do this by exercising their existing legislative functions to ensure that the risks faced by these employees are properly controlled.

A shift in the focus for safety representatives away from representation towards a quasi inspectorial role could well harm and undermine their relationship with the employees they represent and would have no lasting benefit on enforcement generally. It could also have an adverse impact on their relationship with the employer.

The process of enforcement must be seen to be fair, independent and in line with the published HSC Enforcement Policy Statement, and it must have the confidence of all parties. This requires professionally-trained health and safety inspectors who are independent of the interests in any particular case. This is vital given that in especially-serious cases health and safety prosecutions may need to be brought against any party, including not just employers, manufacturers or suppliers but also sometimes employees.

The Committee recommends that the Government identifies resources to build on the success of its pilot of a new prosecution model. (Paragraph 177)

The Government also welcomes the success of this pilot. Following the Government response to the ETR Select Committee in 2000 (which said it was reviewing arrangements), the pilot was developed and ran from September 2001 to the end of 2002.

Based on this experience, the final report concluded that independent legal oversight was not necessary for all HSE prosecution cases. The option of full roll-out was evaluated in the context of prioritising and making most efficient use of HSE's resources.

As a consequence of this evaluation, a prosecution improvement project was initiated. This has been taken forward on three main fronts:

- o defining and prioritising the most serious legal work. These cases are to be managed by HSE's Solicitor's Office, resourcing it to deliver this additional work load;
- o improving the management of solicitor agents (instructed to handle other complex or difficult cases)
- o improving operational procedures, and providing appropriate advice and guidance to operational staff.

This is a logical and efficient segmentation of work based on its seriousness and implications. The Government currently intends to continue with this approach and evaluate its effectiveness before considering any further changes.

The Committee recommends that maximum penalties should be increased by means of a Bill in the next session of Parliament and further recommends that proposals to introduce alternative and innovative penalties in addition to those already available to the courts should be examined and the reasoned conclusions thereof published by 1 May 2005. (Paragraph 182)

The Government will introduce proposals for increased penalties for health and safety offences through the appropriate legislative procedure.

The Government wishes to see enforcement improved, coherent and effective. It believes that alternative and innovative penalties could have a role to play in this but only as part of a wider overall approach to improving enforcement.

The HSC is now evaluating its Enforcement Policy Statement. The work it conducted on Action Point 9 of Revitalising Health and Safety on

innovative penalties, together with further options on alternative approaches, will feed into this evaluation. This is a detailed and comprehensive evaluation with the outcome being a revised Enforcement Policy Statement in September 2007.

INSPECTION AND ENFORCEMENT BY OTHER AGENCIES

The Committee recommends that HSE undertakes and publishes by 1 October 2005 a thorough audit of the performance of local authorities. The Committee further recommends that additional powers should be made available to allow HSC/E to take actions against any local authority manifestly failing in its duty of enforcing health and safety regulations. (Paragraph 198)

The Government accepts the Committee's conclusions on the need for consistency of enforcement, both between HSE and LAs and across all LAs but does not see the need for an audit of the type proposed to achieve that goal. These conclusions, and more generally the Committee's analysis of LAs as enforcers, are consistent with the outcomes of the extensive consultation on these issues, which HSC undertook in developing its workplace strategy.

The Government accepts and supports the proposals in this strategy, which aim to develop the role and performance of LAs as enforcing authorities. HSC, with the strong support of local government institutions, is working to establish a new partnership between HSE and LAs, which will make the best use of their combined resources in tackling agreed priorities, national, regional and local, for improving health and safety. To this end HSC, the local government institutions and HSE have recently agreed a "Statement of Intent", committing themselves to establishing the partnership and spelling out its characteristics. The Programme includes joint action to review the arrangements for providing assurance as to the performance of the enforcement partners – through an equitable process for audit and review.

LAs' performance of their health and safety enforcement responsibilities is currently subject to evaluation. In addition to assessing the information from annual returns by LAs, HSE has conducted some 30 audits on behalf of HSC, and collected over 100 audit reports and actions plans from LAs' inter-authority audits, producing a comprehensive picture of LA performance.

The Programme is also seeking to review and improve the support provided to LAs by HSE, which will further contribute to achieving consistency of targeting regulatory work and the application of the law. DWP has oversight of the Programme through senior membership of HSE's Delivery Board, and will keep the outcomes under review, including the need for more formal powers in respect of LAs' performance as enforcing authorities.

The Committee recommends that the Department by 1 October 2005 reviews its strategies to ensure national consistency and rigour in enforcement of health and safety regulations throughout Great Britain. If this review finds substantial support for current criticisms, it is further recommended that the demarcation of enforcement activity between HSE, local authorities and other enforcement agencies be examined,

the case for a unified health and safety enforcement authority investigated and the reasoned conclusions thereof be published by 1 October 2006. (Paragraph 204)

The Government has asked Philip Hampton to conduct a review of regulatory inspection and enforcement. He expects to consult on his emerging findings in winter 2004-2005, and these will need to be taken into consideration. In addition, HSC consulted widely on its approach to enforcement by LAs and does not see the need for further examination of the case for a unified inspectorate at this stage. Subject to those considerations, the Government supports the current approach by HSC and Local Government to addressing these issues through a strategic partnership.

The Programme which has been set up to develop the partnership does include a review of current arrangements for monitoring and auditing the work of the enforcing authorities, and of demarcation of responsibilities between HSE and LAs. And the evidence-based interventions strategy (referred in response to recommendation 9) will apply to HSE and LAs jointly, and will further help achieve consistency of approach.

INFORMATION AND ADVICE

The Committee recommends that resources should be allocated to enable all key HSE publications to be made available free of charge on the Internet. (Paragraph 216)

The Government supports the view that the key information and advice, published by HSE, should be widely accessible and paragraph 216 of the report notes the extent to which this is already happening.

The Government notes HSE's commitment to making more information available on the Internet and the current examination of its pricing policy aimed at achieving this without incurring business detriment. As part of this review the Government will ask HSE to consider the Committee's recommendation.

The Government will wish to see the conclusions of this review before considering any further action.

WORK RELATED ROAD SAFETY

The Committee recommends that the HSE is provided with the necessary resources to enable it to enforce effectively its existing guidance on work-related road safety, particularly in relation to preventative measures. (Paragraph 224)

The guidance referred to is the leaflet *Driving at work*, published jointly by Department for Transport and HSE in September 2003 in response to a recommendation of the independent Work-related Road Safety Task Group led by Richard Dykes. The guidance provides information about the standards expected of an employer in sensibly managing work-related road risks and seeks to illustrate good practice. Following it is not compulsory and employers are free to take other action to ensure that these risks are sensibly managed.

The question of formal enforcement of the guidance does not arise, but its provisions are promoted actively through a range of national, local authority, and police networks.

The Committee recommends that at-work road traffic incidents should be required to be reported pursuant to RIDDOR. (Paragraph 226)

The Government notes that this recommendation, which was also one made by the Work-related Road Safety Task Group, is already being considered as part of a wider HSE review of RIDDOR that is currently taking place. This review, which will include gathering public views through publication of a discussion document, will report to the Commission in autumn 2005.

The Committee recommends that, by 1 October 2005 the HSC/E should carry out a review of the case for an ACoP on work-related road safety, and publish its reasoned conclusions. (Paragraph 228)

The Driving at work leaflet is but a year old, and the Government considers that next year will be too early to make a judgement on the need for an Approved Code of Practice. Moreover, data on work-related road incidents will only start to be collected under the revised road traffic incident form from 1 January 2005. It will be some time before trends emerge to enable conclusions to be drawn on the desirability of new interventions. In any event, the Government recognises that, in line with the HSC's workplace strategy, work-related road safety is not a priority area for HSE.

CONSULTATION WITH EMPLOYEES

The Committee recommends that, by 1 October 2005, HSC publishes proposals to develop improved rights to consultation for employees, particularly in non-unionised workplaces, including rights of enforcement through its Employment Tribunal and private prosecution routes. (Paragraph 241)

The Government believes that high standards of occupational health and safety will be achieved only with appropriate arrangements on worker involvement and consultation in place in all workplaces. HSC, in its workplace strategy, recognises this and is fully committed to taking forward voluntary, evidence-based measures to promote more active involvement, particularly in workplaces lacking such arrangements, as a matter of priority.

The Government considers the current legislation concerning worker involvement and consultation on health and safety is adequate and does not believe that further legislation including new rights on enforcement, to be either beneficial or likely to attract the necessary wide-ranging stakeholder support to be effective.

The Workers' Safety Adviser (WSA) Challenge Fund is one voluntary measure promoting more active involvement. This grant scheme was created as a result of a successful pilot and is aimed at small and non-unionised workplaces. It will explore in more detail and across a wide variety of projects, sectors and geographical locations, the sustainability of using WSAs for producing improvements in consultation and managing health and safety. It is offering £3 million over three years for a diverse range of schemes. The aim is to demonstrate that WSAs are an effective change agent and lead to new partnerships being established. The Government is watching progress with close interest.

The Government notes a further and vital measure is for HSE and LAs to look at what practical steps they can take to get more workers better involved. Although their

discussions on the right approach to this are at an early stage, HSE has already outlined a set of intervention strategies to be developed with LAs and these include working with safety representatives, trade unions and other organisations representing workers.

The Government and HSC have a key role to play in working with other stakeholders, including employers, business and the trade unions, to promote and encourage genuine partnership on occupational health and safety in the workplace. HSC has already published preliminary evidence in the form of case studies and research to show the business and social benefits of worker involvement in health and safety. This information base will be developed further in the coming years to contribute not only evidence about the social and economic benefits of worker involvement but also practical advice for all of the partners on best methods to achieve the goal.

OCCUPATIONAL HEALTH SUPPORT

The Committee is disappointed at the plans and progress to date to establish national cover of occupational health services. It recommends that this is given higher priority than it has received to date and that HSC/E is provided with the necessary resources to enable it to make progress towards the 2010 targets on occupational health. (Paragraph 251)

The Government recognises improving occupational health as a key priority area, as does HSC's workplace strategy, but it also realises that progress in achieving improvements in occupational health will inevitably not be quick given the complexities involved and lack of reliable evidence base for innovative interventions.

In addition to the three pilots, details of which were given to the Committee in oral evidence by the Minister for Work, funding of £20M spread over three years has been allocated for further pilots to test the impact of the model for delivering occupational health and safety support.

Evaluation of these pilots will provide essential information to identify best practice in changing behavior and establish the financial models necessary to provide a sustainable scheme with national coverage. This would provide Government and employers with the evidence base for what works, how the evidence can be used to develop future services and the benefits of further investment to roll out support provision across the country.

HSE'S work on Occupational Health Support is also a key element of the DWP commitment to produce a framework for Vocational Rehabilitation by the end of October 2004. This Framework will be a first step towards developing a new approach to vocational rehabilitation in the United Kingdom which will provide the support required to enable individuals who are sick or injured, or people with a disability, access to remain in or return to employment.

The Committee recommends that the HSC should, by 1 October 2005, develop and publish an Approved Code of Practice defining the standards of competence employers are required to use to ensure they comply with health and safety requirements. (Paragraph 253)

The Government shares the Committee's view on the central importance of competence but does not consider that a specific Approved Code of Practice on competence, as recommended, is necessary. HSE has already published general advice and guidance on competence, including information within the Management of health and safety at work Approved Code of Practice & Guidance. This is supplemented by the free HSE leaflet Need Help on Health and Safety, which gives guidance on when a business needs to seek outside competent help and explains the help that different health and safety specialists can give.

Two other HSE publications provide more detailed advice:

- o Successful Health and Safety Management, sets out advice on good arrangements for competence; and
- o Comprehensive advice on developing, setting up and maintaining a Competence Management System is given in Railway Safety Principles and Guidance, Part 3, Section A, Developing and maintaining staff competence.

Also, information on competence requirements for particular industries can be found in various other HSE publications.

Employees do not want to talk about their health problem with their employer if they are potentially work threatening. There is a need for third party advice for both employees and employers. We endorse the suggestion of NHS Plus that the NHS is ideally placed to fill this role. This does not mean that they would provide all the service, but they could “serve as honest broker”. (Paragraph 254)

The Government recognises that there are occasions when employees do not feel able to talk to their employers about factors affecting their health, and HSE is exploring two ways of helping. The first is by testing proposals for an occupational health and safety support system. This would provide access to a 'problem solver' who can give independent advice on work-related issues to both workers and employers.

The second is an initiative to encourage greater worker involvement in identifying and tackling work-related health and safety problems. The people best placed to make workplaces safer from harm are the staff and managers who work in them. They do this best by working together and the outcome of cooperation should be a greater willingness to share concerns about potential problems.

In the occupational health and safety support pilots referred to in response to recommendation 28, NHS Plus may have an important role to play as a provider where capacity is available and it operates with the range of skills needed to tackle modern work-related health issues. The recommendation will be considered as part of the work to develop the support system.

OCCUPATIONAL HEALTH

The Committee welcomes steps being taken by HSE to improve our understanding of the nature and extent of the problem of workplace ill-health. (Paragraph 259)

The Government also welcomes the steps taken by HSE. It believes that improved awareness and understanding may also be leading to increased preparedness on behalf of employers and individuals to report work related ill-health conditions.

The Committee shares HSC's concern that there is a 'huge job' to do on health. It is concerned, therefore, that a reduction in HSE's in-house expertise has raised major questions as to its capacity to show leadership on the issue. We recommend the Government reviews the resources available for this work to enable the HSE to fulfil this growing role. (Paragraph 266)

The Government considers that HSC&E have already shown leadership in making work-related health a high priority and the focus of one of its strategic programmes. It also considers that the approach being taken by HSE to resourcing in this field is appropriate.

Improving occupational health is not necessarily about providing more doctors and nurses. To tackle occupational health successfully needs a multi-disciplinary approach using a wide range of skills. The challenges being addressed are much wider than occupational medicine and include the key priorities of work-related stress and musculoskeletal diseases.

While in the past having a Chief Medical Adviser helped HSE raise the profile of occupational health, there are now other ways by which this can be achieved. HSE is currently exploring how best to tap into the available expertise including that available in DWP. It is most important that HSE has access to the whole range of skills it needs to do the job it has identified – not providing the service but offering support and guidance to others.

Over the period 1997-2004, HSE has increased its specialist resource by fourteen full-time equivalent posts to deal with these and related areas.

HSE has recognised that it needs to make the most effective use of its resources. It has undertaken a review of its scientific and technical resources. As a result, it is introducing some structural change with the formation of the Corporate Medical Unit and is looking at more flexible arrangements for deploying its technical specialists, piloting the pooling of groups of topic specialists. Arrangements are also being made to fill any gaps in capacity, particularly in the field of human factors, identified by the review.

The Committee recommends that inspectors should have the resources that they need to be able to identify health issues, recommend remedial action to be taken by employers and define satisfactory outcome measures. Resources are also required to enable proactive research work to be done on combating newly emerging risks, like passive smoking. The risk assessment criteria should be reviewed to ensure they are able to identify workplaces where occupational health risks are high. The results of this review should be published by 1 October 2005. (Paragraph 277)

The Government accepts the Committee's recommendation concerning the actions by inspectors in relation to health issues. Whilst inspectors have dealt with issues like asbestos and silica for many years, two of the eight areas for priority action, which were identified in response to the Revitalising Health and Safety Strategy Statement, were the emergent issues of stress and musculoskeletal disorders. Specific guidance and training has been developed for HSE and LA inspectors on these topics, as well as on other health issues, such as noise

and hand arm vibration. Such guidance includes the standards that should be achieved for each health issue, as well as advice on the enforcement action which should be taken. Specialist support is available for all these topics, although HSE is taking steps to augment that support in certain key areas, such as industrial psychology and ergonomics.

The Government accepts the important role that research can play to determine and tackle health and safety risks. HSE sponsors a wide range of research to help deliver its strategic business priorities, which currently accounts for an annual spend of about 6 per cent of its grant-in-aid. One important aspect of this work is to identify and characterise emerging issues with significant implications for occupational health and safety.

The inspection rating scheme used by HSE and LA inspectors includes a health risk rating, which describes how far the duty holder operates from an acceptable standard of compliance and the residual risk to health thereby created. Therefore, inspectors are able to identify those workplaces where occupational health risks are high and the Government does not accept that a review is necessary.

The Committee recommends that the Government reviews the experience of the ban on smoking in the workplace recently introduced in Ireland. Measures to deal with passive smoking in the workplace should be included in the forthcoming White Paper on improving health. (Paragraph 278)

The Government issued a consultative document (Choosing Health) on 3 March this year that included questions seeking views on whether the Government should pass a law to make all enclosed workplaces and public places smoke free. The consultation ran for nearly four months, ending on 28 June. The Government will announce its conclusions in a White Paper in due course. In Scotland a consultation on smoking in public was launched in January 2004 as part of the Scottish Executive's tobacco control action plan. It ended on 30 September 2004 and Ministers are expected to announce their decision before the end of the year.

In the meantime, the Government wants to see better and more rapid progress in extending the number of smoke-free places on a voluntary basis.

The Committee recommends that HSC reviews international evidence on the efficacy of requiring employers to set out their approach to, and provision of, rehabilitation to determine whether lessons can be learned and introduced in the UK The results of the review to be published by 1 October 2005. (Paragraph 286)

The Government is persuaded of the need to provide leadership to help establish a new approach to rehabilitation within the UK. As a first step the Government will develop and publish a Framework for Vocational Rehabilitation, planned for end of October 2004.

HSE has developed a voluntary best-practice approach, based upon research, and extensive consultations with experts and practitioners. This approach is intended to help employers and managers, in partnership with their employees and their representatives, to manage proactively long-term sickness-absence and help those who are off work sick, whatever the cause, to return to work.

HSE's approach at present is to encourage voluntary action. As a case for new legal duties would require evidence that the voluntary approach has not improved matters, this approach will be monitored to help establish whether a statutory requirement is needed. The HSE will review the international evidence recommended by the Committee when it weighs up all the evidence before deciding on the next steps.