Only those submissions, written specifically for the Committee and accepted by the Committee as evidence for the inquiry *Health and Safety in Scotland* are included.
<table>
<thead>
<tr>
<th>No.</th>
<th>Organization Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>NAO</td>
</tr>
<tr>
<td>2</td>
<td>Occupational and Environmental Health Research Group, Stirling University</td>
</tr>
<tr>
<td>3</td>
<td>British Safety Council</td>
</tr>
<tr>
<td>4</td>
<td>Royal Environmental Health Institute of Scotland</td>
</tr>
<tr>
<td>5</td>
<td>School Travel Forum (STF)</td>
</tr>
<tr>
<td>6</td>
<td>Stan Brown, Force Safety Adviser, Tayside Police</td>
</tr>
<tr>
<td>7</td>
<td>RoSPA</td>
</tr>
<tr>
<td>8</td>
<td>Society of Chief Officers of Environmental Health</td>
</tr>
<tr>
<td>9</td>
<td>Convention of Scottish Local Authorities (COSLA)</td>
</tr>
<tr>
<td>10</td>
<td>HBM Sayers</td>
</tr>
<tr>
<td>11</td>
<td>Highland &amp; Islands Construction Safety Forum</td>
</tr>
<tr>
<td>12</td>
<td>Faculty of Occupational Medicine</td>
</tr>
<tr>
<td>13</td>
<td>Association of Personal Injury Lawyers (APIL)</td>
</tr>
<tr>
<td>14</td>
<td>Scottish Retail Consortium</td>
</tr>
<tr>
<td>15</td>
<td>The Forum of Insurance Lawyers</td>
</tr>
<tr>
<td>16</td>
<td>Health &amp; Safety Executive</td>
</tr>
<tr>
<td>17</td>
<td>Chemical Industries Association</td>
</tr>
<tr>
<td>18</td>
<td>Institution of Occupational Safety and Health</td>
</tr>
<tr>
<td>19</td>
<td>Scottish Trades Union Congress</td>
</tr>
<tr>
<td>20</td>
<td>Inverclyde Advice and Employment Rights Centre</td>
</tr>
<tr>
<td>21</td>
<td>Scottish Chamber of Commerce</td>
</tr>
<tr>
<td>22</td>
<td>Families Against Corporate Killers (FACK)</td>
</tr>
<tr>
<td>23</td>
<td>RMT</td>
</tr>
<tr>
<td>24</td>
<td>NFUS Scotland</td>
</tr>
<tr>
<td>25</td>
<td>Confederation of British Industry (CBI)</td>
</tr>
<tr>
<td>26</td>
<td>Scottish Centre for Healthy Working Lives</td>
</tr>
<tr>
<td>27</td>
<td>Association of British Insurers</td>
</tr>
<tr>
<td>28</td>
<td>Union of Construction, Allied Trades and Technicians (UCATT)</td>
</tr>
<tr>
<td>29</td>
<td>Health and Safety Division of Crown Office and Procurator Fiscal Service</td>
</tr>
<tr>
<td>30</td>
<td>Scotrenewables Tidal Power Limited</td>
</tr>
<tr>
<td>31</td>
<td>Scottish Hazards Campaign</td>
</tr>
<tr>
<td>32</td>
<td>Thompsons Solicitors Scotland</td>
</tr>
<tr>
<td>33</td>
<td>The United Kingdom Offshore Oil and Gas Industry Association (Oil &amp; Gas UK)</td>
</tr>
<tr>
<td>34</td>
<td>Scottish Resources Group</td>
</tr>
<tr>
<td>35</td>
<td>Supplementary Oil &amp; Gas UK</td>
</tr>
</tbody>
</table>
Written evidence submitted by the National Audit Office

Summary

1. The National Audit Office has prepared this memorandum in response to a request from the Scottish Affairs Committee to provide an overview of the work of the Health and Safety Executive in Scotland. Our analysis is based on the information provided by the Health and Safety Executive. Where we report 2009-10 statistics it should be borne in mind that these are provisional at time of writing.

2. Overall responsibility for health and safety in Scotland remains a reserved issue and has not been devolved to the Scottish Parliament. The Health and Safety Executive is a non-departmental public body of the Department for Work and Pensions (the Department). The Health and Safety Executive operates nationally and thus does not have specific home nation targets and performance measures. In enforcing health and safety compliance, the Health and Safety Executive shares its role with local authorities. The 32 local authorities in Scotland carry out inspections and investigations upon 45 per cent of Scotland’s workforce.

3. In 2009-10, the Health and Safety Executive employed approximately 3,650 full time equivalent staff, of which approximately 270 (7 per cent) were based in Scotland. Sixty per cent of the staff based in Scotland were front line inspectors, but the boundaries are not straightforward as some staff based in Scotland have responsibilities covering England and Wales and vice versa.

4. The majority of the Health and Safety Executive’s funding is in the form of grant-in-aid from the Department, which in 2009-10 amounted to £239 million. It also received an income of £106 million, the majority of which came from fees and charges. The level of grant-in-aid funding has been largely consistent in cash terms since 2005-06, but as a result of the 2010 Comprehensive Spending Review, the Chair of the Health and Safety Executive Board stated that its government funding will be reduced by 35 per cent by 2014-15.

5. Figure 1 summarises the trends in workplace accidents in Scotland.

---

1The Health and Safety Executive Annual Accounts 2009-10.
**Figure 1**
A summary of the nature and trend of workplace accidents in Scotland in 2009-10

<table>
<thead>
<tr>
<th>Type of accident</th>
<th>Fatalities</th>
<th>Major injuries</th>
<th>Injuries requiring over-three-days off work</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description</td>
<td>An incident resulting in a death</td>
<td>Injuries resulting in fractures, unconsciousness or hospitalisation</td>
<td>Where the injured person is off work for over-three-days</td>
</tr>
<tr>
<td>Number in 2009-10</td>
<td>23</td>
<td>2,625 reported</td>
<td>8,039 reported</td>
</tr>
<tr>
<td>Rate (number per 100,000 employees)</td>
<td>0.9 per 100,000 employees</td>
<td>114.7 per 100,000 employees</td>
<td>360 per 100,000 employees</td>
</tr>
<tr>
<td>Trend since 2005-06</td>
<td>The levels are lower than in 2005-06</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Comparison with England and Wales since 2005-06</td>
<td>Rate is higher in Scotland than in England and Wales</td>
<td>Rate is consistent with that of England and Wales</td>
<td></td>
</tr>
</tbody>
</table>

**NOTE**
1 The data for major injuries and injuries requiring over-three-days off work should be interpreted with caution as the Health and Safety Executive estimate that only just over half of non-fatal injuries to employees are reported.

*Source: National Audit Office summary of data from the Health and Safety Executive*
Our key findings

6. There has been a reduction in the more serious reported workplace accidents in Scotland since 2005-06

7. The Reporting of Injuries, Disease and Dangerous Occurrence Regulation 1995 specifies the workplace injuries which should be reported to the Health and Safety Executive. All fatalities are reported, but the Health and Safety Executive estimate that they are notified of just over half of non-fatal incidents. There are three main categories of accident and our analysis of reported data shows that the number of accidents in Scotland has declined since 2005-06 (see Figure 1):

- Fatalities: this category refers to those incidents resulting in a death. The annual number of fatalities in Scotland has declined since 2005-06. There were 23 deaths in 2009-10 compared to an average of 30 per year since 2005-06.

- Reportable major injuries: this category refers to those incidents where an injury results in a fracture, unconsciousness, or a need for hospitalisation. The number of reported major injuries in Scotland has steadily declined. There were 2,625 reported major injuries in 2009-10, a reduction of 8 per cent since 2005-06.

- Reportable over-three-day injuries: such incidents are less serious than major injuries, but nevertheless result in the injured party being off work for more than three days. In 2009-10, the number of reported incidents resulting in over three days off work stood at 8,039, a reduction of 18 per cent since 2005-06.

The higher rate of fatalities and reported major injuries in Scotland, compared with England and Wales is largely due to the composition of the workforce.

8. The reported accident rates for fatalities and major injuries remain higher in Scotland than in England and Wales. In order to make comparisons, the number of fatalities and accidents are weighted by the size of workforce to calculate a rate per 100,000 employees. In 2009-10, there were 0.9 fatalities in Scotland per 100,000 employees compared to 0.4 per 100,000 for England and Wales. For major injuries, there were 114.7 major injuries per 100,000 employees in Scotland, compared with 99.4 per 100,000 in England and Wales (see Figure 1). The differences in the rates of fatalities and major injuries between Scotland and England have remained statistically significant since 2005-06. It is important to bear in mind that there is a high level of under-reporting of major injuries across Great Britain, but there is no evidence to suggest that the different rates between Scotland and England are due to variations in reporting practices.

9. The difference in the rate of fatalities and reported major injuries in Scotland compared to England and Wales can largely be attributed to differences in the composition of the workforce. A study commissioned by the Health and Safety Executive in 2000 concluded that the higher accident rate in Scotland was due to a greater proportion of its workforce being employed in higher risk industries, such as agriculture and construction. Our analysis of published data between 2005-06 and 2009-10 confirmed that in comparison to England and Wales, Scotland has a higher proportion of its workforce in the agriculture and construction sectors. We found that 83 per cent of the difference in fatalities and 97 per cent of the difference in reported major injuries over the last five years can be attributed to the different workforce profile in Scotland. The remaining differences (17 per cent and 3 per cent) are down to other factors unique to Scotland.

---

10. The Health and Safety Executive has undertaken research to find out why Scotland has a higher rate of major injuries in the construction industry compared to England and Wales, but it has not done so for the manufacturing sector.

11. Once the effect of the different workforce composition in Scotland is taken into account, there is limited information on what other factors might contribute to the higher accident rates in Scotland. Between 2005-06 and 2009-10, the relatively low number of fatalities in Scotland meant we could not determine whether risks were more prevalent in some sectors than others. For major injuries, we found that there was a significantly higher rate of major injuries reported in the construction and manufacturing sectors in Scotland than in England and Wales. Research undertaken in 2006 on behalf of the Health and Safety Executive into fatalities and major injuries in the construction industry in Scotland concluded that the difference was almost entirely due to the differing occupational make up: a higher proportion of manual workers were employed by construction firms in Scotland than in England and Wales. We could find no evidence of any similar research to examine the difference in manufacturing.

12. The Health and Safety Executive prepared a 2010-11 Business Plan for how it will implement its strategy in Scotland, but it contains little information upon how issues specific to Scotland will be addressed.

13. The Scotland Business Plan is very closely linked to the overall plan for Great Britain and shares the same structure and objectives. As a consequence, the plan specifies the same three priority sectors for Scotland (construction, agriculture and waste recycling) in order to improve the working environment, and there are no specific measures to target manufacturing.

14. There are insufficient data for the Health and Safety Executive to monitor fully the effectiveness of its activities in Scotland. We found that:

- The Health and Safety Executive has used a variety of media, such as events, podcasts and advertisements to draw attention to specific health and safety risks. It has evaluated the impact of some of these targeted initiatives in Scotland, but, because of the difficulties in isolating their impact from other factors, their impact upon health and safety outcomes is difficult to measure.

- Effective targeting depends upon keeping the Health and Safety Executive’s database of organisations up to date. The Health and Safety Executive does not carry out checks upon how representative its interventions are against the total number of businesses in Scotland. Its management information system contains records of interventions carried out in the past twelve years which numbers 84,000 organisations in Scotland. The InterDepartmental Business Register shows 193,305 records for Scotland, albeit that these include premises such as restaurants and hotels, where responsibility for enforcing health and safety rests with the 32 local authorities. We were not able to establish whether the Health and Safety Executive had sufficient information across all relevant business activities in Scotland, but the Health and Safety Executive explained that their management information is used to enable it to focus on poor performing sectors and businesses.

- In England and Wales, the Health and Safety Executive is the prosecuting body. In Scotland, the Crown Office and Procurator Fiscal Service handle each case, with the Health and Safety Executive making recommendations as to which cases should proceed to a prosecution. In 2009-10, the Health and Safety Executive recommended
43 cases for prosecution in Scotland, compared to 75 in 2007-08 and 84 in 2008-09. There was also a reduction in the proportion of major injury cases investigated in Scotland from 11 per cent of cases in 2007-08 to 6 per cent of cases in 2009-10. The Health and Safety Executive does not have information on what impact these reductions have had on the rate of compliance with the Health and Safety Act.

15. The prosecution data held for Scotland and which is used in the published 12 statistics are inaccurate. For 2009-10, the Health and Safety Executive reported 512 prosecution cases in Great Britain, which included 43 cases recommended to the Crown Office and Procurator Fiscal Service in Scotland. Of these 43 cases, 35 were the subject of criminal proceedings raised by the Crown Office and Procurator Fiscal Service. For the remainder, the Crown Office and Procurator Fiscal Service concluded that other proceedings were more appropriate or the situation meant they were unable to prosecute.

16. Given the Health and Safety Executive does not have an accurate record of the outcome of each of their original recommendations, it cannot determine the conviction rate in Scotland. Using the Crown Office and Procurator Fiscal Service data, we established that the conviction rate in Scotland was 94 per cent in 2009-10, which is consistent with that for England and Wales.

17. It is encouraging that the Business Plan for Scotland outlines plans for closer working between officials from the Health and Safety Executive and the Crown Office and Procurator Fiscal Service to complete cases more effectively. However, the inconsistency between the two sets of prosecution data points to the need for prosecution data to be better recorded by the Health and Safety Executive. Once cases are reported to the Crown Office and Procurator Fiscal Service, the Health and Safety Executive should liaise with them to track progress and update their records to monitor the effectiveness of enforcement activities.

The role of the Health and Safety Executive

18. The National Audit Office has prepared this memorandum in response to a request from the Scottish Affairs Committee to provide an overview of the work of the Health and Safety Executive in Scotland. Our analysis is based on the information provided by the Health and Safety Executive. We have also consulted with the Crown Office and Procurator Fiscal Service, who are the prosecuting body in Scotland.

19. This part of the memorandum covers the role of the Health and Safety Executive, and its organisational structure and funding.

The role of the Health and Safety Executive

20. The Health and Safety Executive is a non-departmental public body of the Department for Work and Pensions (the Department). The Health and Safety Executive’s activities cover the whole of Great Britain and over the last decade it has specified performance targets and objectives for Great Britain. Overall responsibility for health and safety in Scotland remains a reserved issue and has thus not been devolved to the Scottish Parliament. In its review of

---

3 For 2009-10, the Health and Safety Executive records 45 cases which were 3 recommended for prosecution. We have excluded two from this figure because whilst the offence took place in Scotland, the hearing was carried out in England.
4 The Health and Safety Executive statistics 2009-10
6 www.hse.gov.uk/scotland/businessplan.pdf
devolution, the Calman Commission recommended in June 2009 that the Health and Safety Executive should develop a closer relationship with the Scottish Parliament.6 In response to this, the Health and Safety Executive reported that it has arranged an event which is to be held at the Scottish Parliament to improve the understanding of working with the Scottish Government and Parliament, which will be attended by Health and Safety Executive policy staff from across Great Britain. They have also published the Business Plan for Scotland for 2010-11 and developed a Scottish section on their website.7

21. The Health and Safety Executive is responsible for the regulation of the majority of the risks to health and safety arising from work-related activities. The Health and Safety Executive has two main types of activity:

- Proactive work includes inspections of premises, focused inspection initiatives and activities to raise awareness in health and safety. Alongside the Health and Safety Executive, local authorities also have a role in enforcing health and safety compliance through inspections and investigations of premises. The Health and Safety (Enforcing Authority) Regulations 1998, covering Great Britain, specify which premises the Health and Safety Executive enforces and those which fall to local authorities. In Scotland, 55 per cent of the workforce are employed in industries which are enforced by the Health and Safety Executive and 45 per cent by the 32 local authorities, which is consistent with the ratio for the whole of Great Britain. The Health and Safety Executive in Scotland works with other devolved bodies, such as the Scottish Environmental Protection Agency, to regulate the onshore petrochemical and other high hazard industries.

- Reactive work involves investigations following a complaint made to the Health and Safety Executive or in response to a specific incident.

22. The Health and Safety Executive’s remit also includes compiling health and safety statistics and developing policy on fundamental and strategic health and safety issues. Whilst health and safety legislation is a non-devolved issue, the Scottish Government has a role in promoting good health and safety practice. For example, it funds the Scottish Centre for Healthy Working Lives, which provides service and advice to businesses to improve the health of the working age population.

23. Between September and November 2010, the estimated workforce in Scotland comprised approximately 2.4 million people, with a further 225,000 unemployed and 780,000 economically inactive.8 The employment and economically inactive rates were similar in Scotland to that for England and Wales. 9

24. Figure 2 overleaf shows that a slightly higher proportion of Scottish workers are employed in agriculture and construction than in England and Wales. Although the profile of Scotland’s workforce is slightly different, the Health and Safety Executive uses a national risk assessment to identify priority sectors and thus it has not specified any areas of focus for Scotland. The Health

---

7Health and Safety Executive data shows that for 2009-10, there were 45 cases recommended in Scotland. However, these include two cases for which while the offence took place in Scotland, the hearing was carried out in England. Hence these have been discounted from the Scottish figures.
8Relates to those aged 16 to 64 years old.
and Safety Executive has identified three work sectors in Great Britain, beyond the major hazard sectors such as oil and gas, at particular risk in relation to health and safety:\(^\text{10}\)

- Construction
- Agriculture
- Waste and recycling\(^\text{11}\)

**Figure 2**
Profile of the Scottish economy

<table>
<thead>
<tr>
<th></th>
<th>Scotland</th>
<th></th>
<th>England and Wales</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Proportion of total workforce (%)</td>
<td>Number of business units</td>
<td>Proportion of total workforce (%)</td>
<td>Number of business units</td>
</tr>
<tr>
<td>Services</td>
<td>81.2</td>
<td>146,495</td>
<td>82.9</td>
<td>2,077,215</td>
</tr>
<tr>
<td>Construction</td>
<td>7.3</td>
<td>19,110</td>
<td>6.7</td>
<td>252,755</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>6.9</td>
<td>9,015</td>
<td>8.2</td>
<td>126,230</td>
</tr>
<tr>
<td>Agriculture</td>
<td>2.4</td>
<td>17,195</td>
<td>1.3</td>
<td>106,795</td>
</tr>
<tr>
<td>Extractive and utility supply</td>
<td>2.2</td>
<td>1,490</td>
<td>0.9</td>
<td>11,235</td>
</tr>
</tbody>
</table>

**NOTE**
1 Number of business units from a snapshot of the InterDepartmental Business Register taken on 22 March 2010.
Source: Labour Market Statistics (December 2010) and UK Business: Activity, Size and Location – 2010 (September 2010)

The organisational structure and funding of the Health and Safety Executive

25. As of April 2010, the Health and Safety Executive (including the Health and Safety Laboratory) employed 3,647 full time equivalent staff across Great Britain.\(^\text{12}\) Figure 3 shows that the Health and Safety Executive’s operational work is divided between three Directorates. These Directorates represent 60 per cent of all staff, with the remaining staff working in a range of other functions such as the regulation of chemicals and pesticides, liaison with industry and other government departments, technical and forensic support to the operational Directorates as well as business support functions. Of the three operational Directorates, two cover Great Britain; thus specialists will work regularly in Scotland, but may be based elsewhere. For example, the Nuclear Directorate is based outside Scotland but covers installations in Scotland. Similarly, the team of quarries inspectors covers the whole of Great Britain, but it is led from within Scotland, and the Offshore Division is based in Aberdeen.\(^\text{13}\) Only the Field Operations Directorate is divided in part by geographic area. The Health and Safety Laboratory, an internal agency of the Health and Safety Executive also provides forensic investigation and technical support for incidents and issues in Scotland as it does for England and Wales.

\(^{10}\)The Health and Safety Executive Scotland Business Plan 2010-11

\(^{11}\) Although identified as a priority sector, work-related incident statistics upon waste and recycling have not been published.

\(^{12}\) The Health and Safety Executive Annual Report 2009-10.

\(^{13}\) The Health and Safety Executive Scotland Business Plan 2010-11.
Figure 3
Operational divisions of the Health and Safety Executive

**Hazardous Installations Directorate**
Regulates and promotes health and safety improvements in high hazard industries and sectors through inspections, investigations and advice. It operates across Great Britain.

**Field Operative Directorate**
The largest operational inspectorate within the Health and Safety Executive provides advice and guidance on compliance, inspecting workplaces, investigating accidents and taking enforcement action. It is managed across geographical and sectoral divisions.

**Nuclear Directorate**
Ensures that those regulated have no major nuclear accidents; it issues licenses for aspects of nuclear energy and materials, approving security arrangements and compliance within the industry and working with other agencies and regulators. It operates across Great Britain.

**Other operational activities**
This includes activities to support operational directorates including operational strategy and the Corporate Operation Information System. It operates across Great Britain.

**Great Britain**
550 Staff

- **North West**
  133 Staff

- **Scotland**
  99 Staff

- **East and South East**
  176 Staff

- **Midlands**
  149 Staff

- **London and 2012 Games**
  78 Staff

- **Yorkshire and North East**
  110 Staff

- **Wales and South West**
  215 Staff

- **Construction (Great Britain Wide)**
  258 Staff

**Source:** The Health and Safety Executive
26. Approximately 270 (7 per cent) of staff were based in Scotland in 2009-10 at the Health and Safety Executive’s offices in Edinburgh, Glasgow, Aberdeen and Inverness. Sixty per cent of the staff based in Scotland were frontline inspectors. The remainder provide policy and administrative support.\(^{14}\)

27. The Health and Safety Executive is mainly funded by grant-in-aid from the Department and through fees and charges, such as for the licensing of nuclear installations. In 2009-10, the Health and Safety Executive received £239 million in grant-in-aid, and had an income of £106 million, sourced predominantly from fees and charges. Fee charging activities include charges for inspection, investigation and approvals at onshore major hazard sites, gas transportation pipelines, offshore oil and gas extraction, and the vast majority of its nuclear functions. It also recovers its costs for performing a wide range of statutory functions in areas such as licensing activity, approving equipment, chemical substances and pesticides. The Departmental funding has remained relatively consistent since 2005-06.

28. Figure 4 shows that in 2009-10, the Health and Safety Executive’s expenditure was £335 million, 8 per cent higher than in 2008-09. The £14.4 million increase in staff costs was the main contributory factor. The full time equivalent staff numbers increased from 3,582 to 3,647 (an increase of 65) between 2008-09 and 2009-10, and the average cost of each member of staff increased by nearly 7 per cent.\(^ {15}\) As the Health and Safety Executive’s funding is allocated on an operational rather than geographic basis, there are no separate figures for Scotland. Similarly, the Health and Safety Executive does not record the levels of expenditure in Scotland as resources are applied and work activity is undertaken across borders; thus we are unable to report related expenditure to activity in Scotland.

29. The Chair of the Health and Safety Executive Board has stated that, as a result of the Spending Review in 2010, the Health and Safety Executive will make savings of a minimum of 35 per cent in its grant-in-aid funding by 2014-15. The difference could be delivered from improved efficiencies and increasing income from fee charging activities, although it is unclear what proportion of the reduction will be met by each of these options.\(^ {16}\) Income receipts (including those of the Health and Safety Laboratory) have increased in the past five years from £60 million in 2005-06 to £106 million in 2009-10. It is not yet clear what proportion of the planned efficiency savings will be made from the Health and Safety Executive’s offices in Scotland.

\(^{14}\) The Health and Safety Executive Scotland Business Plan 2010-11
\(^{15}\) The Health and Safety Executive Annual Accounts 2009-10.
\(^{16}\) Speech of Chair of the Health and Safety Executive Board, (7 December 2010) Health and Safety after the Young Review, www.hse.gov.uk/aboutus/speeches/transcripts/hackitt071210.htm
### Figure 4
Breakdown of expenditure of the Health and Safety Executive from 2005-06 to 2009-10

<table>
<thead>
<tr>
<th></th>
<th>2005-06 (£m)</th>
<th>2006-07 (£m)</th>
<th>2007-08 (£m)</th>
<th>2008-09 (£m)</th>
<th>2009-10 (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Administration costs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff</td>
<td>162</td>
<td>157</td>
<td>154</td>
<td>164</td>
<td>178</td>
</tr>
<tr>
<td>Other</td>
<td>101</td>
<td>99</td>
<td>92</td>
<td>111</td>
<td>113</td>
</tr>
<tr>
<td><strong>Programme costs</strong></td>
<td>42</td>
<td>38</td>
<td>33</td>
<td>36</td>
<td>44</td>
</tr>
<tr>
<td><strong>Total Expenditure</strong></td>
<td>305</td>
<td>294</td>
<td>279</td>
<td>311</td>
<td>335</td>
</tr>
<tr>
<td><strong>Income</strong></td>
<td>60</td>
<td>60</td>
<td>65</td>
<td>92</td>
<td>106</td>
</tr>
<tr>
<td><strong>Net operating costs</strong></td>
<td>245</td>
<td>234</td>
<td>214</td>
<td>219</td>
<td>229</td>
</tr>
<tr>
<td><strong>Grant-in-aid from the Department</strong></td>
<td>233</td>
<td>233</td>
<td>217</td>
<td>210</td>
<td>239</td>
</tr>
</tbody>
</table>

**NOTES**
1. Figures for administration and programme costs are gross expenditure.
2. The figures shown are those published in each year’s Annual Accounts and presented in cash terms.
3. Administrative expenditure is defined as the cost of staff and the services necessary to support them, such as IT and accommodation.
4. Programme expenditure includes costs such as communication activity, including the production of publications and guidance, scientific support to, for example, incident investigation and research.
5. Other administration costs include accommodation, travel and subsistence and IT expenditure.
6. Net operating costs and grant-in-aid differ because the former includes non-cash costs and the latter is a cash figure.

*Source: The Health and Safety Executive’s Annual Accounts*
Work-related injury and illness statistics

30. This part of the memorandum covers the incidence of work related injury and their estimated cost. Our analysis is based on the information provided by the Health and Safety Executive. Where we report 2009-10 statistics, it should be borne in mind that these are provisional at the time of writing.

31. We have carried out statistical analysis on the rates of each type of work-related incident per 100,000 employees. To avoid year-to-year fluctuations, we have analysed the rates over five years, between 2005-06 and 2009-10. Those differences found to be statistically significant at the 95 per cent or 99 per cent confidence levels have been reported. The terminology used for such findings is to describe them as being ‘significantly’ different.

32. Since April 1996, the following types of work-related accidents must be reported to the Health and Safety Executive under the Reporting of Injuries, Disease and Dangerous Occurrence Regulation 1995:

- Reportable deaths and major injuries – an incident in which there is a death or injury such as fractures, unconsciousness, or a need for hospitalisation.
- Reportable over-three-day injuries – where the injured party is off work for more than three days.
- Reportable disease – where an employer is notified that an employee suffers from a reportable work-related disease.
- Reportable dangerous occurrences (near misses) – occurrence of incident in which a reportable injury does not result, but which clearly could have done.
- Reportable gas incidents – for those ‘handling’ flammable gas and an incident occurs in which someone has died or suffered a major injury in connection with the gas ‘handled’.

33. Reporting of Injuries, Diseases and Dangerous Occurrence Regulation 1995 data needs to be interpreted with care because non-fatal injuries are substantially under-reported. By comparing incident reporting through Reporting of Injuries, Diseases and Dangerous Occurrence Regulation 1995 with data collected through the Labour Force Survey, the Health and Safety Executive has estimated that currently just over half of non-fatal incidents are recorded (with this level being consistent across Scotland, England and Wales). Hence we use the term ‘reported’ to describe such statistics. All incidents involving a fatality are reported.

Fatal Injuries

There were 23 fatal accidents in Scotland in 2009-10 – see Figure 5. The number of fatalities in Scotland has reduced compared to earlier years (an average of 30 per year between 2005-06 and 2008-09).

17 A t-test was carried out on Health and Safety Executive data.
Figure 5
The number and incidence of fatalities in Scotland and England and Wales since 2005-06

Number of fatalities

<table>
<thead>
<tr>
<th>Year</th>
<th>England and Wales</th>
<th>Scotland</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005-06</td>
<td>250</td>
<td>15</td>
</tr>
<tr>
<td>2006-07</td>
<td>200</td>
<td>20</td>
</tr>
<tr>
<td>2007-08</td>
<td>150</td>
<td>30</td>
</tr>
<tr>
<td>2008-09</td>
<td>100</td>
<td>20</td>
</tr>
<tr>
<td>2009-10</td>
<td>50</td>
<td>10</td>
</tr>
</tbody>
</table>

Fatalities per 100,000 workforce

<table>
<thead>
<tr>
<th>Year</th>
<th>England and Wales</th>
<th>Scotland</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005-06</td>
<td>1.2</td>
<td>0.1</td>
</tr>
<tr>
<td>2006-07</td>
<td>1.0</td>
<td>0.2</td>
</tr>
<tr>
<td>2007-08</td>
<td>0.8</td>
<td>0.4</td>
</tr>
<tr>
<td>2008-09</td>
<td>0.6</td>
<td>0.3</td>
</tr>
<tr>
<td>2009-10</td>
<td>0.4</td>
<td>0.1</td>
</tr>
</tbody>
</table>

NOTES
1. The counts include fatalities to both employees and the self-employed.
2. Rates shown are per 100,000 employees. They exclude incidents involving the self-employed.

Source: The Health and Safety Executive
34. Between 2005-06 and 2009-10, the rate of fatal accidents per 100,000 employees in Scotland has been significantly higher than in England and Wales. Whilst no recent research has examined this pattern, a study commissioned by the Health and Safety Executive in 2000 found that the variations arose because Scotland has a greater proportion of its workforce employed in higher risk industries.18

35. By adjusting the workforce profile in Scotland to match that of England and Wales, we established that this would account for 83 per cent of the differences in fatalities between 2005-06 and 2009-10. This is because a greater proportion of employees in England and Wales work in the services sector (where fatality rates are lower) than Scotland. Scotland has a higher proportion who work in agriculture and construction (where fatality rates are higher).

36. Once the effect of the different workforce profile in Scotland is taken into account, the remaining 17 per cent difference in the fatality rate with England and Wales is due to other factors such as different working practices, the types of activities being undertaken and accessibility to emergency services. The relatively low number of fatalities in Scotland between 2005-06 and 2009-10 meant we were unable to determine whether risks were more prevalent in some sectors than others. Reported major injuries

37. There were 2,625 major injuries reported in Scotland in 2009-10, compared to 22,774 in England and 1,479 in Wales – see Figure 6. The number of reported major injuries has steadily declined since 2005-06.

38. Between 2005-06 and 2009-10, the rate of major injuries per 100,000 employees in Scotland has been significantly higher than that for England and Wales. There is a high level of under-reporting of non-fatal injuries across Great Britain, but there is no evidence to suggest that this has contributed to the difference in rates between Scotland and England and Wales.

39. Around 97 per cent of the difference in rates between Scotland and England and Wales is due to the differences in the composition of the workforce. Only 3 per cent of the difference is therefore due to other factors such as different working practices, types of activity or accessibility to emergency services.

40. Between 2005-06 and 2009-10, two sectors (construction and manufacturing) have had a significantly higher rate of major injuries in Scotland than in England and Wales – see Figure 7.19

---

19 There was no statistical significance between Scotland and England within 19 other sectors.
Figure 6
The number and incidence of reported major injuries in Scotland and England and Wales since 2005-06

NOTES
1. The counts include major injuries to both employees and the self-employed.
2. Rates shown are per 100,000 employees. They exclude incidents involving the self-employed.
3. The data should be interpreted with caution as the Health and Safety Executive estimate that only just over half of non-fatal injuries to employees are reported.

Source: The Health and Safety Executive
Figure 7
Incidence rates of major injuries by sector in Scotland and England and Wales since 2005-06

Incidence rates of major injuries in Scotland by sector

Incidence rates of major injuries in England and Wales by sector

NOTES
1 Rates shown are per 100,000 employees. They exclude incidents involving the self-employed.
2 The data should be interpreted with caution as the Health and Safety Executive estimate that only just over half of non-fatal injuries to employees are reported.

Source: The Health and Safety Executive
41. In 2004, the National Audit Office examined the approach taken by the Health and Safety Executive to improve the health and safety performance of the construction industry. Assessing the impact of the Health and Safety Executive strategies was found to be difficult, partly because of the long-term nature of the intended impact and the need to account for the impact of other influences on health and safety performance; the difficulties in establishing baseline data; and the characteristics of the construction industry. We recommended that the Health and Safety Executive should improve the evaluations of its strategies in order to measure its own performance and that of the industry.\(^{20}\) The Health and Safety Executive published research in 2006 into the difference in rates of injury in the construction industry.\(^{21}\) The report concluded that the higher accident rate in Scotland was almost entirely due to the differing occupational make up of the construction industry, as there were proportionally many more manual (at risk) workers involved in construction in Scotland than in the rest of Great Britain. We found no evidence of any similar investigation into the different rates of reported major injuries for Scotland and England and Wales in the manufacturing sector.

Reportable over-three-day injuries and illness

**Reportable over-three-day injuries**

42. There were over 8,000 reported injuries in Scotland in 2009-10 that required more than three days off work. Figure 8 overleaf shows that the rate per 100,000 employees in Scotland was lower than in England and Wales. Since 2005-06, Scotland has seen a reduction of 18 per cent in the number of such incidents. This reduction is in line with England and Wales. Over the past five years, there has been no significant difference between Scotland and England and Wales for the overall rates of work-related incidents which required more than three days off work.

**Work-related illness**

43. The Health and Safety Executive estimates that the injuries and illness caused by work resulted in 2.5 million working (full time equivalent) days lost in Scotland in 2009-10. This equates to an average of 1.24 days lost per worker, which is consistent with England and Wales.\(^{22}\) There is no significant difference in the rate of self-reported illness in Scotland since 2003-04 compared with that of England or Wales.

**The cost of work-related injury**

44. In 2001-02, the total cost of work-related injury to Great Britain society was estimated to be £6-£11 billion.\(^{23}\) This is the most recent estimate and as it is such a wide estimate it cannot be disaggregated by geographic area. The Health and Safety Executive confirmed that it is currently undertaking research to update these estimates which it intends to publish, aggregated by geographic area, in 2011.

---

\(^{20}\) Improving health and safety in the construction industry, National Audit Office, 2004.

\(^{21}\) An analysis of the significant causes of fatal and major injuries in construction in Scotland, The Health and Safety Executive, 2006.

\(^{22}\) The number of working days lost is a central estimate of a range between 1,781,000 and 3,258,000.

\(^{23}\) Costs to Britain of Workplace Accidents and Work-Related Ill Health, The Health and Safety Executive, 2000-01.
Figure 8
The number and incidence of reported over-three-day injuries in Scotland and England and Wales since 2005-06

Number of over-three-day injuries (000s)

NOTES
1. The counts include injuries to both employees and the self-employed.
2. Rates shown are per 100,000 employees. They exclude incidents involving the self-employed.
3. The data should be interpreted with caution as the Health and Safety Executive estimate that only just over half of non-fatal injuries to employees are reported.

Source: The Health and Safety Executive
45. The Health and Safety Executive has also developed an estimated ‘unit cost to society’ for workplace accidents and ill health. These cost estimates can only be an averaged approximation, but as Figure 9 shows, there are estimated costs for each fatality and workplace injury. The overall unit cost is divided into the following component costs:

- Human cost – the cost of pain, grief and suffering to the casualty, relatives and friends.
- Resource cost – includes cost of medical treatment, business administration costs, insurance administration costs, recruitment costs and costs to government.
- Lost output – is assumed to be equal to the labour cost that is normally incurred in employing the absent worker, together with any sick pay.

46. When the costs presented in Figure 9 are applied to the number of work-related incidents, the estimated cost to Great Britain society is £1.6 billion. This is substantially below that reported in 2001-02 and reflects the more closely defined methodological approach used. Using the unit costs in Figure 9, the 23 fatalities, 2,625 reported major injuries and 8,039 reported injuries over three days across Scotland in 2009-10 would have cost approximately £187 million (representing approximately 10 per cent of the Great Britain total). In 2009, the Health and Safety Executive undertook a review of the methodologies behind the two approaches which revealed limitations in both the methods and sources of data used to derive each of the estimates. As a result, the Health and Safety Executive has commissioned a project to produce new estimates of these aggregate and unit costs in 2011.24

---

**Figure 9**

Unit costs to society for workplace accidents and ill health

<table>
<thead>
<tr>
<th></th>
<th>Human cost (£)</th>
<th>Lost output (£)</th>
<th>Resource cost (£)</th>
<th>Total (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fatality</td>
<td>991,200</td>
<td>520,700</td>
<td>900</td>
<td>1,500,000</td>
</tr>
<tr>
<td>Major injury</td>
<td>18,400</td>
<td>16,200</td>
<td>5,800</td>
<td>40,400</td>
</tr>
<tr>
<td>Over-three-day injury</td>
<td>2,700</td>
<td>2,600</td>
<td>500</td>
<td>5,800</td>
</tr>
<tr>
<td>Minor injury</td>
<td>200</td>
<td>100</td>
<td>50</td>
<td>350</td>
</tr>
<tr>
<td>Average case of ill health</td>
<td>6,700</td>
<td>2,700</td>
<td>800</td>
<td>10,200</td>
</tr>
</tbody>
</table>


---

24 The costs of workplace injuries and work-related ill health in the UK, Dr Stavros Georgiou et al, The Health and Safety Executive, 2009.
Objectives and targets of the Health and Safety Executive

47. This part of the memorandum outlines the Health and Safety Executive’s objectives and targets and how they apply to Scotland.

The Health and Safety Executive’s strategic objectives

48. In June 2009, the Health and Safety Executive launched *Be Part of the Solution*, a new strategy for the health and safety system in Great Britain. It followed consultation with a range of industry and employee representatives and other organisations, which included workshops held in Scotland. The overriding aim is to prevent the death, injury and ill health of those at work and those affected by work activities. In order to meet this aim, it specified four objectives for the health and safety of Great Britain:

- to reduce the number of work-related fatalities, injuries and cases of ill health;
- to gain widespread commitment and recognition of what real health and safety is about;
- to motivate all those in the health and safety system as to how they can contribute to an improved health and safety performance; and
- to ensure that those who fail in their health and safety duties are held to account.

49. In July 2010, the Health and Safety Executive published a Business Plan for its work in Scotland. This plan shows how the Health and Safety Executive will work in Scotland to lead, motivate and support those involved in improving health and safety at work. The Business Plan is very closely linked to the overall plan for Great Britain and shares the same structure and objectives. It does not contain any targets or performance measures specific to Scotland. The main differences in the business plans are in the local initiatives and targeted work derived from consulting with local stakeholders. The main consultative forum in Scotland, established in 2005, is the Partnership for Health and Safety in Scotland. It meets three times a year to assist the Health and Safety Executive in delivering its strategy in the context of Scotland’s economy, industrial make-up and culture.

The Health and Safety Executive’s performance targets

50. We assessed the performance of the Health and Safety Executive against existing targets. In particular:

- The Health and Safety Executive’s Revitalising Health and Safety strategy statement, launched in June 2000, set three national targets to improve occupational health and safety outcomes by 2010. The targets were across Great Britain and Figure 10 summarises the progress made by the Health and Safety Executive.

- The Department’s Departmental Strategic Objective 3 Improving health and safety outcomes specified three indicators relevant to the Health and Safety Executive. In examining performance against these indicators it is important to bear in mind that the

---

25 The Health and Safety Executive Scotland Business Plan 2010-11.
26 The Health and Safety Executive Business Plan 2009-10
Coalition Government announced in June 2010 that these indicators would be discontinued.

a) Targets specified in the Revitalising Health and Safety strategy

**Figure 10**
Progression against national targets

<table>
<thead>
<tr>
<th>Target</th>
<th>Progress</th>
</tr>
</thead>
<tbody>
<tr>
<td>To reduce the number of working days lost per 100,000 workers from work-related injury and ill health by 30 per cent.</td>
<td>The Health and Safety Executive reported that working days lost through work-related ill health and injury fell by an estimated 30 per cent between 2001-02 and 2009-10.</td>
</tr>
<tr>
<td>To reduce the incidence rate of fatalities and major injury accidents by 10 per cent.</td>
<td>The Health and Safety Executive’s adjusted data show an estimated fall of 22 per cent between 2001-02 to 2009-10.2</td>
</tr>
<tr>
<td>To reduce the incidence rate of cases of work-related ill health by 20 per cent.4</td>
<td>The data show that ill health fell by an estimated 15 per cent between 2001-02 (the earliest available year for which data is available) and 2009-10.</td>
</tr>
</tbody>
</table>

NOTES
1 In 2003-04, there were changes to the recording systems. These resulted in some types of injuries being classified as major that would previously have been classified as over-three-day.
2 There have been revisions to the Office for National Statistics employment estimates covering the period 2001-02 to 2008-09. This has changed the reported rates when compared to previous publications, although the actual changes are relatively minor.
3 This covers a range of possibilities: a 95 per cent confidence interval – from 7 per cent to 23 per cent.
4 The Health and Safety Executive does not have a large degree of influence on improved outcomes in this area.

Source: The Health and Safety Executive
51. There are no separate performance targets for Scotland. We have therefore drawn on the data available to compare performance in Scotland with England and Wales as a whole. Performance is largely the same for two indicators, but the reduction in the rate of fatalities and major injuries in England and Wales has not been matched in Scotland. We found that:

- The average number of days lost per worker in Scotland was lower in 2009-10 (1.2 days) than in 2003-04 (1.9 days). This reduction is greater than for England and Wales as a whole, where the average number of days lost per worker fell from 1.7 days in 2003-04 to 1.2 days in 2009-10. Over this period, there is no significant difference between the nations in terms of average days lost.

- Our analysis of the incidence rate of fatalities and major injuries in Scotland found the level to have remained consistent since 2005-06 (a 2 per cent reduction to 115 incidents per 100,000 employees in 2009-10), but for England and Wales over the same period, the rate fell significantly by 9 per cent to 100 incidents per 100,000 employees in 2009-10. Since 2005-06, this rate has been significantly higher in Scotland than that for England and Wales.

- The rates of self-reported work-related ill health in Scotland increased by 9 per cent between 2001-02 and 2009-10, which contrasts sharply with a 17 per cent reduction for England and Wales. However, since 2003-04 there has been no significant difference between the rates of work-related ill health in Scotland compared with that for England and Wales. Figure 11 suggests the reason for this is due to year-on-year fluctuations for work-related ill health.

**Figure 11**
Incidence rates of self-reported work-related ill health in Scotland and England and Wales since 2003-04

Self-reported incidence (per 100,000)

<table>
<thead>
<tr>
<th>Year</th>
<th>Scotland</th>
<th>England and Wales</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003-04</td>
<td>1,200</td>
<td>1,300</td>
</tr>
<tr>
<td>2004-05</td>
<td>1,250</td>
<td>1,350</td>
</tr>
<tr>
<td>2005-06</td>
<td>1,300</td>
<td>1,400</td>
</tr>
</tbody>
</table>

**NOTE**

1 No data is available for 2002-03, hence rates are shown since 2003-04.

*Source: The Health and Safety Executive*
b) Departmental Strategic Objective indicators

52. The national targets outlined within the Revitalising Health and Safety strategy formed the basis of the Departmental Strategic Objective 3 Improving health and safety outcomes. The indicators are:

- The incidence of fatal and major injuries in workplaces.
- The incidence of work-related ill health.
- The number of dangerous events in the nuclear industry, and in the offshore and onshore oil and gas sector.

53. The indicators on fatal and major injuries, and on the incidence of work-related ill health are based on the same performance data as the targets specified by the Health and Safety Executive in its Revitalising Health and Safety strategy. The third indicator comprises three sub-indicators, these being:

- Events reported by licence holders which are judged to have the potential to challenge a nuclear safety system;
- Major and significant hydrocarbon releases in the offshore oil and gas sector; and
- Relevant reportable dangerous occurrences in the onshore sector as defined by the Reporting of Injuries, Disease and Dangerous Occurrence Regulation 1995.

54. Figure 12 shows that since 2000-01, there has been a downward trend in the numbers of associated events and dangerous incidents in the nuclear, offshore oil and gas sector and onshore oil and gas industries, although there is some fluctuation between the years. In 2009-10, there were 98 potentially dangerous events reported from within the nuclear industry, 85 from the offshore oil and gas sector and 76 from the onshore oil and gas sector. The data is collected at a national level and hence we are unable to report the figures for Scotland separately.28

55. In February 2010, the National Audit Office examined the data systems used by the Department to monitor and report performance against the Departmental Strategic Objectives. We found that potentially dangerous occurrences within the nuclear sector are reported by nuclear licence holders who operate nationally. Their reports are assessed on a monthly basis within the Health and Safety Executive’s Nuclear Directorate.

---

27 The Government announced in June 2010 that Departmental Strategic Objectives are to be discontinued.
28 Onshore events include all with major accident hazards potential, and hence not just those for the oil and gas sector. Similarly offshore events are limited to those involving a release of petroleum hydrocarbon.
29 Department for Work and Pensions – Validation of the data systems for the 2008-11 Departmental Strategic Objectives (February 2010).
56. For offshore events, the Hydrocarbon Release database has been used to record the number of dangerous occurrences. All releases of petroleum hydrocarbon, actual or potentially dangerous, by an offshore installation must be reported by law. Inspectors meet quarterly to review and confirm the grading allocated to events.

57. In our examination, we found that the text of the indicator specifies ‘dangerous events’, and while this includes hydrocarbon releases, it also extends to a much wider range of events which are currently excluded.

58. Similarly, we found that the onshore sub-indicator specifically refers to the ‘onshore oil and gas sector’, whereas the data reported goes beyond the oil and gas sector to include all events with a major accident hazards potential, thus other industry sectors are included which are not currently identified in this indicator.

59. The Health and Safety Executive intends to retain this performance indicator after the Departmental Strategic Objectives are phased out. It is consulting with the Department to change the description from 2011-12, and in so doing, give it a more accurate reflection of the current data that is collected.
The Health and Safety Executive’s actions to minimise risks

60. This part of the memorandum examines the Health and Safety Executive’s activities to minimise the risks to health and safety in the workplace across Scotland. The Health and Safety Executive’s approach to controlling work-related incidents involves a wide range of interventions, which are generally categorised as being either proactive or reactive. Proactive work includes inspections and targeted awareness campaigns. Reactive work includes the investigation of a complaint or an incident.

61. A recent report by the Northern Ireland Audit Office on the Health and Safety Executive in Northern Ireland noted that ‘the balancing of resources’, that is, the number of full-time staff deployed on proactive and reactive work, had been a prominent feature in recent reviews of health and safety practice undertaken by Hampton and Macrory. In December 2010, the balance of resources for staff based in Scottish offices was approximately 55 per cent proactive and 45 per cent reactive. The Health and Safety Executive in Scotland told us that it had considered the optimal split to be 60:40. Achieving this optimal split has proved difficult because of the need to investigate fatal and serious incidents, which in themselves are often unpredictable, and take appropriate enforcement action whenever serious breaches of legislation are found.

62. In 2008, the Scottish component of the Field Operations Directorate published a paper which sought to better control increasing reactive workloads and to maintain existing proactive tasks with the limited Inspectorate resources available. The paper put forward a number of suggestions, including stronger active management of investigation direction, increased pace of investigation and quicker decision-making where no enforcement was likely. In April 2010, these improvements were assessed through a peer review exercise which found that the Health and Safety Executive in Scotland had better control and management of increasing reactive workloads and proactive work.

Proactive activities

63. The Health and Safety Executive uses a Corporate Operation Information System (COIN) to record its interventions with businesses throughout Great Britain within the last 12 years. The system is not automatically updated by any external business registers, but staff cross-check company details on the database with other information sources such as the Companies House register when adding new records, and the system uses the Post Office’s Quick Address System to populate addresses where these have postcodes. The Health and Safety Executive’s Field Operations Directorate in Scotland uses the Scottish Assessors Association website to cross-check information on businesses already in, or who they wish to enter, on the COIN database.

64. The Health and Safety Executive confirmed that it uses the COIN database to record its interventions; licences and consents, incident and complaint investigations, inspection and enforcement work. The performance data on each site visited enables the Health and Safety Executive to target poor performing organisations and to contact new additions to the

---

30 Review of the Health and Safety Executive for Northern Ireland, Northern Ireland Audit Office, September 2010.
34 www.saa.gov.uk
65. In particular, the data are used to:

- inform upon previous work prior to undertaking further activity;
- commission further work by specialist inspectors in support of investigations; and
- trigger inspection work to ensure major hazards are being managed.

66. The Field Operations Directorate has carried out a benchmarking exercise to test the accuracy of the information held. A business register was used to identify a random sample of manufacturing premises that were representative of that sector. The Executive explained that the information was found to be reliable. We compared the number of businesses recorded on the COIN database in Scotland with data from the Inter-Departmental Business Register. The Register is maintained by the Office for National Statistics and draws on data from HM Revenue & Customs and Companies House to keep it up to date. Its records thus also include premises such as retail outlets and offices which are the responsibility of local authorities.

67. The Health and Safety Executive has explained that they do not have access to the Interdepartmental Business Register for operational purposes. They told us that the data which forms the basis for the register is collected under the Statistics of Trade Act, and can only be used for statistical purposes, such as being used as a sample frame for a survey. The Health and Safety Executive does not carry out checks upon the representativeness of its interventions against the total number of businesses in Scotland.

68. The Health and Safety Executive told us that there are 825,000 site records on COIN, of which 84,000 are in Scotland. The Interdepartmental Business Register records 193,305 businesses in Scotland, which include premises such as restaurants and hotels, where responsibility for enforcing health and safety rests with the 32 local authorities. The Health and Safety Executive explained that their management information is not intended to be representative of the Scottish economy, rather it used it to target poor performing sectors and businesses. We have not examined the extent to which this has been achieved, but the Health and Safety Executive explained that they are confident that poor performers are covered by their interventions.

**Proactive work**

69. The Health and Safety Executive’s proactive work comprises a suite of interventions which include communication activities and inspections. For example, promotional activity may be used instead of proactive inspection as a key method of intervention.

70. Figure 134 shows the number of organisations which have been inspected, in Scotland and England and Wales, since 2007-08. Over the three years, organisations in Scotland represent around one in ten of those inspected by the Health and Safety Executive.

71. In June 2010, a moratorium was placed across government upon communications and marketing spend. Prior to June 2010, the Health and Safety Executive had undertaken a number of campaigns to promote health and safety. Figure 14 shows examples of such campaigns, some of which were national and others targeted at Scottish audiences. The Health and Safety Executive has also used external events to reach out and convey its health and safety messages

---

35 A follow-up exercise is planned for 2012-13
to those at risk or those managing the risks. Examples of events attended by the Health and Safety Executive in Scotland include the country and agricultural showcase the Royal Highland Show, the oil and gas conference Offshore Europe and the entrepreneurial exhibition New Start Scotland.\textsuperscript{36} In Scotland, the Health and Safety Executive works with the Central Office of Information Scotland to disseminate messages via local and national media.\textsuperscript{37}

72. The Health and Safety Executive has also used new media, such as podcasts, newsfeeds and text messaging, to promote health and safety. It has used health and safety bulletins to issue alerts and notices to inform industry, workers and the public of possible risks and/or appropriate procedures. In 2009, the Health and Safety Executive had 221,000 subscribers to its health and safety e-bulletin service, of which nearly 2,000 had subscribed to e-bulletin service of the Health and Safety Executive in Scotland. The Health and Safety Executive’s website received around 22 million visits in 2010, which is at a similar level as the previous two years. The Health and Safety Executive’s website has a dedicated section on health and safety in Scotland, outlining its activities, performance and delivery partners. It received over 41,000 visits in 2010.

\textsuperscript{36} Since the Comprehensive Spending Review and ensuing budgetary cuts, the 36 Health and Safety Executive has stopped this type of activity.

\textsuperscript{37} Central Office of Information advises government departments and the public sector on best practice and cost effectiveness in informing, engaging and influencing citizens.
Figure 13
The number of companies inspected in Scotland and England and Wales

NOTES
1 The Health and Safety Executive do not have a breakdown of companies inspected by sector. This is due to the sector being identified by the economic activity at the company’s site. As a result, a number of the companies inspected will span different sectors as a result of their site information. The Health and Safety Executive does not have sufficient information to enable the assignment of the primary economic activity when there is more than one Standard Industrial Classification code at one premises.
2 Scotland inspection figures are based on predominately land-based inspection. Most of the Health and Safety Executive’s offshore inspection recorded is within figures for Great Britain.
3 Where a company has several sites, then an entry on the system indicates that one or more such sites has been inspected, and if a company has been inspected at sites within Scotland and elsewhere in Great Britain, the company is included in both sets of figures.

Source: The Health and Safety Executive
73. The effectiveness of the Health and Safety Executive’s targeted activities designed to raise health and safety standards (or to secure compliance with health and safety law) have not routinely been evaluated. The Health and Safety Executive consider that to isolate the impacts of such a campaign away from other factors is difficult because the impacts of such activity may be borne out over several years. Ultimately, the Health and Safety Executive consider that the overall impact of its interventions is measurable through changes to the levels of work-related injury and illness, as set out in the national targets.
### Figure 14
Examples of communication campaigns undertaken by the Health and Safety Executive in Scotland and Great Britain

<table>
<thead>
<tr>
<th>Great Britain</th>
<th>Scotland</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Make the Promise, Come Home Safe</strong></td>
<td><strong>Safe use of all-terrain vehicles</strong></td>
</tr>
<tr>
<td>Award-winning campaign using a multi-channel approach to raise awareness about the risks faced by farmers. Communication methods included BBC Farming Today and Countryfile programmes as well as direct mail and trade advertising.</td>
<td>Raised awareness of the risks of using all-terrain vehicles, such as quad bikes, among farmers to prevent avoidable injuries and deaths.</td>
</tr>
<tr>
<td><strong>Asbestos – Hidden Killer</strong></td>
<td><strong>Safety standards in the offshore industry</strong></td>
</tr>
<tr>
<td>Worked with local authorities, trade unions, DIY stores and trade associations to raise awareness of the risks of asbestos and managing the risks. Communication methods included victims’ stories on radio, trade press advertising and a public relations programme.</td>
<td>Hosted conference with North Sea Offshore Authorities Forum that brought together senior executives of all major oil companies operating in the North Sea.</td>
</tr>
<tr>
<td><strong>Slips and Trips – Shattered Lives</strong></td>
<td><strong>Liquid petrol gas</strong></td>
</tr>
<tr>
<td>Substantial media presence including broadsheets as well as technical and trade media to raise awareness of the causes of slip and trip accidents. Other activities included targeted inspection activity and provision of tailored advice, guidance and research.</td>
<td>Safety campaign targeted at businesses and residents of sites likely to use liquid petroleum gas to inform them of responsibilities and likely problems.</td>
</tr>
<tr>
<td><strong>Safety Health and Awareness Days</strong></td>
<td><strong>Health and safety in small businesses</strong></td>
</tr>
<tr>
<td>These awareness days provide practical demonstrations and guidance to farmers about the key topics that most commonly result in death and injury and an opportunity to raise awareness of issues. It is a significant means of face-to-face contact with those working in farming. Over the last decade there have been around 180 of these events.</td>
<td>Road show events around the country to promote key messages, including health and safety leadership in small businesses. These draw upon the resources of the Health and Safety Executive’s partner organisations in Scotland, something we were told makes this intervention unique to Scotland.</td>
</tr>
</tbody>
</table>

**NOTE**
1 The campaigns in the offshore industry and on liquid petroleum gas are not specific to Scotland, although given the geographic concentration of the industry they may apply to a greater extent in Scotland.

*Source: The Health and Safety Executive*
Reactive work

74. On an operational level, the Health and Safety Executive has evaluated the effectiveness of some of its proactive work although all are at a national level and hence not specific to Scotland. In 2010, the Health and Safety Executive commissioned an evaluation of its Agriculture Safety and Health Awareness programme of interventions. The evaluation showed that 12 per cent of farmers had attended a Safety Health and Awareness Day and 48 per cent had found it very helpful. It indicated there is still a large untapped pool of farmers to reach. In 2010, the Health and Safety Executive also evaluated the Shattered lives campaign, finding that 53 per cent of those surveyed were able to recollect the campaign.

75. The Health and Safety Executive’s reactive work includes responding to work-related incidents. Such work can involve:

- dealing with complaints;
- investigating incidents; and
- enforcement notices, prosecutions and convictions.

a) Complaints

76. Figure 15 shows the number of complaints made to the Health and Safety Executive together with the proportion that were investigated, and their outcome for Scotland and England and Wales since 2007-08. The number of complaints made to a Health and Safety Executive office in Scotland has fallen by 35 per cent since 2007-08, this being greater than the comparable figure for England and Wales (22 per cent). We asked the Health and Safety Executive the reason for the reduction. They explained that previously it was difficult to distinguish between requests for advice or information from actual complaints, thus meaning complaints may have been over-counted. The Health and Safety Executive told us that it has recently put in place a more robust handling process for complaints. This has resulted in a better definition of what constitutes a real complaint and may explain the reduction. The Health and Safety Executive were unable to provide a robust response as to why the reduction was greater in Scotland. They considered that it may be on account of the greater variation in the way that complaints were recorded in different parts of Great Britain, before the introduction of the new process.

77. In January 2009, the Health and Safety Executive changed its complaints investigation procedure to a proportionate risk-based approach. This involved the creation of a dedicated complaints handling team in each division. In January 2010, the Health and Safety Executive Board concluded that the change in complaints handling had been successful and agreed that it should be adopted as a permanent procedure.
Scotland accounts for around one in ten of all complaints received in Great Britain by the Health and Safety Executive. Since 2007-08, over 99 per cent of complaints have been investigated each year and the proportion which led to an enforcement notice or a prosecution is consistent between Scotland (3 per cent) and England and Wales (4 per cent). The number of appeals against a decision not to investigate a complaint remains low, accounting for less than 0.5 per cent of complaints received.38

b) Investigations

79. On learning of a work-related incident, the Health and Safety Executive bases its investigations, and the level of resource to be used, upon the following criteria;39

- Severity and scale of potential or actual harm;
- Seriousness of any potential breach of the law;
- Duty holder’s known past health and safety performance;
- Enforcement priorities;

NOTES
1 The figures are current as of 6 December 2010. These are subject to change as further investigation and enforcement activity is undertaken on these complaints.
2 The enforcement figures are expressed as the number of complaints investigated which have resulted in at least one enforcement notice being issued, and those investigated which have resulted in at least one duty holder being prosecuted. In some instances an investigation will result in both notice and prosecution action.

Source: The Health and Safety Executive

---

### Figure 15
Number of complaints received and the proportion investigated that result in either a prosecution or an enforcement notice

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of complaints in Scotland</th>
<th>Number of complaints in England and Wales</th>
<th>Percentage of complaints investigated resulting in prosecution or enforcement notice</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Scotland (%)</td>
</tr>
<tr>
<td>2007-08</td>
<td>1,878</td>
<td>14,936</td>
<td>3.8</td>
</tr>
<tr>
<td>2008-09</td>
<td>1,459</td>
<td>13,126</td>
<td>3.5</td>
</tr>
<tr>
<td>2009-10</td>
<td>1,229</td>
<td>11,639</td>
<td>2.9</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>England and Wales (%)</td>
</tr>
<tr>
<td>2007-08</td>
<td></td>
<td></td>
<td>4.7</td>
</tr>
<tr>
<td>2008-09</td>
<td></td>
<td></td>
<td>4.9</td>
</tr>
<tr>
<td>2009-10</td>
<td></td>
<td></td>
<td>4.3</td>
</tr>
</tbody>
</table>

NOTES
38 Implementation of a risk-based approach for selecting complaints about dutyholders (December 2010).
39 The Health and Safety Executive Enforcement Policy Statement.
• Practicality of achieving results; and
• Wider relevance of the event, including serious public concern.

80. Figure 16 summarises the proportion of reported work-related incidents in Scotland which have been investigated since 2007-08. Over this period, the Health and Safety Executive investigated all fatalities but the proportion of major incidents investigated in Scotland has fallen each year.

81. As the number of major incidents in Scotland has remained consistent since 2005-06 (see paragraph 3.5), we asked the Health and Safety Executive why a smaller proportion were investigated in 2009-10 than previous years. They explained that the reduction was on account of the Health and Safety Executive now exercising greater discretion when deciding which incidents are selected for investigation.

---

**Figure 16**
Rate of reportable incidents and subsequent investigations in Scotland and England and Wales since 2007-08

<table>
<thead>
<tr>
<th>Severity of incident</th>
<th>Year</th>
<th>Percentage of incidents reported that are investigated</th>
<th>Percentage of incidents investigated that result in a prosecution or enforcement notice</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Scotland (%)</td>
<td>England and Wales (%)</td>
</tr>
<tr>
<td>Fatality</td>
<td>2007-08</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>2008-09</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>2009-10</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Major injury</td>
<td>2007-08</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>2008-09</td>
<td>8</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>2009-10</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Over-three-day injury</td>
<td>2007-08</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>2008-09</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>2009-10</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

**NOTE**
1 The figures are current as of 6 December 2010. These are subject to change as further investigation and enforcement activity is undertaken.

*Source: The Health and Safety Executive*
c) Enforcement notices, prosecutions and convictions

82. An investigation or inspection may result in an enforcement notice (improvement or prohibition) or a prosecution. In Great Britain, enforcement notices are issued by three organisations: the Health and Safety Executive, Local Authorities and the Office of Rail Regulation. In 2009-10, the Health and Safety Executive issued approximately 1,400 enforcement notices. Figure 17 shows that the majority of these were improvement notices (815 notices, 58 per cent of all notices issued) and there were 589 immediate prohibition notices (42 per cent of notices issued). Deferred prohibition orders are rarely used. Whilst less than half of the improvement notices in Scotland originated from the Health and Safety Executive, they issued over 70 per cent of the notices of immediate prohibition. The percentages are similar in England and Wales and reflect the greater seriousness of the incidents investigated by the Health and Safety Executive compared with local authorities. The balance of prohibition to improvement notice varies by sector; the Health and Safety Executive told us that in construction more prohibition notices have to be served to stop work which presents serious or imminent danger.

40 An improvement notice will order the duty holder to make improvements allowing them time to comply. A Prohibition notice will result in an activity being prevented until remedial action has been taken.

41 Since 1 April 2006 enforcement of railway safety has been the responsibility of the Office of Rail Regulation.
Prosecutions

83. According to the Health and Safety Executive, prosecutions are used to bring duty holders to account for alleged breaches of the law. A prosecution may ensue when either of the following circumstances apply:

- As a way to draw general attention to the need for compliance with the law and conviction may deter others from similar failures to comply.
- Significant risk has continued despite relevant warnings from employees or others affected by a work activity.

84. In England and Wales, the Health and Safety Executive is the prosecuting body. In Scotland, the Crown Office and Procurator Fiscal Service is the sole public prosecution authority. Here, the Health and Safety Executive make recommendations to the Crown Office and Procurator Fiscal Service and employees will normally be witnesses in any case proceeding to trial. The Crown Office and Procurator Fiscal Service has the sole responsibility for determining what action is appropriate in the public interest in respect of any allegation of criminal conduct. In reaching this decision, the Procurator Fiscal will consider whether there is a sufficiency of evidence to support the charges suggested. Where the Procurator Fiscal is satisfied that there is a sufficiency of evidence, he will consider what action, if any, is required in the public interest. In reaching this decision, the Procurator Fiscal has regard to a number of factors which include an assessment of the seriousness of the offence, the length of time since the offence took place, the interests of victims or other witnesses, any previous convictions or enforcement history.

85. In 2009-10, there were 469 health and safety prosecution cases heard in England and Wales as a consequence of investigations or recommendations. In Scotland, the Health and Safety Executive recommended 43 cases to the Crown Office and Procurator Fiscal Service for prosecution. This represents a reduction of 46 per cent from the previous year. The Health and Safety Executive explained that following the establishment of the specialist Health and Safety Division within the Crown Office and Procurator Fiscal Service in March 2009, the Health and Safety Executive were requested to review older cases which took up additional resources.

86. In 2009-10, the Crown Office and Procurator Fiscal Service prosecuted in 35 of the 43 cases recommended to them by the Health and Safety Executive. The Crown Office and Procurator Fiscal Service did not proceed with the eight cases either due to the fact that there was insufficient evidence to justify a prosecution, another form of proceedings was determined to be appropriate or that the companies reported for prosecution had gone into liquidation. For the 35 prosecution cases in 2009-10, the rate of conviction in Scotland was 94 per cent, which is consistent with that for England and Wales.

87. Fines awarded by the Courts vary from case to case and year-to-year, depending on the nature of the incidents that incur a penalty. For instance, the Health and Safety Executive’s Annual Report for 2005-06 describes a £15 million fine against Transco, which accounts for the vast majority of the £16.2 million recorded for that year. Figure 18 shows the average fine imposed per conviction in Scotland and England and Wales since 2006-07, but the variations in

---

42 The Health and Safety Executive records that for 2009-10, there were 45 cases recommended in Scotland. However, these include two cases for which while the offence took place in Scotland, the hearing was carried out in England.

43 The specialist Health and Safety Division was established in March 2009.

the extent of fines make comparisons difficult. Unlike in England and Wales, costs cannot be recovered from successful prosecutions in Scotland.

**Figure 18**

Average fine imposed per conviction

<table>
<thead>
<tr>
<th>Thousands</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>10</td>
</tr>
<tr>
<td>15</td>
</tr>
<tr>
<td>20</td>
</tr>
<tr>
<td>25</td>
</tr>
<tr>
<td>30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
</tr>
</thead>
<tbody>
<tr>
<td>England and Wales</td>
<td>13</td>
<td>14</td>
<td>15</td>
</tr>
<tr>
<td>Scotland</td>
<td>20</td>
<td>18</td>
<td>21</td>
</tr>
</tbody>
</table>

**NOTE**

1. The figures show the average fines imposed for Health and Safety offences in Scotland and England and Wales. We have not compared this with the amount that has actually been recovered.

*Source: The Health and Safety Executive*

*February 2011*
Written evidence submitted by the Occupational and Environmental Health Research Group, Stirling University

Executive Summary

1. The human costs and consequences of injuries and illnesses that are work-caused or work-related in Scotland remain considerable and grossly under-reported. This burden hits hardest those already facing other major health and socio-economic inequalities and contributes to such inequalities. Countries of a similar size to Scotland like Finland demonstrate that far higher health and safety at work standards can be achieved.

2. Existing enforcement and related stakeholder mechanisms and policies have failed to improve the record in any major way: they are strong on rhetoric, weak in practice/delivery. HSE prioritisation, because of cuts, of high risk jury industries can also miss high risk workplaces for occupational disease. Employers have the primary responsibility for ensuring health and safety at work. Good employers can and do achieve good standards. Bad employers must be increasingly aware that for many of the injuries and diseases they create in their workforces, the chances of inspection, enforcement and prosecution in Scotland will be especially low. Bad work is bad for your health and safety and much still exists in Scotland. Neither HSE Scotland nor local authority inspectorates (LAIs), resources and policy have been able to progress matters. New approaches are needed and further cuts in HSE should be avoided.

3. HSE governance has been poor. HSE resources should not be diverted away from core prevention, information and enforcement activities to broader health promotion campaigns: these should be funded by other agencies. The situation will deteriorate further with financial pressures on the public sector both as employers and enforcers, and pressures on the sick and disabled to return to work when not fit to do so because Work Capability Assessments are flawed.

4. Linkages between HSE and the NHS Scotland (hospital and primary care) and other bodies - to better identify injuries at work and occupational diseases - should be improved to identify and hold accountable employers who are persistent poor OHS performers. These developments should also be connected to access in Scotland to at least one funded and independent OHS advice centre for vulnerable employees.

5. ‘Good health and safety is good business’ as HSE has demonstrated. Hence UK government should draw back from further OHS cuts on and deregulation. HSE Scotland lacks sufficient staff, resources and effective practices to support OHS especially in small and medium sized enterprises (SMEs), and for employees in union and non-unionised workplaces, to ensure healthy and safe working conditions.

Effectiveness of health and safety regulation in Scotland and likely impact of HSE cuts

6. The Scottish record of workplace fatalities and serious injuries is poor compared to the rest of the UK (NAO 2010). Occupationally-caused and occupationally-related ill-health estimates remain substantial. Low staff numbers, staff training and staff time in HSE and local authority inspectorates compound weak policy and limited practice. There are major questions about the past effectiveness and responsiveness of the HSE leadership in Scotland. This does not relate to field staff but to HSE management where governance has been poor. The recent Gill public enquiry evidence on the 2004 ICL/Stockline disaster where 9 workers were killed and over 30 injured, exposed major failings by employers and HSE managers with repeated HSE errors on enforcement and follow-up. Gill and other independent reports also exposed how courts fail to obtain accurate pictures either of failings by bad employers or their finances. In Scotland and elsewhere if workers took a dog to work and they and the dog were killed, criminal
prosecutions for the dog’s death would be far more likely than for the death of the workers. The ICL/Stockline disaster also demonstrated serious failings in the capacity of the HSE to operationalise effective consultation on hazards with non-unionised employees who are in a highly vulnerable position in the country.

7. HSE Scotland all too often did not emerge as a champion for OHS but rather as an apologist for failures to protect workers effectively. This is unlike the current situation in the USA where OSHA leaders reflect a commitment to raising health and safety standards. HSE recommended 43 cases for prosecution in Scotland in 2009-10, compared to 75 in 2007-08 and 84 in 2008-09.3 (NAO 2011:8). The decline in these figures is greater than the decline in officially reported injuries which are anyway accepted by HSE and others to be gross under-estimates. The NAO report on the HSE in Scotland does not provide adequate information about occupational diseases in the country because the diagnosis, recognition and recording of such diseases are completely inadequate, lagging far behind Finland for instance.

8. If Scotland has more workers in the high risk sectors of agriculture and construction and has around 8.5% of the UK workforce, often in remote and rural areas, it is difficult to understand why the Scottish HSE has only 7% of the HSE workforce. In some respects the current UK HSE agricultural campaign - relating to ‘take the promise to come home safely’ and linked to tying ribbons and attending church services to pray for the survival of those in agriculture - indicates the major failure of that body to function effectively to protect farmers, self-employed contractors and farm workers. This is against a backdrop of several recent fatalities and serious injuries in Scottish agriculture.

9. There should be an end to dissipation of HSE funds in wider workplace health promotion in Scotland and a re-orientation of such bodies back to core activities. This should mean greater focus on major occupational disease and occupational injury prevention activity in conjunction with a strengthened HSE. Funding from employers, the education sector and health should support broader health promotion campaigns on such things as exercise, food and alcohol, not the scarce resources of HSE Scotland.

Roles and division of responsibilities between the different bodies responsible for health and safety in Scotland.

10. Inter-agency working remains in some respects problematic in Scotland (Independent Report on ICL/Stockline 2008). The relationship between HSE and LAIs may be especially problematic in terms of HSE hoping to offload some of its work onto LAIs and also expecting LAIs to adopt similar policies and practices to their own. Enforcement in both sectors has at times been poor. The linkage between HSE, the NHS in Scotland, local authorities and bodies such as SEPA has also failed in terms of addressing a number of major OHS problems emanating from a range of industries where workplace and wider pollution exist. Examples would include plastics factories in residential areas, electronics manufacture, oil refining and chemicals, open caste mining and the waste industry (Watterson et al 2006; Watterson et al 2008b). The NHS in Scotland picks up the bill for poor health and safety in terms of sickness and injury.

11. HSE, health, local authority planning and building controls, the fire brigade, SEPA all need better means to exchange information about their sectoral work and how that work may inform risk assessments and risk management of numerous workplaces in Scotland. Effective policies and procedures should link HSE with Scottish Government Health bodies specifically on occupational health and safety. Requirements for information on workplaces where problems have been identified should be shared across agencies and more widely with employees. Mechanisms to do this are not currently effective. A good multi-disciplinary Scottish
occupational health service linked to NHS is needed that covers all employees in the country with prevention as its core principle not diluted health promotion geared to lifestyle factors.

**Impact of health and safety regulation upon business**

12. Research shows that regulation and more importantly its enforcement helps to maintain and raise occupational health and safety standards (Davis: Sussex University). Other research has shown that many SMEs, when questioned in detail, find the role of HSEIs of benefit: with regulation comes information and advice which are invaluable (James et al. Middlesex University). The rhetoric against regulation is currently strong but the evidence base for it is weak. The media representation of occupational and environmental health and safety is often wrong and usually trivial. There is a frequent lack of coverage of major health and safety problems that exist in Scotland beyond the off shore oil industry, fishing and quarrying. We recently surveyed media coverage of occupational health in Scotland and found it was minimal. This helps to skew political, public and even OHS professional priorities.

**Data on health and safety matters in Scotland & impact on the understanding of potential health and safety problems.**

13. Very poor data exist on occupational diseases in Scotland and elsewhere in the UK. What data do exist are on occasions ignored or downplayed by HSE (O’Neill et al 2007). This partly relates to resources, partly to staff training and partly due to the policies and practices of HSE. However, data and estimates do exist in HSE that indicate they should prioritise matters differently. Using WHO and EASHW current estimates of occupational diseases and injuries, far more people die in Scotland from workplace conditions, than from suicides, murders and road traffic fatalities combined (Watterson et al 2008a). HSE currently apparently has one part-time medical staff member dealing with around 2.5 million workers in the whole of Scotland.

**HSE research on effective interventions.**

14. HSE core activities should relate to disease and injury prevention which must also entail effective and relevant provision of information to employers and employees and enforcement and prosecution of offenders where necessary. HSE’s successful and low cost ‘infoline’ is for example about to be cut and, in rural and remote areas, such services are critical. The inspection visits of HSE staff in Scotland and elsewhere have been steadily eroded in terms of what they have time and resources to check on. HSE recently ran a multi-million pound slips, trips and falls campaign yet ignored major occupational disease problems, such as lung diseases and cancers, in Scotland. It would seem that such campaigns squander resources and are not likely to produce effective interventions in ways that regular pro-active visits, inspections and enforcement will on the major causes of poor OHS in the country.

15. HSE need to set up investigations of more problem plants especially SMEs like ICL/Stockline so that inspectors, regulators, workers, ex-workers and communities may be warned about and take action on known and suspect hazards and safety threats. This does not require additional legislation as it is a policy matter.

**Comparative effectiveness of the Health and Safety Executive (HSE) in Scotland with rest of UK linked to managing health and safety in a devolutionary context**

16. Better mechanisms are needed in Scotland for information exchange, policy development based on evidence and enforcement. This will ensure greater effectiveness and use of resources targeted to often neglected but major problems. Hence HSE organisation needs to have more effective working with local authorities, NHS Scotland which is not reserved, SEPA which is not reserved, and other Scottish specific agencies dealing with business and the environment that either impact on or are influenced by work environment issues.
17. It is notable that bodies such as SEPA have been able to function well as a devolved agency in Scotland. A devolved HSE in Scotland with greater accountability for its policies relating to enforcement and prosecutions on workplace injuries and diseases may be possible.

**International comparisons with similar sized countries/similar risk industries**

18. The UK global OHS ranking - drawing on WHO, ILO and World Bank data - was 30th out of 176 (Maplecroft Global Health and Safety Risk Index 2009). Indicators used included work related fatalities and injuries, deaths from work related diseases, health expenditure, life expectancy, government effectiveness, regulatory quality and ILO conventions ratified. UK ranked just 20th out of 30 OECD countries. Denmark with a population of 5.5 million came first with Finland, population of around 5 million, scoring highly and sharing some geographical characteristics with Scotland. Finland, despite cuts in its own OHS agencies, still remains a world leader on occupational health, provides greater information and support to employers and employees, and records and monitors occupational diseases far better than in the UK. As Finland and Denmark are independent countries of similar population size to Scotland, they demonstrate what Scotland could achieve if the UK and Scottish Governments committed themselves to the task of good worker health and safety.

*May 2011*
The British Safety Council invited over 600 of its member organisations based or operating in Scotland to set out their views on the issues that go to the heart of the Scottish Affairs Committee Inquiry into health and safety in Scotland. Our evidence has been informed by the views of our members.

We are a charity with the vision of making all workplaces safer, healthier and more sustainable. Our range of charitable initiatives, such as free health and safety qualifications for all 14-19 year olds in full-time education, is supported by revenue-generating activities centred on membership, training, audit and qualifications.

A significant proportion of British Safety Council members in Scotland operate in the construction, manufacturing, offshore oil and gas, onshore major hazard and public service sectors. In 2010 6 of the 38 organisations who won our prestigious Sword of Honour for exemplary health and safety were from Scotland. These were Aker QServ, Arnold Clark Automobiles, Forth Ports Grangemouth, Glasgow Housing Association, Norec Longannett Power Station and Shell Exploration & Production Aberdeen. Distinction winners of our 2010 International Safety Award winners based and/or operating in Scotland include ASDA CDC4 Falkirk, Babcock Critical Services Edinburgh Airport, Dounreay Site Restoration, Glasgow Airport and Morrison Bowmore Distillers.

As advised we have attached an executive summary setting out our views on the issues addressed by the Committee’s Inquiry – see page 3. The British Safety Council would welcome the opportunity to present evidence to the Committee in person. If invited we plan to have two of our member organisations in Scotland form part of our delegation.

Executive Summary

The British Safety Council invited over 600 of its member organisations based or operating in Scotland to set out their views on the issues that go to the heart of the Scottish Affairs Committee Inquiry into health and safety in Scotland.

The detailed breakdown of the responses we received from our member organisations are set out below in the body of our submission.

The British Safety Council considers that health and safety in Scotland is effectively regulated. Further, a significant number of our members consider regulation to be very effective. We recognise, too, the overwhelming agreement among our members that Great Britain’s health and safety record, and within it Scotland, compares well with other leading EU members states and other leading economically developed nations.

There is an overwhelming view among our membership that health and safety regulation has a positive impact on business.

The British Safety Council is strongly of the view that HSE’s operations in Scotland are equally effective as its operations in England and Wales.

The British Safety Council acknowledges that its members are evenly divided on the issue of the devolution of health and safety to the Scottish Government. There were strongly held views both for and against. We are, for the moment, neutral on the issue of devolving health and safety. We do not support the creation of a separate HSE responsible for health and safety regulation in Scotland.
11 The British Safety Council recognises the concerns of a significant minority of its members about HSE’s priorities and allocation of resources for its operations in Scotland. We are concerned too that there was almost universal bewilderment among our members about how HSE monitors the impact of cases that are investigated, prosecuted and which result in conviction. Similarly, there is a concern that a significant number of duty holders are unaware as to how the impact of HSE’s interventions is measured. What is clear is that there is a need for national health and safety targets for England, Scotland and Wales owned by all those with a responsibility for or interest in good health and safety and overseen by the Government and HSE.

12 The British Safety Council recognises the concern of our members in Scotland over the impact of the deficit reduction on HSE’s operations generally and inspector numbers specifically. The consequences in terms of the likely reduction in the frequency of inspection visits caused considerable unease as well as the likelihood, for example, that sectors such as agriculture and construction will fade from the spotlight.

Methodology and responses

13 Our online survey of members, conducted between 17 May and 6 June, who are based and/or operating in Scotland produced a much smaller response than the surveys detailed above, a reflection of a far smaller target audience. There was nonetheless considerable interest in the important questions posed by the Inquiry and strong views were expressed about the possible consequences of major changes, for example, that would flow should health and safety be devolved to the Scottish Government.

14 The main sectors in which our respondent member organisations operate:

<table>
<thead>
<tr>
<th>Sector</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturing</td>
<td>30%</td>
</tr>
<tr>
<td>Emergency Services</td>
<td>6%</td>
</tr>
<tr>
<td>Passenger transport</td>
<td>2%</td>
</tr>
<tr>
<td>Major hazards incl. oil &amp; gas and chemicals</td>
<td>10%</td>
</tr>
<tr>
<td>Education, training &amp; research</td>
<td>4%</td>
</tr>
<tr>
<td>Waste management</td>
<td>2%</td>
</tr>
<tr>
<td>Food and drink</td>
<td>8%</td>
</tr>
<tr>
<td>Third sector</td>
<td>4%</td>
</tr>
<tr>
<td>Health &amp; safety consultants</td>
<td>2%</td>
</tr>
<tr>
<td>Energy &amp; utilities generation and supply</td>
<td>6%</td>
</tr>
<tr>
<td>Transport &amp; distribution</td>
<td>2%</td>
</tr>
<tr>
<td>Other</td>
<td>16%</td>
</tr>
<tr>
<td>Construction</td>
<td>6%</td>
</tr>
<tr>
<td>Property/facilities management</td>
<td>2%</td>
</tr>
</tbody>
</table>

15 The breakdown of respondent member organisations by number of employees:

<table>
<thead>
<tr>
<th>Number of Employees</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fewer than 5</td>
<td></td>
</tr>
</tbody>
</table>
The British Safety Council’s evidence concerning the main issues addressed by the Inquiry: our members’ views

The effectiveness of health and safety regulation in Scotland

16 Almost 40% of respondents considered health and safety to be very effectively regulated in Scotland; 45% considered it satisfactorily or reasonably regulated and 15% poorly regulated.

17 A concern was raised about the problems the geographical remoteness of certain parts of Scotland posed for regulation.

The roles and division of responsibilities between the different bodies responsible for health and safety in Scotland

18 50% of respondents considered that the arrangement of roles and responsibilities was effective or very effective; 30% of respondents considered the current arrangements confusing and unclear; 20% were undecided.

19 One respondent called for a unified regulatory body for health and safety, fire and food safety. Another respondent argued for better coordination between the various health and safety bodies in Scotland concerning the production of advice and guidance.

The effectiveness of the relationships between the Health and Safety Executive (HSE), the Crown Office and Procurator Fiscal Service, the Scottish Government, local authorities, and other relevant bodies

20 25% of respondents considered the relationships between the various bodies effective; 25% of respondents considered the relationships very effective; 20% considered the relationships poor; 30% were undecided.

21 Concerns were raised about lack of effective coordination and duplication of effort. The system was seen as far more effective method of handling prosecutions than the use of HSE Inspectors in England and Wales to undertake prosecutions.

The impact of health and safety regulation upon business
22 70% of respondents considered that health and safety had a positive impact on business. Within that group of respondents there were those who considered health and safety regulation as restrictive or demanding but necessary and justified. Some respondents also viewed well managed health and safety as critical to business success and compliance was high on business agendas.

23 20% of respondents considered the impact of regulation as bureaucratic, onerous and unnecessary. 10% of respondents were undecided.

The availability of data on health and safety matters in Scotland and how this data helps the understanding of potential health and safety problems in Scotland

24 40% of respondents did not consider that there was a lack of health and safety data in Scotland to help inform an understanding of health and safety problems.

25 40% of respondents expressed concern about the lack of specific data concerning injury and ill health in Scotland and that many statistics had a GB dimension. 20% of respondents did not know whether or not there was sufficient data. A more general concern was expressed about the time taken to gather, collate and publish annual injury and ill health statistics.

How does the HSE know how effective their interventions are?

26 60% of respondents were unaware as to how effective HSE’s interventions are and how those interventions are measured. 30% of respondents considered that the annual statistics concerning reportable injuries and ill health were an important measure of HSE effectiveness. 10% of respondents expressed concern over whether the statistics that are currently available enable HSE effectiveness to be measured.

How does the HSE monitor the impact of the cases that are investigated, the number that lead to prosecutions, and whether fines are collected?

27 95% of respondents did not know how HSE monitors the impact of cases that are investigated, prosecuted and result in convictions. Respondents did not consider the prosecution success rate as a reliable measure for assessing the effectiveness of HSE interventions. 5% of respondents considered the prosecution success rate an effective measure of impact.

The effectiveness of the Health and Safety Executive (HSE) in Scotland in comparison with the effectiveness of the HSE in England, Wales and Northern Ireland

28 65% of respondents considered HSE in Scotland equally effective as HSE in England and Wales and HSE NI. 35% of respondents were unable to comment on this comparison.

Should health and safety be a matter devolved to the Scottish Government?

29 55% of respondents did not support health and safety being devolved. Respondents were concerned that health and safety being devolved could lead to the creation of different standards applying in Scotland and an end to harmonised health and safety law and practice. Respondents also recognised that many businesses operate across the UK and would encounter disruption should different laws apply.

30 45% of respondents supported health and safety being devolved. Respondents argued that devolution would benefit business with a government more receptive to the needs of
Scottish business. Devolution would, some argued, result in better targeting with priorities more aligned to Scotland’s health and safety needs.

**Would a separate HSE responsible for health and safety regulation and enforcement in Scotland be more effective and efficient?**

31 60% of respondents did not consider that a separate HSE for Scotland would be more efficient and effective for reasons similar to those given on the issue of devolution of government responsibility for health and safety.

32 Conversely, 40% of respondents considered that a separate HSE for Scotland would be more effective and efficient. However, the issue of funding of such a body was seen as a critical one and key to effectiveness.

**Whether the HSE have correctly identified the areas of concern and have appropriately targeted their resources in Scotland?**

33 45% of respondents did not consider that HSE has appropriately targeted its resources. 35% of respondents considered that HSE had appropriately targeted its resources. 10% of respondents were undecided.

34 Concerns were raised about the need for more resources to enable effective enforcement across a vast geographical area. Some respondents identified that the considerable resources devoted to the enforcement of the offshore oil and gas sector were not mirrored for sectors such as agriculture and construction where there were insufficient inspectors.

**What effect any reduction in the HSE workforce might have upon the HSE as a whole and its work in Scotland?**

35 Respondents almost unanimously expressed concern about the impact of deficit reduction on HSE and the consequent cut in enforcement staff. The reduction in Inspector numbers would inevitably result in fewer inspections being carried out and send out the message that compliance with the law was now less of a priority. There was also a real concern that the tough economic climate more generally was leading to fewer resources being devoted by some businesses to specific aspects of health and safety such as training and safety equipment. Only 5% of respondents considered that the reduction would have little or no impact on HSE’s work.

**What international comparisons with similar sized countries, or similar risk industries, can be made which could be helpful?**

36 Respondents almost unanimously agreed that Great Britain, and within it Scotland, has a health and safety record that compares well with other countries including leading EU member states. Only 10% of respondents considered that the country’s health and safety record was either as not as good as it could be or indeed not as good. No specific international comparisons other than those already made around the incidence of work related injury and ill-health were identified by respondents.

*June 2011*
Written Evidence submitted by the Royal Environmental Health Institute of Scotland

Introduction

The Royal Environmental Health Institute of Scotland (the Institute) has been in existence for over 135 years and has around 1200 members the majority of whom are Environmental Health Officers working in that capacity for Scottish local authorities.

The objects for which the Institute is established are for the benefit of the community to promote the advancement of Environmental Health by:
- stimulating interest in and disseminating knowledge concerning Environmental Health;
- promoting education and training in matters relating to Environmental Health; and
- maintaining, by examination or otherwise, high standards of professional practice and conduct on the part of Environmental Health Officers in Scotland.

Environmental Health Officers in Scotland are part of a graduate only profession and by virtue of their underpinning academic education, professional practical training, professional qualifications and experience are well placed to apply a holistic public health approach to the education of the public and to the enforcement of a wide range of environmental and public health legislation.

The Institute which is incorporated by Royal Charter, is an independent and self-financing organisation. It neither seeks nor receives grant aid. The Institute’s charitable activities are funded significantly by the subscriptions received from its members.

The Royal Environmental Health Institute of Scotland is a registered Scottish charity, No. SC009406.

It is important to note that in terms of EU Directive 2005/36//EC on the recognition of Professional Qualifications within Member States and under the European Communities (Recognition of Professional Qualifications) Regulations 2007 the Royal Environmental Health Institute of Scotland is a Competent Authority for the Profession Environmental Health Officer/Chartered Environmental Health Officer in the UK. In this respect individuals who have successfully completed the appropriate academic study and professional training and examinations are awarded the Royal Environmental Health Institute of Scotland Diploma in Environmental Health.

The Institute is an external accreditation body and currently accredit the BSc (Hons) Environmental Health and MSc Environmental Health degree courses delivered by the University of Strathclyde and the MSc Environmental Health degree course (by distance learning) delivered by the University of Derby. In addition to achieving the academic qualification, those wishing to become an Environmental Health Officer require to undertake the Institute’s Scheme of Practical Training with a Scottish local authority over a minimum period of 48 weeks. Thereafter they require to successfully complete the Institute’s Professional Examination, an assessment of their professional competence, before practicing as an Environmental Health Officer.

Detailed Comment

The underpinning academic knowledge allied to the practical training is designed to ensure that Environmental Health Officers are competent on qualification and possess the core competencies identified within the Competence Framework for Regulations of Health and Safety. Environmental Health Officers thereafter require to undertake Continuing Professional Development to ensure
ongoing training and development needs for Environmental Health Officers and others in local authorities responsible for the enforcement of health and safety are identified and met.

The Institute is one of the ten organisations working in partnership which make up the Board of the Occupational Safety and Health Consultants Register (OSHCR).

As an organisation, which is independent, and promotes the improvement of public health and environmental health, the Institute is well placed to contribute to the enquiry into Health and Safety in Scotland.

1) **The Effectiveness of health and safety regulation in Scotland**

It is reasonable to assess the effectiveness of health and safety regulation through studying outcomes. It is recognised that Scotland has a higher workplace injury rate than other parts of the UK, however, it is difficult to ascertain the reasons for this being the case. The regulatory system in Scotland is similar to other parts of the UK and as such it would be wrong to attribute the higher rate of workplace injury to regulation alone. In reality, the issues contributing to the higher workplace injury rate will be more complex.

In 2009/10 the cost of reportable workplace accidents in Scotland was estimated to be £187 million and 2.5 million working days were lost. This not only has an adverse impact on public health but on the economic wellbeing of Scotland as a whole.

These statistics demonstrate that the Health and Safety system in Scotland should be reviewed. The effectiveness of regulation should be incorporated in such a review, however, it should always be remembered that health and safety is the responsibility of businesses and as such regulation cannot be reviewed in isolation. The Institute believes that within an environment of financial constraint and reduction in resources regulation, more than ever, requires to be targeted to areas of greatest risk. This will be expanded upon when addressing the roles and responsibilities of different bodies responsible for health and safety.

2) **The roles and division of responsibilities between the different bodies responsible for health and safety in Scotland**

Ultimately the responsibility for health and safety in the workplace lies with each individual business, however, in the context of the enquiry it is believed that this area be restricted to public bodies who have regulatory and other responsibilities.

The Health and Safety Executive (HSE) provide strategic direction and take the lead on the health and safety system as a whole in the UK. The HSE undertake a range of activities including inspection, investigation, enforcement, research, provision of information and advice and promoting training.

HSE has an important relationship with local authority environmental health services who operate in partnership with the HSE to ensure that businesses manage their workplaces with due regard to the health and safety of their workforce and others affected by their work activities. As co regulators Local authorities undertake a similar range of activities including inspection, investigation, enforcement and provision of information and advice.
The categories of premises for which each the HSE and local authorities have regulatory responsibility are dictated in the Health and Safety (Enforcing Authority) Regulations 1998. In general terms the HSE are responsible for activities which of their nature possess a higher risk than the type of activities regulated by local authorities. The prescriptive nature of the Enforcing Authority Regulations impacts on the principle of proportionality and this issue will be explored in more detail.

HSE and local authorities over decades have undertaken risk assessment in order to priority plan inspection programmes. This was carried out to ensure that limited resources were applied to areas and activities of greatest risk and within their respective regimes apply the principle of proportionality. However, when considering the regulation of health and safety at work as a whole it becomes apparent that the overall priority planning and targeting is skewed. In simple terms, many of the premises falling within the responsibility of the HSE which are not inspected are higher risk than those inspected by local authorities. This is commonly referred to as the ‘twin peaks’ effect. Whilst both the HSE and local authorities are targeting their resources to the higher risk activities within the categories assigned to them within the Enforcing Authority Regulations the premises not inspected by the HSE are of a higher risk category than those inspected by the local authorities.

It is therefore evident that the current Enforcing Authority Regulations do not apply the guiding principle of proportionality to the health and safety at work regulatory regime as a whole. One way of resolving this issue would be to amend the Enforcing Authority Regulations, however, it is understood that the Government is reluctant to do so. It has been muted that local agreements between the HSE and local authorities could be drawn up and premises transferred to local authorities to resolve the ‘twin peaks’ effect. REHIS are of the opinion that local agreements would make the regulatory landscape more confusing for business as different systems could apply across the country dependent upon who has and who has not signed up to a local agreement. Clarity for both business and the regulators is essential and this will only be achieved if everyone is operating under the same system. If it is correct that there is no appetite to amend the Enforcing Authority Regulations but there is a recognition that the ‘twin peaks’ effect requires to be addressed a more strategic and national approach will require to be adopted.

In Scotland, the HSE would require to agree the transfer of premises to local authorities with the Convention of Scottish Local Authorities (COSLA) to ensure that all local authorities sign up to this approach. Recent discussions have shown that although not unanimous there are a majority of local authorities who would sign up. Those Authorities not in a position to do so would welcome a degree of flexibility to tackle high risk local issues which they are targeting. If such a memorandum of understanding was achieved central government should likewise formalise their approval. This would ensure that there is understanding and clarity of the regulatory system both locally and nationally. HSE would similarly require to seek agreement with other local authority governing bodies in the UK i.e. Local Government Association. This would ensure that the ‘twin peaks’ effect is addressed on a national basis and that the limited resources available are applied to the areas of greatest risk.

In effect, this will mean that none or few of the activities presently regulated by local authorities will be subject to proactive inspection and it is important that this is understood by both local and national government. It is also likely that some businesses will not receive the same level of support in terms of advice and guidance which they presently enjoy.
As previously stated the responsibility for complying with health and safety regulations in the workplace lies with each individual business and as such, where they presently rely on advice and guidance offered during proactive inspections, they will be subjected to a different regulatory regime. It is therefore imperative that businesses falling into the lower risk category, who do not receive proactive visits from the regulator, understand that if they are found to be in serious breach of health and safety at work regulations the regulator will take formal action proportionate to the offence.


The Institute restricts its’ comments to the relationship between the HSE and local authorities in Scotland.

There exists well established liaison arrangements between the 32 Unitary Local Authorities and the HSE in Scotland. In Scotland, liaison arrangements between local authority Environmental Health services have been achieved by the formation of four regional health and safety working groups: West of Scotland, North of Scotland, Lothian and Scottish Borders and Central, Fife and Tayside. Each of the local authorities is represented on one of the four groups by Environmental Health professionals specialising in occupational health and safety. These regional groups are supported and directed by the Institute’s Health and Safety Co-ordinating Group (HASCOG) whose main remit is to act as a co-ordinating committee to strategically manage the future direction and policy of the local authority regulation of occupational health and safety in Scotland. The Institute and the Society of Chief Officers of Environmental Health in Scotland have representation on UK wide HSE/local authority liaison arrangements which have been in place for a considerable number of years. The arrangements have not only fostered excellent working relationships between the HSE and local authorities but strived for the principles of transparency, fairness and consistency within the current regulatory regime. These liaison arrangements are mature and robust and the Institute would wish them to continue and to improve upon the work done to date. However, due to severe financial cuts being experienced by the HSE and by the Local Government Regulation, the support and administration of the national and local liaison groups has been affected. Changes are in the process of being implemented and time will tell if this will change the partnership working that has existed over the last decade.

4) The impact of health and safety regulation upon business

Regulation is only part of the answer to improve health and safety in the workplace. A number of studies have been carried out which in essence have concluded that changing behaviour and reducing injury and illness associated with the workplace is best achieved through enforcement, support, guidance, advice and information. Businesses which actively embrace these various approaches are likely to experience positive impacts in terms of productivity and profitability. Relying on regulation alone is insufficient to achieve the desired outcomes in relation to both health and wellbeing allied to sustainable economic growth.

This year HSE will be consulting on the proposal for cost recovery from companies that have had enforcement action taken against them. It is uncertain at this stage how this will work and whether local authorities will implement the same policy. This will have a financial impact on businesses within Scotland.
5) Conclusion

The issue of resource targeting in the overall regulatory regime for occupational health and safety in these times of limited resources must be tackled to ensure that the system is both fair and proportionate. The Institute would prefer the solution to be addressed through amending the Enforcing Authority Regulations as this would have the authority of government. If this is not possible, it must be ensured that the issue is tackled in such a manner which delivers on a national basis and not a potentially fragmented local approach. The solution must also be formally approved by both HSE and local authorities as a whole and by central government.

June 2011
1. Executive Summary

The School Travel Forum (STF) welcomes the Scottish Affairs Select Committee’s inquiry into health and safety in Scotland. In this submission the STF would like to highlight the impact of overly bureaucratic health and safety regulations and a perceived fear of litigation on the school travel industry, which has resulted in a decline in school travel and field trips in Scotland in recent years. We would also like to bring to the committee's attention that by working with organisations such as the School Travel Forum, schools can overcome the health and safety barriers and bureaucratic burdens involved in arranging outdoor learning experiences, enabling them to deliver effective and safe travel.

In this submission we have used our experience to highlight the following areas:

- The worrying decline in school travel in recent years due to health and safety concerns and bureaucratic procedures as well as a perceived fear of litigation which restrict teachers from organising school trips.
- The importance of removing barriers which restrict the effective delivery and implementation of outdoor education and the benefits of outdoor education in improving educational attainment.
- The role of the STF in supporting schools undertaking outdoor learning experiences to overcome such health and safety burdens and deliver effective and safe school travel.
- The need to promote existing accreditation schemes to schools which identify centres of excellence in health and safety in outdoor education such as the Learning Outside the Classroom Quality Badge.

2. About The School Travel Forum

Since its inception in 2003 the School Travel Forum has won widespread recognition and support for the way it simplifies and provides essential reassurance for leaders looking to organise study, sports and ski trips. The STF, which includes the major companies in the school travel business, has estimated that around 40% of all school visits are organised through our members. Our members are required to adhere to a rigorous Code of Practice and Safety Management Standards and are externally verified each year by a leading Health and Safety Consultancy. Founded in 2003, the School Travel Forum is a democratic, not for profit organisation of leading school tour operators that promotes good practice and safety in school travel.

Our Objectives include:

- Promoting best practice in educational school travel and support the principles established by the Learning Outside the Classroom Manifesto
- Designing and promoting sector-specific standards that will be periodically reviewed and adapted to reflect changes in education, health and safety legislation and any other relevant influence.
- Ensuring the needs of schools and teachers are understood and adopted into our standards by regularly meeting bodies such as the Learning Outside of the Classroom Council (LoTC), the Department for Education (DfE), the Outdoor Education Advisors Panel (OEAP), Head Teacher Associations and Teacher Unions.
- Ensuring that independent assessment of travel companies offering educational travel in line with the requirements of the LoTC Quality Badge and the STF Code of Practice.
- Providing a forum for members to discuss non-competitive issues of common interest and concern.

3. Background to School Travel

Written evidence submitted by School Travel Forum
Benefits

The known benefits for pupils of learning outside the classroom are many and varied. They include: improved engagement and attendance; the development of learning and thinking skills; and the strengthening of personal, social and emotional development (e.g. confidence, self-reliance, and management of risk). School trips are becoming increasingly recognised as an important, irreplaceable part of understanding your subject in the real world, as well as being an excellent opportunity for team building and personal development. Evidence also suggests that low attainment can frequently be linked to a lack of engagement in the teaching style, making it vital for schools to examine and use a wider and more flexible range of teaching methods, such as outdoor education, to engage all pupils, particularly those who are at risk of becoming NEET. Ofsted strongly supports the value of outdoor learning experiences as part of a full and rounded education, noting that when well planned and executed, learning outside the classroom “contributed significantly to raising standards and improving pupils’ personal, social and emotional development”\(^1\).

Decline

However despite the benefits, in recent years there has been a steady decline in outdoor learning. Research commissioned by Scottish Natural Heritage has identified many reasons including school culture, health and safety, and risk of litigation. A survey by the Association of Teachers and Lecturers (ATL) concluded that children have fewer opportunities to learn outside the classroom than in the past, noting that 17% had not taken their pupils on school trips in the last 12 months. The former Children, Schools and Families committee conducted an inquiry into Transforming Learning Outside the Classroom in 2010 which warned about the lack of growth in recent years in the number of trips and visits offered by schools\(^2\). The report also found that pupils from poorer areas are still much less likely to access school trips and argued that there is a danger of children becoming “entombed” in their homes.

4. Health and Safety in Outdoor Education

The STF believes that the safety of children and young people is the most important priority but that there should always be opportunities for young people to experience outdoor learning. However, in our experience, overly bureaucratic health and safety concerns as well as a perceived fear of litigation prevent teachers from delivering an enhanced curriculum through outdoor education.

Reducing Health and Safety Bureaucracy in Schools

The STF is concerned that overly bureaucratic health and safety procedures are deterring schools from undertaking school trips. A recent survey revealed that 46% of teachers placed health and safety concerns, including risk assessment, paperwork and fear of litigation, as one of the most significant barriers to learning outside the classroom, second only to cost\(^3\). We welcome the findings of Lord Young’s Review which highlighted the need to reduce health and safety burdens to simplify the process that schools and other organisations undertake before taking children on outdoor learning experiences. We urge the Scottish Government and Health and Safety Executive to work with the school travel industry to take forward these recommendations to make it significantly easier for children and young people to undertake outdoor learning experiences.

The STF would also like to bring to the Committee’s attention that by working with the STF, schools can overcome the health and safety barriers and bureaucratic burdens involved in arranging school trips. Working with a travel company helps reduce a large amount of risk-assessment administration involved

---

1 Ofsted, Learning Outside the Classroom: How far should you go? (October 2008)
2 Children, Schools and Families Select Committee, Transforming Education Outside the Classroom (March 2010)
3 Opinion Matters survey on behalf of TUI Travel PLC (2010)
with trips. This not only reduces the burden on teachers, enabling them to dedicate more time to ensuring a high standard of teaching and learning, but also helps schools to make savings through more effective procedures, ever more important in the current fiscal environment. STF members are required to adhere to a rigorous Code of Practice and Safety Management Standards and are externally verified each year by a leading Health and Safety Consultancy. However, only 40% of all school visits are organised through our members so there are hundreds of schools trips taking place every year where there is no guarantee of quality or health and safety.

If schools do their own organisation they put themselves in much the same position as supplier travel companies, responsible wholly for health and safety, and possibly subject to the Package Travel, Package Holidays and Package Tours Regulations 1992 for some of the visits. However, if they use travel companies then schools are in effect the customers and entitled to all the protection afforded by the health and safety laws, contract law, trade description legislation, and the above Package Travel Regulations. They will be relieved of the burden to assess the safety management of the component parts of the visit, though they will need to satisfy themselves that the Tour Operator has done so adequately.

Companies such as the STF works to assist schools in identifying external travel providers who deliver good quality teaching and learning experiences and manage risk effectively. For teachers, membership of the STF provides an assurance that a provider:

- Meets their need for due diligence
- Takes account of the needs of users
- Operates in a healthy and safe environment
- Has an emphasis on ‘learning/skills outcomes

We recommend the Government and Health and Safety Executive do more to highlight the work that organisations like the STF do in promoting health and safety and challenging providers to raise their game in terms of safety management, the learning opportunities that they provide and helping relieve the burden of bureaucracy in schools.

Reducing the Fear of Litigation

Anecdotal evidence has pointed to a decline in school travel level due to a perceived fear of litigation after accidents, which has been greatly inflated through media coverage. The Children, Schools and Families Committee’s inquiry into Transforming Learning Outside the Classroom concluded that teachers' fears over health and safety litigation, which make them reluctant to offer trips and visits, have not been effectively addressed. The STF are concerned that an unnecessary and disproportionate level of risk averseness, particularly among public bodies in the education sector, because of overly bureaucratic health and safety rules, has led to an approach to avoid all activities perceived as ‘risky’, to the detriment of children’s experiences of out-of-classroom activity and real-world experience.

However, evidence suggests that school trips have a good record of health and safety, and the National Governor’s Association recently claimed that: “The evidence is that school trips are safe; the few fatal accidents that occur are newsworthy because they are so rare; statistics show that children are actually at more risk at home in their beds”. Indeed, statistics show that an average of three young people per year die whilst taking part in out of classroom activities, with road accidents the most common cause. This is in comparison to over 50 children who die in house fires every year.

---

4 Children, Schools and Families Select Committee, Transforming Education Outside the Classroom (March 2010)
In addition, where compensation claims are made against schools and teachers following school trips, the majority are unsuccessful. A report by the Countryside Alliance found that only 364 legal claims were made over a ten year period, while less than half of the cases were successful and resulted in a payout. In fact, on average just over £290 was paid out per year by each local authority\(^6\). These results challenge the widely held assumption that school trips are inherently dangerous and result in huge numbers of compensation claims.

The STF would like to see the Scottish Government work to reduce the fear of litigation amongst schools and teachers. This could be achieved by ensuring that teacher’s are aware that serious accidents on school trips are very rare, as well as ensuring that health and safety guidance for schools clearly notes that teachers are protected from prosecution and litigation if they follow their employer’s guidelines. This will help to encourage teachers and schools to undertake school travel free from the fear of litigation.

**Quality Badge**

In addition, we would like to bring to the Committee’s attention the fact that teachers and schools can take advantage of existing accreditation schemes, particularly those featuring independent external inspection, such as LOTC Quality Badge, to easily evidence the suitability of potential suppliers. The STF is one of the Awarding Bodies for the Learning Outside the Classroom (LOTC) Quality Badge which is the self regulation scheme with the widest acceptance. The Quality Badge provides for the first time a national accreditation combining the essential elements of provision – learning and safety – into one easily recognisable and trusted Quality Badge for all types of Learning Outside the Classroom provider organisations. The badge serves an important purpose and helps to promote safety and best practice for outdoor learning providers.

Local authorities have previously taken a prominent role in encouraging schools to adopt these standards because they provided a relatively uncomplicated way of ensuring high class provision in outdoor learning as well as meeting health and safety standards. However, the major barrier we have found is that there is a lack of awareness of the badge in schools and we are concerned that this could be further exacerbated by the diminishing role of local authorities in school management. The STF recommends that the Scottish Government works to raise awareness of the Learning Outside the Classroom Council and the Quality Badge in their work providing schools with a list of reputable and recommended travel companies, such as the members of STF. This will enable teachers to source out these administrative burdens in order to enable them to focus on delivering an effective curriculum through outdoor education. This will again help to reduce the fear of litigation by giving teachers greater confidence in the health and safety record of the outdoor education centre.

*June 2011*

---

\(^6\) Countryside Alliance, Outdoor education: the countryside as a classroom (2010)
Written evidence submitted by Stan Brown, Force Safety Adviser, Tayside Police

1. The effectiveness of health and safety regulation in Scotland. In my opinion health and safety regulation in Scotland is effective. When you consider that the legislation produced by the Houses of Parliament or from enabling Acts like the Health and Safety at Work etc Act 1974(HASAW), is done so by studying emerging trends and hazards created by new technologies, then they are fit for purpose.

2. Each document is prepared with assistance from learned institutions, experts in their chosen fields and sometimes following critical failures. The drive is that they do not want such incidents to happen again or be proactive and minimise any potential incidents from occurring.

3. Conscientious employers in Scotland are aware of their Health and Safety responsibilities and willing to comply. However those in the minority may plead ignorance or are driven by profit and willingness to cut corners to achieve their goals are often the ones that make the headlines.

4. The HSE have been decimated by numerous cuts over the years and yet still face up to 35% in cuts over the next three years are still value for money in Scotland!

5. The roles and division of responsibilities between the different bodies responsible for health and safety in Scotland. There are a wide range of bodies, enforcement, institutions ie IOSH, industry working groups, trade unions all have a very important part to play. Now more than ever there is consultation between all these groups and all have the chance to contribute to H&S in Scotland.

6. Whether it is enforcement or advisory, it is clear to me that they all want a common goal of ensuring the best health, safety and welfare for employers, employees and all members of the public.

7. The effectiveness of the relationships between the HSE, Crown office and Procurator Fiscal Service, the Scottish Government, local authorities and other relevant bodies. I am aware that great strides have been taken with regards to the Fiscal’s office now having a dedicated team purely for H&S offences.

8. I know that the HSE carry out many promotions with the local authorities and also provide inspectors to sit on working groups and deliver talks on pertinent H&S topics. Certainly we have had a principal inspector attend the Association of Police Health and Safety Advisers(APHSA) forum and had talks for Tayside Integrated Safety Association(TISA) which is a member of Safety Groups UK.

9. Impact of H&S regulation upon the business. This has been positive, with reference to the Police (Health and Safety) Act 1997, police officers are now afforded all the benefits of the HASAWA.

10. The six pack has also been beneficial and is now firmly integrated into all areas of business. It is clear that these pieces of regulation have contributed to the reduction in deaths, injury and ill health across Scotland.

11. Is there a lack of data on H&S matters in Scotland, and how does this affect the understanding of potential H&S problems in Scotland. Would disagree with this, the internet is filled with pertinent data of all aspects of H&S in Scotland and throughout
the UK. Many issues are similar and control measures and solutions would be equally applicable in Wales as it would be in Scotland.

12. How does the HSE know how effective their interventions are. This is easily measured with follow up visits if it is a place of work or through monitoring performance data following promotions. Companies who had just had a critical incident will become even more safety conscious in the aftermath as they will be aware of follow up visits to see how any recommendations and improvements have been made.

13. How does the HSE monitor the impact of the cases that are investigated, the number that lead to prosecutions, and whether fines are collected? From personal experience following a fatality while working for a Fire Brigade, there was a follow up visit by the HSE which proved satisfactory. We were fined and duly paid the fee, unaware of any organisations that have not paid their fines and have managed to remain in business?

14. How does the effectiveness of the Health and Safety Executive (HSE) in Scotland compare with the effectiveness of the HSE in England, Wales and Northern Ireland; and whether the organisational structure of the HSE is the best way to manage health and safety in the context of devolution. In 2008 Tayside Police were the subject to a weeklong inspection by three inspectors and a principal inspector. It was clear from my counterparts in England and Wales that the inspectors were far more familiar with the unique operations of a police force. The reports from England and Wales tended to focus on individual items that the inspectors were familiar with i.e. DSE and manual handling. Whereas in Scotland they were keen to look into operational policing, it is clear that having their inspectors attending the APHSA forum had paid dividends and their awareness of our national auditing process was aligned to their own inspection protocols. As for the future political landscape for Scotland who knows?

15. Whether the HSE have correctly identified the areas of concern and have appropriately targeted their resources in Scotland? I believe that the HSE are very efficient with the resources that they have available to them, they are very aware of the businesses and activities that require the most attention.

16. What effect any reduction in the HSE workforce might impact upon the HSE as a whole and its work in Scotland? Over the last ten or so years the HSE has been subject to many reductions of workforce and increase in responsibility. As far as I am concerned they are still good value for money and punch above their weight as far as quality and workload are concerned. However with them facing further cuts of up to 35% in the coming years it will undoubtedly be harder for then to maintain their high standards.

17. What international comparisons with similar sized countries, or similar risk industries, can be made which could be helpful? I have travelled extensively and it is clear to me that H&S gets a far higher profile in the UK than in most of the countries that I have visited. This is particularly relevant in the construction sector, in which I worked as a civil engineer for eight years. While we can and should strive to do better I believe that you would be hard pushed to find many similar sized countries that would be better. Exceptions being Switzerland and any Scandinavian country where their standard of living and lifestyles way exceed anything that can be found in Scotland.

EXECUTIVE SUMMARY

With the future of economic cuts facing the whole of the UK it is always the case that H&S and training will be amongst the first casualties for most business areas.
Conscientious employers will still do their best to protect the health safety and wellbeing of their workforce and anyone affected by their undertakings. There will be more collaborations and smarter working to deal with all H&S issues that come our way. The HSE have survived many cutbacks in the past and face their stiffest test yet! They will give it their best shot as will I and my colleagues who can honestly say they do it for the love of the job and not the financial rewards.

*June 2011*
Written evidence submitted by RoSPA

Executive summary

1. RoSPA welcomes the decision by the House of Commons Scottish Affairs Select Committee to undertake an inquiry into health and safety in Scotland. This submission sets out information on the work-related casualty toll in Scotland, our views on current challenges and steps which need to be taken to make further progress in improving standards of health and safety within Scotland’s workplaces.

2. Our submission delineates RoSPA’s role in Scotland’s health and safety network, and seeks to communicate the positive benefits of HSE led partnership working. We believe that this provides a model of good practice, which could be adopted elsewhere in the UK.

3. We believe that the 35% reduction in the HSE budget by 2014 will not only impact upon the delivery of front line services, but impair its ability to lead the health and safety system within Scotland.

4. The content of our submission is informed by the National Audit Office (NAO) report ‘The Health and Safety Executives work in Scotland’ published in February 2011.

About RoSPA

5. RoSPA is a membership based UK charity registered in Scotland (No.SC039289) whose mission is ‘to save lives and reduce injuries’ at work on the road, in the home, through safety education and in water and leisure activities.

- We research and pioneer new health and safety concepts;
- We lobby and campaign;
- We encourage, inform, train and advise; and
- We recognise and celebrate performance achievement.

6. Our vision is ‘to lead the way on accident prevention’ which we pursue through the promotion of key issues, tailoring our approach to reflect the Scottish context,

- Management of Occupational Road Risk, working in partnership with Healthy Working Lives, HSE, Scottish Government, Road Safety Scotland, ACPOS and others to develop and sustain the Scottish Occupational Road Safety Alliance;
- Workplace Safety; Everybody’s Business, (it is our belief that the ‘community based’ approach that has evolved within Scotland offers a model for the wider UK);
- facilitating the Scottish Higher Performer’s Forum which brings together award winning organisations committed to spreading good practices
- supporting the work of local Safety Groups and the Scottish Chamber of Safety
- organising Scotland’s Health and Safety Forum and the associated RoSPA Scotland awards ceremony;
• participating in the Partnership on Health and Safety in Scotland (PHASS) which is chaired by HSE.

• providing training, auditing and driver/fleet safety solutions; and

• acting as a key partner in the in the formulation and delivery of Scottish Occupational health and safety strategy through most recently the development of the Health Risks at Work Do you know yours? toolkit, the delivery of ‘Worker Involvement What Works’ on behalf of HSE Scotland, and the ScORSA Driving Risks at Work Toolkit.

7. RoSPA believe that far from being burdensome or limiting enterprise and opportunity, a balanced and proportionate approach to health and safety is positive and liberating, enabling individuals, businesses and the wider community to pursue their goals, confident that hazards have been identified and risks adequately assessed and controlled.

The work related casualty toll in Scotland

8. In 2008/09, there were 26 fatal injuries to workers in Scotland, 2,666 reported major injuries to employees and 8,841 over 3 day injuries to employees. Results from the Labour Force Survey indicated that in 2008/09;
   • An estimated 104 000 people in Scotland who had worked in the last 12 months suffered from ill-health which they thought was work –related.
   • An estimated 38000 people (1400 per 100 000 people) suffered from a musculoskeletal disorder
   • An estimated 45 000 people (1700 per 100 000 people) suffered from work-related stress, depression or anxiety

9. Management of Occupational Road Risk,(MORR). In Scotland (2008) there were 15,563 road casualties reported to the police. Of these 2,807 were either killed or seriously injured. Up to one-third of all road crashes involving someone who is driving for work purposes.

10. Through Scours, which is chaired by RoSPA we are extending our influence over those who drive for work. Working towards the delivery of Scotland’s Road Safety Framework to 2020, a medium term goal of which is to ensure that all contractors working with the Scottish Government have a MORR policy in place.

The effectiveness of health and safety regulation in Scotland

11. Given the content of ‘Good health and safety, good for everyone’ and the suggested ‘re-focussing’ of HSE activities. RoSPA is concerned that the reduction in pro-active inspections may create the impression that poorer performers are even less likely to be ‘caught’ and that in consequence they may move health and safety further down their list of priorities.

12. Convincing poorer performers that ‘good health and safety is good business’ has been central to HSE campaigns over the last 20 years and we are concerned that the HSE’s voice will be diminished through lack of funding for advertising, events and awareness raising campaigns.

13. As a campaigning safety charity RoSPA in Scotland will seek to support HSE by communicating key HSE messages to our community and play our part in keeping health and safety at the forefront of good business practice.
14. Through our links with Scotland’s health and safety network we are aware that, subject to resources the HSE’s reactive work, which is linked to incident based selection criteria, aims to ensure that all specified incidents are investigated. Cuts will mean that inspection regimes will have to be revisited including specific evidence based criteria. But they may also adversely affect HSE’s capacity to gather data to support both the effectiveness and efficiency of their enforcement work going forward. We are not opposed in principle to cost recovery for intervention as a way of helping to resource HSE’s inspection activities but it will need to be undertaken with care to ensure that it does not harm relationships with duty holders or alter operational priorities.

15. RoSPA believe it is critical that where significant failings are identified through HSE activities that these cases are subject to the full range of powers of the inspectorate culminating in exemplary fines which attract media attention and thereafter are profiled within the public domain. Furthermore whilst cost recovery is not the same as a fine, we believe that it should act as a disincentive to wilful non-compliance.

The roles and division of responsibilities between the different bodies responsible for health and safety in Scotland

16. Responsibility lies with HSE and LA enforcers, and whilst there are high level examples of these bodies working together, for example, through PHASS in Scotland and within the wider UK, perhaps closer working and sharing of information at local level in light of cuts would be mutually beneficial.

The effectiveness of the relationships between the Health and Safety Executive (HSE), the Crown Office and Procurator Fiscal Service, the Scottish Government, local authorities, and other relevant bodies

17. RoSPA believes that while health and safety related legislation should remain a reserved matter, HSE enforcement policy and strategy should be tailored to meet the needs of Scotland’s economy, industrial make-up and culture. These are the core principles upon which PHASS is based. RoSPA is concerned that sufficient resource should be made available to continue evolving Scotland’s health and safety network through PHASS. Many of the methods adopted successfully in Scotland to deliver better health and safety are applicable to England and Wales, particularly closer partnership working involving the regulator and other key players working together as part of a combined national health and safety effort.

The impact of health and safety regulation upon business

18. Whilst RoSPA is not opposed to the current Lofstedt review, we refute the underlying suggestion that health and safety requirements are excessive and represent an unjustifiable burden on small firms. Despite proportionality which lies at the heart of our legislation there is a strong perception that health and safety law is too complex for SMEs particularly. Unnecessary complication, including that created by third parties, must be dealt with but we recognise that the real challenge is to communicate a practical understanding of what is required of an SME in terms of compliance and to signpost them to competent advice and sources of information. Proportionate health and safety advice is currently available via the HSE’s Infoline which will cease in September 2011. The Scottish Centre for Healthy Working Lives, provides information and support to SME’s but that safety net does not exist for the remainder of the UK. RoSPA recognises that OSCHR provides access to competent advice to SME’s across the UK however this in itself will not fill the gap left by HSE Infoline.
Is there a lack of data on health and safety matters in Scotland, and how does this affect the understanding of potential health and safety problems in Scotland?

19. Data collection is fundamental in understanding the scale of Scotland’s current occupational health and safety issues and in identifying emerging trends as a consequence of new technologies, patterns of work and our ageing declining workforce. RoSPA suggests that a pilot project linked to work related injury and ill-health data collection via the NHS would help to establish a baseline from which the extent of harm and success in prevention could be measured.

How does the HSE know how effective their interventions are?

20. As mentioned in the NAO summary, there has been a reduction in the more serious reported workplace accidents in Scotland since 2005-2006. Furthermore the document explains the reasons (primarily workforce composition) that there is a higher rate of fatalities and reported major injuries in Scotland as opposed to England and Wales. This underlying trend suggests that health and safety related interventions are being successful within a Scottish context however the challenge is to identify the specific influence of an individual stakeholder like the HSE.

21. PHASS meetings are now subject to evaluation, (http://www.hse.gov.uk/scotland/creating-healthier-workplaces.htm). An open format held across Scotland bringing together 40-50 local organisations around a common theme, aiming to promote business to business learning. However RoSPA believes that going forward HSE should be required to publish the results of evaluations linked to each intervention, to assist organisations who may wish to use campaign material within their own organisation.

How does the HSE monitor the impact of the cases that are investigated, the number that lead to prosecutions, and whether fines are collected?

22. As identified within the NAO report the HSE does not have an accurate record of each of their original recommendations and is unable to determine the conviction rate within Scotland. RoSPA supports the development of a ‘tracking system’ which would map individual cases from investigation to collection of fines. This approach represents good business practice providing a benchmark for improvement.

How does the effectiveness of the Health and Safety Executive (HSE) in Scotland compare with the effectiveness of the HSE in England, Wales and Northern Ireland; and whether the organisational structure of the HSE is the best way to manage health and safety in the context of devolution

23. Since the advent of the Scottish Parliament the HSE in Scotland has tailored its approach to reflect the needs of its constituency. The concordat between the Scottish Executive and HSE 1999 guides that working relationship. Since 2007, HSE and the Scottish Government have exchanged staff in a series of secondments. This has assisted work across reserved and devolved boundaries by introducing expertise and different perspectives to each organisation’s programmes of work.

24. In 2001 RoSPA was pivotal in the establishment of the ‘Health and Safety Revitaliser’s Forum’, in essence the precursor to PHASS, which now aims to help implement HSE strategy within the context of Scotland’s economy, its industrial makeup and culture. Recently reviewed, PHASS is an action orientated grouping with a clear focus on health and safety, which aims to co-ordinate action between partner organisations that may
not make a sufficiently significant impact due to working in isolation with insufficient resources. The structure is exemplary and should now be followed by other nations within the UK, particularly in the light of the cuts. HSE, as a result of restrictions in resources is in danger of being unable to exercise its leadership function and provide sufficient support through PHASS to Scotland’s wider health and safety network.

**Whether the HSE have correctly identified the areas of concern and have appropriately targeted their resources in Scotland?**

25. HSE in Scotland’s Business plan reflects that of the wider UK, and targets the same priority areas. Going forward consideration should be given to particular sectors in Scotland’s economy as well as emerging issues linked to new technologies which may alter the list of priority areas to be targeted. However HSE’s ability to target successfully will be influenced by available resources.

**What effect any reduction in the HSE workforce might impact upon the HSE as a whole and its work in Scotland?**

26. The NAO report outlines that in 2009-10 the HSE employed approx 3,650 full time equivalent staff of which 270 (7%) were based in Scotland. 60% of the staff based in Scotland are front line inspectors any reduction in head count will have a disproportionate impact on service delivery north of the border.

**What international comparisons with similar sized countries, or similar risk industries, can be made which could be helpful?**

27. RoSPA believes that much might be learned in Scotland by reviewing health and safety practices and networks in Norway, Denmark, Sweden and Finland. There is also the potential to benchmark with the Republic of Ireland.

28. Whilst the linkages between health safety and the wider public health agenda are well established within Scotland, RoSPA believe there is an opportunity to further raise the profile of accident prevention as a public health issue. When compared to other potential public health interventions those that are accident prevention led are in our experience easy to implement and inexpensive to deliver.

**In conclusion**

30. Scotland’s health and safety network is well defined and benefits from the connections established between its individual stakeholders. The role of HSE has been pivotal in its establishment and will remain critical in driving change. Whilst much can be achieved through partnership working and the wider ‘good will’ which exists between stakeholders, we are concerned that cuts to HSE will impact upon what we believe to be a model of good practice.

*June 2011*
Written evidence submitted by the Society Chief Officers of Environmental Health Officers in Scotland (SOCOEH)

The Society represents the chief officers and senior managers of environmental health in the 32 Unitary Scottish Local Authorities. The role of the Society is to promote good management practice and effective and efficient delivery of environmental health services; act as a voice for the local authority environmental health service in Scotland; and, provide professional advice to COSLA, Scottish Government and other Government Departments and Agencies.

Executive Summary

• Local Authorities are key partners with HSE in the enforcement of health and safety legislation and delivering the HSE strategy\(^9\) in Scotland. Local authority (LA) responsibilities cover premises employing nearly half of the Scottish working population. Occupational Health & Safety enforcement whether by HSE or local authorities is an important contributor to local community safety, well-being and public health outcomes.

• The UK Government has announced reforms to the health and safety system\(^5\). Local authorities have serious concerns about the impact of the proposed reduction in pro-active inspections and introduction of cost recovery. The planned changes risk lower health & safety outcomes in local communities and loss of the positive relationships that have been developed between local authorities and local businesses.

• The H&S reform paper raises more fundamental questions about the deployment of public resources to improve occupational health and safety outcomes. The latest announcements mean that targeting of premises and interventions by LAs and HSE is likely to move further apart (so called “twin peaks”). This requires more detailed examination in terms of the available premises data, the division of HSE & LA enforcement boundaries, and the availability of both HSE and Local Authority resources to better target risk.

Role of Local Authorities as Co-regulators in Health & Safety Enforcement

1. Local Authorities (LAs) are responsible for enforcement of health and safety in some 100,000 workplaces\(^1\), employing 45%\(^2\) of the working population in Scotland. The HSE is responsible for the remainder. Every local authority has a statutory duty under Section 18 of the Health and Safety at Work etc Act 1974 to ensure it makes adequate provision for health and safety enforcement in its area. The split of enforcement responsibility between LAs and HSE is defined in the enforcing authority regulations (1998) as illustrated in appendix A.

2. The delivery of this LA responsibility is achieved by trained and authorised Environmental Health professionals carrying out:

• Programmed Health and Safety inspections in accordance with a predetermined risk based inspection programme.
• Compliance visits to premises at the request of other Local Authority departments and statutory bodies.
• Investigation of complaints received relating to workplace health, safety and welfare issues.
• Investigation of serious workplace accidents, dangerous occurrences and cases of occupational disease.
• Observations relating to H&S when carrying out other regulatory activities such as food hygiene or licensing inspections.
3. There are around 300 authorised LA officers working on health and safety enforcement in Scotland but because many are working in a number of other work areas (e.g. food safety) this equates to about 100 full time equivalent posts or 1 officer per 1000 premises.

4. In carrying out these duties, Environmental Health services aim to provide a consistent and proportionate approach working to agreed enforcement policies and HSE guidance.

5. This work is facilitated by well established partnership liaison arrangements between local authorities and HSE at both a Scottish and wider Great Britain level – as detailed in appendix A.

**Impact on Business**

6. Local authorities actively support their business communities through their wider responsibilities e.g. Food Safety, Licensing, Environmental Protection, Public Health etc. Health and safety work is often carried out at the same time as engagement with business in these other areas. This multifunctional support is an effective and efficient way for Environmental Health Services to help deliver wider community safety, well-being and public health outcomes in local authority areas. It is also in keeping with local outcomes of promoting and encouraging local business.

7. Many services are providing innovative approaches tailored to local circumstances and available resources. There is much evidence supporting this approach and the assisting and advisory role is particularly valued by business, yet it is this which could be the most under threat from spending pressures on LAs and the proposed health and safety reforms.

**Reforms to the health and safety system in the UK**

8. In March 2011, the Minister for Employment published “Good Health and Safety, Good for Everyone” (DWP 2011) which is a development of aspects of the Lord Young report (2010) and outlines further major reform, particularly in the approach to implementing health & safety legislation. These reforms have implications for Scotland’s local authorities and their Environmental Health Services as well as HSE.

9. In particular, the DWP report outlines a “new” health and safety framework setting out a new pattern of enforcement to the way local authorities and the HSE approach business compliance. The framework acknowledges that the HSE and local authorities, as joint co-regulators for health and safety legislation, have a vital role to play in ensuring that the regulatory system:

   • is focused on better health and safety outcomes and not purely technical breaches of the law;
   • makes it as straightforward as possible for business, and in particular, small businesses, to deliver a healthy and safe working environment;
   • is enforced in a manner which is proportionate to risk;
   • avoids placing unnecessary burdens on businesses which manage health and safety effectively; and
   • maintains a strong deterrent against those who fail to meet their health and safety obligations and put their employees at material risk thereby also deriving an unfair competitive advantage.

10. The framework states that HSE will largely continue its current regulatory approach with major hazard industries but for non-major hazard industries HSE will significantly change its approach to the totality of businesses it regulates by:

   • using alternative interventions such as increasing joint initiatives with industry to promote safe and healthy workplaces;
• targeting inspections more effectively...and substantially reducing the overall number of proactive inspections by one third (a reduction of 11000 inspections UK wide); and
• introducing the recovery of HSE costs from businesses (“fee for intervention”) e.g. recovery of the costs of an inspection/investigation at which a serious, material breach in standards is diagnosed and a requirement to rectify is formally made, together with the cost of any follow-up work.

11. The UK Government is also looking to apply the framework principles to local authorities including reducing the number of pro-active inspections carried out by Environmental Health Services by a third (approx 60,000 across the UK, 5000 in Scotland). It is not clear how this UK government objective will be achieved in Scotland. It is understood that the Scottish Government Minister for Public Health has written to the DWP expressing concern about the proposals and also advising that local government activity is devolved and that consultation should take place with COSLA.

**Targeting HSE and Local Authorities resources – “Twin Peaks”**

12. The Better Regulation Executive report on the health and safety regime published in 2008 identified the need to address the skew in regulatory targeting. This is known as, the so-called ‘twin peaks’ effect (see diagram 1), where higher risk sectors are inspected periodically by HSE inspectors, and lower risk premises by local authority inspectors. In between these “peaks”, there is a misalignment of regulatory resource for medium risk premises (e.g. motor vehicle repair, High Street printers, small-scale construction) that are receiving little or no interventions from any enforcement body to improve the health and safety – most of these businesses are the responsibility of HSE.

Diagram 1 “Twin Peaks”

13. The split of premises between HSE and local authorities is determined by statutory regulations. Although these allow some scope for limited transfer of premises between the two organizations by local agreement, the regulations could be considered to constrain more flexible working between HSE and LAs and the most effective deployment of limited resources. Further research is required to evaluate the full extent of the “twin peaks” in Scotland, including workplace activities should be risk rated in a standard manner across both the HSE and local authorities to provide risk data which can be used in best targeting limited resources.
14. With the proposed reduction in the number of pro-active inspections by HSE by a third and encouragement to local authorities to similarly reduce their pro-active inspection of premises for health and safety, there is concern that the “twin peaks” will drift further apart. There is strong evidence that appropriate interventions, including inspections are a positive driver to improving health and safety outcomes. (see appendix B).

15. Although it is the preference of many local authorities for a formal transfer of premises, it appears that there is no appetite in the UK government for a review of the current enforcing authority regulations, so any changes to working with HSE across enforcement boundaries would probably need to be achieved by local agreement in Scotland however this risks a less co-ordinated approach.

16. It is recognised that at a time of public sector spending constraint, best use of available resources across both HSE and Local Authorities to improve occupational health and safety in Scotland’s communities will involve a range of interventions based on risk evaluation including inspections, formal enforcement, provision of information and guidance etc. There may also be scope for developing flexible warranting arrangements between local authorities and HSE so that staff from either enforcement group can undertake appropriate interventions in local premises across the current enforcement boundaries.

17. In taking forward this approach it is also recognised that Scotland’s local authorities differ in size and character and what is appropriate in an Island Council may not be feasible in for example a large city or vice versa. In addition the resource implications for local authorities of any changes will require careful consideration.

18. SOCOEH has expressed a commitment to try to address the “Twin Peaks”, with a desired outcome to use both HSE and local authority resources to better target risk, unconstrained by current enforcement boundaries and traditional ways of working. A draft position statement has been developed to seek political support for improved targeting of resources and as a framework for further developing partnership working with HSE. This statement is detailed in appendix B.

Conclusions

19. There are two key drivers for the proposed health and safety system changes: reducing regulatory burdens on business and public sector spending cuts.

20. The broad enforcement principles set out in the health & safety system framework (paragraph 9 above) are supported but are not particularly “new”. Indeed, Environmental Health services already carry out their work in line with these principles e.g. target their resources according to risk evaluation. But, the implications of the spending cuts, particularly on HSE, mean that there will be a significant reduction in pro-active inspections in Scotland and reduced support for local businesses, replaced in part by alternative interventions. There is also concern that a reduction of direct health & safety interventions may result in lower health & safety outcomes in local communities and some loss of the positive relationships that have been developed between local authorities and their local businesses. Occupational Health & Safety enforcement whether by HSE or local authorities is an important contributor to local community safety, well-being and public health outcomes.

21. Details of the proposed “fee for intervention” charging scheme are awaited, but local authorities are being encouraged to introduce a similar charging scheme. However there are clear concerns about its implications and applicability to local authorities. It is anticipated that introducing such a scheme would have costs and bureaucracy for administering it, and it would lead to a change in culture/relationship between inspecting officers and duty holders. While there is the possibility of some cost recovery to offset budgets, it is uncertain
whether the potential income from charging would be worthwhile for local authorities. HSE look to be going ahead with this scheme in relation to their enforcement responsibilities. Whether local authorities will be required to implement this is uncertain and opens the prospect of a two tier enforcement system if there is limited or no take up by local authorities.

22. The H&S reform paper raises more fundamental questions about the deployment of public resources to improve occupational health and safety outcomes. The latest announcements mean that targeting of premises and interventions by LAs and HSE is likely to move further apart (so called “twin peaks”). This requires more detailed examination in terms of the available premises data, the division of HSE & LA enforcement boundaries, and the availability of both HSE and Local Authority resources to better target risk. There are potential opportunities to develop partnership working between HSE and local authorities to improve health and safety outcomes for Scotland as outlined in appendix B. This is not straightforward and in particular it is recognised that this will require detailed evaluation of resource implications for local authorities.

References

1 HSE Enforcement Statistics 2009/10 LAE 1 returns www.HSE.gov.uk

http://www.publications.parliament.uk/pa/cm201011/cmselect/cmscotaf/writev/health
/health.pdf


4 Business perceptions of local authority regulatory services (2008)

5 Regulatory Review Group Annual Report 2010 in Scotland


7 Common Sense, Common safety. Lord Young , Cabinet Office (2010)

8 Better Regulation Executive (BRE) (2008) Improving Outcomes for Health and Safety
http://www.bis.gov.uk/files/file47324.pdf

9 HSE Strategy : The Health & Safety of Great Britain : Be part of the solution (2009)
http://www.hse.gov.uk/strategy/index.htm

June 2011
Written evidence submitted by the Convention of Scottish local Authorities (COSLA)

As COSLA Spokesperson for Community Well-Being and Safety I am writing in support of the submission to the Scottish Affairs Committee into Health and Safety in Scotland 2011 made by the Society of Chief Officers of Environmental Health Officers in Scotland (SOCOEH).

Occupational Health & Safety enforcement whether by the Health and Safety Executive (HSE) or local authorities is an important contributor to local community safety, well-being and public health outcomes across Scotland.

Local Authorities are key partners in the enforcement of health and safety legislation with local authorities responsibilities covering nearly half of the Scottish working population and in delivering the HSE Strategy in Scotland.

Scottish local authorities have serious concerns about the planned reforms announced by the Department of Work & Pensions in March 2011 and their potential impact on Health and Safety in Scotland. These include the proposed reduction in pro-active inspections and introduction of cost recovery. Introducing a cost recovery scheme for local authorities would have significant implications. It is anticipated that introducing such a scheme would have costs and bureaucracy for administering it, and it would lead to a change in culture and relationship between inspecting officers and duty holders. While there is the possibility of some cost recovery to offset budgets, it is uncertain whether the potential income from charging would be worthwhile for local authorities.

In summary, the planned changes risk lower health & safety outcomes in local communities, the loss of the positive relationships that have been developed between local authorities and local businesses and are likely to increase the risk of non compliance.

I appreciate the current budget reductions and the challenges this presents however the implications of the changes to the role of the HSE will have a significant impact on Scottish local authorities and more fundamentally will potentially have a detrimental effect on the Scottish workforce. This will in turn have wider societal impacts and risks simply moving or increasing the financial burden in another areas e.g. health, social care, benefit system etc.

Having discussed this issue with the COSLA Community Well-Being and Safety Executive Group I would like to take this opportunity to support the concerns raised by SOCOEH and encourage the Committee to recommend a review and more detailed examination of the division of HSE and local authority enforcement boundaries and the availability of both HSE and Local Authority resources to better target risk.

June 2011
Written evidence submitted by HBM Sayers, Solicitors

1. **SUMMARY**

HBM Sayers, Solicitors and Solicitor Advocates are one of the leading firms of Solicitors in Scotland involved in acting for accused in criminal Health and Safety prosecutions and Fatal Accident Inquiries (FAIs). In that role we have regular contact with the Health & Safety Executive (HSE), the Crown Office and Procurator Fiscal Service. Accordingly, our response is mainly restricted to comments on the effectiveness of the relationships between the HSE, the Crown Office, Procurator Fiscal Service, and other relevant bodies. We consider ourselves as falling within the definition of “other relevant bodies”. In addition we have included a brief response in relation to the proposed reduction in the HSE workforce and the impact this may have on its work as a whole and its work in Scotland.

2. **COMMENTS ON THE EFFECTIVENESS OF RELATIONSHIPS**

(i) **Relationships between Crown Office/Procurator Fiscal Service and Defence Lawyers**

The formation of the specialist Health & Safety Unit at Crown Office has had a positive effect on our relationship with the Crown Office and the Procurator Fiscal Service. It has allowed us to develop a good working relationship with both. Our Health & Safety team regularly deal with same people in Crown Office and the Procurator Fiscal Service. Accordingly, in terms of communication and working relationships when dealing with potential Health & Safety prosecutions/FAIs, we are of the view that the specialist unit has, in general terms, had a noticeable positive impact on the way cases are investigated up to their conclusion. The result of this helps to ensure a) opportunity for early dialogue/discussion about a particular case and b) early resolution of a case where appropriate. However, following the establishment of the specialist Health & Safety Unit we have started to experience delay in our cases. Whereas at first the Unit was exceptionally pro-active in dealing with matters, progress in cases is now slowing down. This is possibly due to the rising workload of the Unit. This may be down to funding issues in COPFS. This is not good for the efficient disposal of cases/justice.

(ii) **Relationships between the Health & Safety Executive and Defence Lawyers**

So far as the relationship between the HSE and ourselves is concerned, developing a positive relationship has been a slow process. From our perspective, it would appear that the HSE and/or their Inspectors have a suspicion of defence solicitors and what we do/attempt to do. Our perception is the HSE/HSE Inspectors don’t understand our relationship with our clients and it is this misunderstanding which creates suspicion. We would like to improve this relationship. A suggestion/proposal for this would be for the HSE to have a better understanding of our role, which means educating the HSE and their Inspectors in this area.

By way of example, a consistent and repetitive issue, which arises at the investigation stage, is where HSE Inspectors wish to take statements (in particular, Section 20 statements). Very often, Inspectors try to prevent us from sitting in on the interview process at which statements are taken. The general reason advanced for this is that
they consider a conflict of interest exists, for example, between an employer and an employee. This displays, in our view, a fundamental misunderstanding of our profession and the code of conduct by which we are bound. We should not act where there is a conflict of interest. However, as solicitors, we are trained to identify situations where there is an actual or potential conflict of interest. Very often it is quite clear from the outset whether or not such a conflict exists. Where it is unclear, and in the event we were to determine that there was a conflict of interest, we would act appropriately. This fundamental position is very often misunderstood by the HSE and their Inspectors and has caused and continues to cause considerable difficulties for us in our role of representing our clients’ interests in potential HSE prosecutions. When we are instructed to sit in on these interviews, we should be entitled to do so - it is the interviewee's right to have us there (see comments on Cadder below).

An additional factor, which may influence Inspectors in this regard, is the guidelines, which govern their conduct. The HSE Enforcement Guide (Scotland) is outdated. Many Inspectors use this as a key reference tool. The guidelines are very strict and have a bearing on the Inspector’s fact-finding role and their relationship with defence solicitors and their clients. There is a sense that the HSE/their Inspectors are entrenched and our recommendation would be that flexibility should be encouraged.

(iii) The relationship between the HSE and the Crown Office/Procurator Fiscal Service

The relationship between the HSE and the Crown Office/Procurator Fiscal Service is meant to be independent. However, from our perspective this is not the case. For example, the HSE regularly seek advice from the Crown Office/Procurator Fiscal Service and, we would question this whether there is an independence/distinction between these bodies.

(iv) The Effect of recent legislation on the relationships

It is clear that, following the passing of The Corporate Manslaughter & Homicide Act 2007, there has been an increased focus on fatal accidents and it is not uncommon for us to be involved in investigations at a much earlier stage. It is also apparent that there is or there appears to be a policy to prosecute, if at all possible, for corporate manslaughter. We often find ourselves at interviews with the HSE and Police/CID. This perceived pressure to prosecute causes tension in the relationships between the HSE, the Police and those solicitors instructed to represent potential accused Directors etc. Involvement at an earlier stage is very labour intensive. Co-ordination of interviews is difficult. We would encourage more open dialogue and a spirit of co-operation between the HSE, Police and ourselves. Post-Cadder, this is all the more important. All potential suspects in any investigation are entitled to the benefit of legal representation. Given the new sanctions introduced for individual responsibility in terms of the Health & Safety Offences Act 2008, and potential for imprisonment, this becomes an even greater issue of importance.

3. EFFECT OF REDUCTION IN THE HSE WORKFORCE ON HSE AS A WHOLE AND ITS WORK IN SCOTLAND

(i) It is inevitable that timescales for HSE investigations will increase. The HSE already
struggles to fulfil its 4 month target investigation time. We envisage more delay. More dialogue between those represented and the HSE is to be encouraged. There should be a clear process for dealing with delays, and sanctions for failure to comply with the process. Clear explanations should be given by HSE as to why there are delays, and how these are to be resolved.

(ii) In this era of austerity cuts, HSE is no stranger to change. It is clear that there will be dynamic changes affecting the internal organisation of the HSE and how it carries out its statutory functions in the future. It is anticipated there is to be a move away from pro-active inspection. Inspectors will reduce pro-active inspection in their day-to-day work, except in those industries involving high risk. The movement is towards reactive intervention in serious incidents, and working with industry bodies to ensure benchmark standards and implementation of these. Clearly there will be a focus on more serious accidents.

(iii) The reduction in proactive work will see more focus on "safety" than "health".

June 2011
Written evidence submitted by the Highlands & Islands Construction Safety Forum

On behalf of the committee of the Highlands & Islands Construction Safety Forum, I would like to make the following submission for consideration in the ongoing inquiry.

The forum as a whole comprises 250 members which are representative of a wide cross-section of industry sector stakeholders and the regular meetings contain updates from the local HSE inspector.

The forum only recently became aware of the consultation via a meeting of HSE Site Safe Scotland Committee. A number of key points came to light which we would like to comment on from a regional perspective.

Our comments below relate to the points on which the Committee has stated a particular interest in, following the same order as given on the website:

1. We are concerned that the effectiveness of health and safety regulation in Scotland will be greatly diminished when the new Cost Recovery regime commences next year. We feel that such a scheme will prove difficult to operate effectively across the Highlands & Islands.

2. We would like to see more consistency between the different bodies responsible for health and safety in Scotland. For example, will Environmental Health inspectors be targeting the same level of risks north and south of the border, and how will this compare with HSE and others.

3. No comment.

4. No comment.

5. We feel that we receive sufficient data on health and safety matters in Scotland through various established channels, but are concerned that our understanding of potential health and safety problems will be adversely affected if the HSE inspectors are not allowed to spend sufficient time giving proactive advice in the future.

6. No comment.

7. No comment.

8. We think that the HSE has been effective in the Highlands & Islands because the construction inspector has been an active presenter at all our Forum meetings etc. This has been hugely influential in getting smaller firms to attend, and for them to seek and receive advice which is respected. It also encourages them to improve standards of safety resulting in fewer accidents.

9. We believe that HSE have correctly identified the areas of concern and have prioritised their actions to suit. We are concerned that their resources in Scotland may not be sufficient to achieve adequate coverage of the points which we consider important.

10. The Highlands & Islands is a vast geographical area which is larger than Wales. Normally one construction inspector covers this area – we would suggest an increase rather than a reduction.

11. No comment.
We hope that you find these comments helpful and will take this submission into account.

We would welcome the opportunity to develop our evidence in due course.

June 2011
Written evidence submitted by the Faculty of Occupational Medicine

The Faculty of Occupational Medicine welcomes the opportunity to contribute to the inquiry into health and safety in Scotland. The loss of an Employment Medical Advisory Service based in Scotland is of great concern to the Faculty Board. This means that there are no longer any specialists in occupational medicine available to support business in Scotland. This results in a significant reduction in the availability of in-depth medical advice to Scottish businesses and employees and reduced capability to take enforcement action with improvement or prohibition notices or indeed to proceed to prosecution where medical matters are relevant.

It is clear that safety and quality and business success are inextricably linked and that to reduce the capability to deliver safety will lead to business failures and an associated human cost too. The Faculty of Occupational Medicine would offer its unreserved support to the reinstatement of EMAS in Scotland.

June 2011
1. The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has over 4,300 members in the UK and abroad who represent hundreds of thousands of injured people a year.

2. When consulting with APIL members, one key issue that arose in discussions regarding health and safety in Scotland is the length of time it can take to investigate a case. The main reason for this was identified as a duplication of work as the Health and Safety Executive (HSE) conducts its investigation and possibly forwards the case to the Procurator Fiscal Service, and the Procurator Fiscal Service then re-investigates before proceeding to prosecute. This duplication of work has continued to produce time delays, despite specialisations within the Procurator Fiscal Service which began in 2009, and has highlighted a lack of communication between departments. APIL recommends that in order to save a duplication of work, which in turn will save on time and costs, the HSE could either conduct the whole process itself, as in England and Wales, or that the Procurator Fiscal Service could conduct its own independent investigations simultaneously with the HSE.

3. The Compensation Recovery Unit (CRU) has recently published its up-to-date statistics for 2010/2011\(^1\) which includes the number of employers liability cases registered to the CRU. In 2010/2011 the number of cases registered sits at 81,470, which is a decrease year-on-year from 87,198 registered in 2007/2008. APIL suggests that this is evidence that HSE regulatory activity works and prevents accidents. Furthermore, when you look at the HSE’s statistics of occupational ill health, safety and enforcement for injuries in Scotland, as published on their website\(^2\), it is clear to see that the numbers of fatal injuries; major injuries; and over-3-day injuries have fallen since 2005/2006. This shows that injuries suffered at work in Scotland have decreased over the last five years, major injuries dramatically so, and health and safety regulation has helped to achieve this and prevent unnecessary injury.

4. Areas where the numbers of reported injuries remain particularly high in Scotland are construction, agriculture and plant processing\(^3\). This is also true in England and Wales. This could suggest that the reporting of injuries in these occupations is poor, but also that the monitoring of businesses in these industries is currently inadequate. In our report to Lord Young of Graffham\(^4\), while he was conducting his review of health and safety\(^5\) in October

---


\(^3\) Health and Safety Executive, Scotland, statistics and Injury analysis by occupation, http://www.hse.gov.uk/statistics/tables/ridocc.xls

2010, we stated that although it is commonly held that the number of personal injury claims has increased, the CRU statistics clearly show that the number of cases reported to them has declined, including Employer liability cases as detailed above. The reason we give for this decline is health and safety laws that have provided protection from needless injury. We went on to say that health and safety laws have also helped to ensure redress and rehabilitation for injured people, which in turn limits the call on the state to provide care and benefits. We reiterate our statement in that report here; any assault of health and safety as a way of what is curtailing what is perceived to be too much regulation is aiming at the wrong target. The key is to ensure that regulations are applied accurately and with common sense.

5. A key example of how recent regulation has worked well in the workplace is the Work at Height Regulations 2005 and Work at Height (Amendment) Regulations 2007. These regulations are still fairly new to industry, and yet the number of these types of accidents has reduced significantly in that time. These regulations were driven directly by a European Directive and show a good example of workplace regulations that are clear, comprehensive and that prevent needless injury.

6. We hope that our comments prove helpful to the committee and look forward to engaging with you further in the future.

June 2011

---

Introduction

1. The Scottish Retail Consortium (SRC) is the trade association of the Scottish retail sector and is the authoritative voice of the industry to policy makers and to the media. The SRC brings together the whole range of retailers across Scotland, from independents to large multiples and department stores, selling a wide selection of products through centre of town, out of town, rural and online stores. The SRC is based in Edinburgh and is supported by its parent company, the British Retail Consortium, based in London and Brussels.

2. The Scottish retail sector employs nearly 250,000 people, equating to one in nine of the workforce. The sector contributes seven per cent of Scotland’s Gross Value Added (GVA) and just under 10 per cent of enterprises in Scotland are retailers.

3. Our members take health and safety compliance very seriously, not just to protect their staff but also for the safety of their customers. The SRC therefore welcomes the opportunity to respond to the Scottish Affairs Committee inquiry into health and safety in Scotland.

Health and safety regulation in Scotland

4. Feedback from our members indicates that the vast majority of health and safety regulation is fit for purpose. However, a much greater focus on improved interpretation of legislation and consistent enforcement is urgently needed to reduce the burdens on compliant businesses. This will permit limited resources to be focussed on those that are high-risk or non-compliant. It is also important that any future regulation is kept to an absolute minimum.

5. Despite general agreement that retail is a low-risk sector our members still experience inconsistent enforcement at a local level. This is particularly true of multi-site retail businesses which, for efficiency purposes, have devised national strategies and policies to be implemented locally by stores, yet still receive a disproportionate number of visits from local authority inspectors. This is despite the fact that these businesses are likely to be compliant, and that rigorous internal processes exist to monitor these and ensure that they are properly implemented at local level. It is therefore important that inspectors focus on the processes a business has in place, not one particular incident.

6. The SRC welcomes the Government’s commitment to reduce the number of inspections that are currently undertaken by Local Authorities. Through reducing the number of inspections, associated letters and improvement notices our members receive, the burden placed on them would be greatly reduced.

7. The SRC is also a strong supporter of the Primary Authority Scheme as a way of working towards consistent enforcement. Several of our members have now established Primary Authorities for health and safety matters which are working effectively.

Data on health and safety matters

8. The SRC does not believe there is a lack of data on health and safety matters and therefore does not feel that further ways of capturing more data need to be introduced.

9. One area of data capturing that should be improved is the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 1995. Currently over 50 per cent of reportable incidents are not reported. Therefore current data is not accurate and where you
have sectors that are well intended and well informed, they appear to dominate this data due to their rigorous reporting systems. For example some categories are heavily dominated by retailers, like slips and trips, because these companies adhere rigidly to the reporting requirement.

10. The SRC therefore strongly believes that these regulations need a proper review to ensure the data is captured in the most appropriate way to drive up compliance and reduce the burden on those retailers which do adhere to the regulations.

11. Feedback from our members has suggested that trying to obtain accident statistics from HSE also can also be difficult and therefore making it easier for businesses to obtain relevant information would be welcome.

**International comparisons**

12. From a retail perspective it may be helpful to look at the approach taken by France or Germany with regards to interpreting European legislation into local regulation and enforcing safety standards.

*June 2011*
Written evidence submitted by The Forum of Insurance Lawyers

FOIL Scotland members are closely involved in the operation of the Health and Safety regime in Scotland, through direct involvement in the defence of Health and Safety prosecutions and in the defence of personal injury claims. Members have followed with great interest the recent developments in Health and Safety emanating from Westminster, in particular the review and report of Lord Young, “Common Sense, Common Safety”; the reforms announced recently by the Employment Minister, Chris Grayling MP; and the current review of Health and Safety legislation by Prof. Ragnar Löfstedt.

FOIL Scotland considers that the Health and Safety regime in Scotland, including the legislative framework and the enforcement of the regime through the HSE, local authorities and the Health and Safety Division of the Crown Office and the Procurator Fiscal Service, is working effectively. Some members, however, have questioned whether the relationship between the HSE and the Crown Office and Procurator Fiscal Service is truly independent, questioning whether the HSE relies excessively on the advice of the other bodies.

Since the Division’s launch in late 2008, the creation of a specialist prosecution unit, removing health and safety from the general pool of prosecuted cases, has worked well. Over the past two years FOIL Scotland members have seen an improvement in the handling of prosecutions with cases being concluded more quickly, with the need for fewer trials, and at reduced cost. It is to be hoped that the improvements will still continue as the new system beds down although some members have reported a recent slowing in the efficient handling of cases, with the concern that this may be due to an increasing workload. On a point of detail some members have noted in their comments to FOIL Scotland that the HSE Enforcement Guide (Scotland) is outdated. Greater flexibility when applying the guidelines would be helpful.

Some members have also drawn to FOIL’s attention their experiences of handling cases under the Corporate Manslaughter & Homicide Act 2007. A focus on fatal accidents and an apparent policy to prosecute under the Act whenever possible is causing tensions between the HSE, the Police and defence lawyers. It is believed that a more open, co-operative approach would be beneficial in these very serious cases. It is also important, when any investigation is underway, for HSE inspectors to understand fully the nature of the relationship between lawyer and client. It should be freely recognised that individuals being investigated are entitled to legal representation when being interviewed, and that it is for the lawyer to consider the issue of conflict of interest, for example, between employer and employee, and to act accordingly.

The delivery of an effective health and safety regime is a balancing process. It is vitally important that individuals are protected but it is also important to ensure that regulation is not in place for its own sake, and that procedures and administration are kept to the minimum required to achieve safe outcomes. FOIL Scotland would endorse the statement of Chris Grayling when he introduced the reforms in March this year:

“Of course it is right to protect employees in the workplace, but Britain’s health and safety culture is also stifling business and holding back economic growth. The purpose of health and safety is to protect people at work and rightly so. But we need common sense at the heart of the system, and these measures will help root out the needless burden of bureaucracy. This will help to make Britain a more growth focussed, entrepreneurial nation. By reducing unnecessary red tape we can encourage businesses to come and invest in the UK, creating jobs and opportunities when we need them most”.

To achieve the right balance it is important that the HSE in Scotland, and the other bodies involved in Health and Safety, continue to have the remit and the resources to enforce high
standards of safety in areas of high and medium risk. However, there are regulations and requirements in place at present which do create an unnecessary burden on business and, in general terms, FOIL Scotland welcomes the implementation of Lord Young’s report and Prof. Ragnar Löfstedt’s review.

Whilst the current reviews and this inquiry will identify areas for change, FOIL Scotland is firmly of the view that Scotland must continue to be part of a Health and Safety regime which has application across the UK. The development of a separate legislative and regulatory regime for Scotland would be likely to impact adversely on investment and development within the country and affect Scotland’s economy. The reforms being introduced at present are aimed at achieving greater simplicity and ease-of-use: a separate regime in Scotland could run counter to this, making Health and Safety compliance more complex and expensive particularly for UK-wide businesses.

However, within that overall regime, Scotland is a country which presents its own challenges in Health and Safety. The HSE’s own accident statistics show a greater incidence per capita in Scotland than in the rest of the UK and the spread of the population and the geography of the country also present their own logistical challenges. Although FOIL Scotland believes that Scotland is best served by maintaining a Heath and Safety regime which is in line with the rest of the United Kingdom, that does not mean that it can be treated as just another region: its particular characteristics and issues must be recognised and addressed. Although FOIL members acknowledge the need for a cost effective approach in the current climate, it would be opposed to a reduction in resource which would, for example, prevent the HSE carrying out pro-active inspections of high and medium risk environments, or lengthen the timescale for investigations. It would not be appropriate to merely allocate resources across the UK on a head-count basis: a more sophisticated approach is needed which may necessitate a higher per capita allocation for Scotland than elsewhere.

Developments taking effect at present are achieving greater consistency between the regime in Scotland and that in the rest of the United Kingdom. For example, although historically the level of fines for Heath and Safety breaches in Scotland has been lower than in England and Wales, reliance on English judicial authority (HMA v Munro and Sons (Highland) Ltd [2009] Scot HC HCJAC/10) and Guidelines issued by the Sentencing Guidelines Council for England and Wales have narrowed the gap over the past year, to the extent that the penalties in both jurisdictions are becoming broadly similar. There is now greater consistency in the judicial approach to sentencing across the jurisdictions. FOIL members anticipate that the reforms being introduced to move the cost of Health and Safety away from the taxpayer onto those who breach the regulations will result in greater recovery of costs in Scotland, bringing it more in line with England and Wales.

It would be wrong, however, to strive for consistency for its own sake; it is important that differences which deliver real advantages are maintained. FOIL Scotland believes that the current arrangements splitting responsibilities between the HSE and the Crown Office and Procurator Fiscal are working well and it would be unwise to attempt the enormous and costly upheaval which would be required to move Scottish prosecutions to regulators such as the HSE and local authorities.

In practical terms, in the light of the current reviews and reforms, FOIL Scotland would welcome an approach which maintains a common system across the UK but which also recognises the special factors at play in Scotland. It is important, before any changes are made, that the implications for Scotland are considered fully, particularly those focusing on a reduction in resource. As Lord Young indicates in his report, the one law which Parliament cannot repeal is the law of unintended consequences and it is never more important to recognise that than
when the lives and well-being of individuals, as well the economic health of the country, are at stake.

*June 2011*
Written evidence submitted by the Health and Safety Executive (HSE)

Executive summary

1. Last year, the Scottish Affairs Committee commissioned the National Audit Office (NAO) to produce a memorandum on the work of HSE in Scotland. The report is published as written evidence on the Committee’s website. This submission does not repeat material already presented in the NAO report.

2. The system of health and safety in Great Britain rests on two key principles; that for good standards to be achieved, responsibility should rest with those who create the risks; and that there are good arguments on both ethical and economic grounds for good standards to be secured. Evidence shows that organisational leadership is important within each business, throughout supply chains and in setting expectations across trades and industries. Other important characteristics include having access to competent and proportionate advice either within the business or externally and managing health and safety with the full involvement of workers.

3. In comparison with other European countries, Scotland has one of the lowest rates of fatal injuries at work and the overall injury rate is in line with the average for European Union member states. Within Great Britain, injury rates in Scotland are similar to those of English regions with similar occupational compositions. The type of occupation is the key driver of risk more than industry category, and that geographical variations are a product of these factors, not a cause of the differences that are seen. There are more people employed in higher risk occupations in Scotland which accounts for a slightly higher rate of fatal and major injury compared to Great Britain as a whole.

4. HSE uses evidence built up over decades of research and experience to deploy a range of interventions which foster characteristics and behaviours necessary for the protection of workers’ health and safety both in Scotland and elsewhere. HSE applies that knowledge in Scotland in the context of devolution, including a different system of law, a unique set of stakeholders and the close knit nature of Scottish business and public life, whilst at the same time ensuring that in depth specialist knowledge in key sectors is deployed efficiently and consistently across GB.

5. Health and safety in Scotland is not regulated by the work of HSE alone; local authorities are responsible for around 45% of Scotland’s workforce (in comparatively low risk occupations).

Evidence in relation to each of the terms of reference

- The effectiveness of health and safety regulation in Scotland
- The impact of health and safety regulation upon business
- How does the HSE know how effective their interventions are?

6. The main evidence for overall impact and effect comes from the relatively low injury rates in Great Britain. In comparison with other European countries, Scotland has one of the lowest rates of fatal injuries at work after allowing for industry mix. The overall injury rate is in line with the average for European Union member states, although allowing for the mix of industry would also reduce this rate, probably to below the EU average.

7. Injury rates in Scotland are similar to those of English regions with similar occupational compositions. The type of occupation is the key driver of risk rather than industry category, and
geographical variations in injury rates are therefore largely explained within Britain as the product of a region’s relative occupational and industrial mix. Scotland has a higher rate of fatal and major injury compared to Great Britain as a whole, because there are more people employed in higher risk occupations in Scotland; but those workers are not at higher personal risk than others doing similar work elsewhere in Great Britain.

8. There were over 8,000 reported injuries in Scotland in 2009/10 that required more than 3 days off work. This represents a reduction of 18% since 2005/06. This reduction is in line with England and Wales. There is no significant difference in the rate of self-reported work-related illness in Scotland since 2003/04 compared with that of England and Wales. Over that period the average number of working days lost due to work-related ill health and injury per worker in Scotland fell from 1.9 in 2003/04 to 1.2 in 2009/10; a slightly greater reduction than in England and Wales. HSE considers that valid International comparisons that concern or include ill-health data are difficult to draw.

9. Many factors influence health and safety performance. HSE has, over the years, carried out a great deal of evaluation, and has reached several broad conclusions. These conclusions include that the factors do not operate in isolation; that several of the most critical factors rest with those who create risks, such as the importance of effective leadership; that the role of the regulator should therefore be to stimulate “ownership” and beneficial behaviours, as well as to identify failures and secure justice in a quasi-policing capacity; and finally, that evaluation can be both inconclusive and very costly and so is a support to, not a substitute for, professional judgments.

10. HSE has not identified what one might term a significant geographical character either to the impact of the influencing factors on risk control, or to the effectiveness of the many intervention techniques that are used by HSE. Indeed, there are two benefits from the integrated approach of HSE: large organisations with activities across Great Britain, receive consistent intervention, from a single regulator; and HSE is able to apply learning and techniques, adapted as necessary to suit local circumstances. For instance, Health and Safety Awareness Days are an effective proven method for influencing large groups of farmers. When these are held in Scotland, particular emphasis has been given to forestry and fish farming which are particularly important agricultural activities in Scotland.

11. HSE uses intelligence both on the present and the future severity, distribution, and evolution of work-related risks and major hazard activities to target its attention. Preventive work is directed towards major hazards, higher risk activities and poor performers. Well established published Incident Section Criteria identify the reports of injury and ill health that most require investigation. The way complaints about working conditions are handled illustrates the philosophy in paragraph 9, in action; the extent and speed of HSE’s response reflects the severity of the alleged risk, but where it is practical to do so, complainants are encouraged to resolve matters “in house” to stimulate proper ownership of the risk, and leadership.

The roles and division of responsibilities between the different bodies responsible for health and safety in Scotland

HSE and Local Authorities (LAs)

12. The Health and Safety at Work etc. Act 1974 (HSWA), and related legislation, is enforced at individual work premises either by HSE or the relevant LA according to the main activity carried out there. LAs enforce mainly in the non-industrial sectors, in retail, service and leisure which accounts for approximately 45% of the workforce in Scotland. LA Environmental Health practitioners enforce a range of other legislation relating to food safety and public health nuisance as well as health and safety, providing multi-functional support to business. HSWA
Section 18 places a duty on both HSE and LAs to make adequate arrangements for enforcement, with the Health and Safety (Enforcing Authority) Regulations 1998 specifying the industry sectors that each enforces.

13. As the GB-wide regulatory body, HSE provides strategic direction for the health and safety system as a whole. LAs and HSE as co-regulators operate in partnership. HSE issues guidance and planning material to assist LAs and monitors their contribution to health and safety activity (enforcement, inspection and prosecution) via voluntary data collection arrangements. The information is used for national statistics and for HSE and Ministers to review activity across Great Britain. Individual LAs use the collated data to benchmark against each other. LAs are however independent regulators and as such are not accountable to HSE.

Crown Office and Procurator Fiscal Service

14. COPFS is responsible for the prosecution of crime in Scotland and the investigation of sudden or suspicious deaths. Only COPFS, not HSE, may bring health and safety cases before the Courts.

15. The Lord Advocate established a specialist Health and Safety Division within COPFS in 2010. It comprises three dedicated units based in Aberdeen, Edinburgh and Glasgow and is led by a senior prosecutor with a total of 16 staff who work closely with HSE, local authorities and other agencies who report health and safety cases to COPFS.

16. HSE has a very good operational relationship with COPFS for both strategic co-operation and operational liaison on individual cases. COPFS prosecutors work from the main HSE offices on a regular basis.

The Scottish Government

17. HSE works closely with the Scottish Government on areas of overlapping interest especially on the links between reserved occupational health policy and devolved public health policy. The Scottish Government is also represented on the Partnership on Health and Safety in Scotland (PHASS) - chaired by HSE Board member Hugh Robertson, which aims to inform businesses about their responsibilities and promote access to the range of support mechanisms available to them in Scotland. In particular, HSE supports the free advisory service provided by the Scottish Centre for Healthy Working Lives which is funded entirely by NHS Scotland.

The Scottish Parliament

18. HSE in Scotland responds to enquiries and correspondence from MSPs and monitors Scottish Parliamentary business to respond to requests for briefing material within the reserved remit and to offer advice where it may be useful.

- Prosecution and sentencing in Scotland and elsewhere
- How does the HSE monitor the impact of the cases that are investigated, the number that lead to prosecutions, and whether fines are collected?

19. Enforcement decisions are taken in accordance with HSE’s published Enforcement Policy Statement (EPS). The principle of targeting inspection and investigation on those creating the most serious risks is carried through to HSE’s incident selection criteria and complaints handling procedures. The EPS sets out the principles to be applied when determining what enforcement action to take in response to breaches of Health and Safety legislation. Such action ranges from sending a letter, to issuing improvement and prohibition notices to prosecution. In 2009/10, HSE served 1,400 notices in Scotland (815 improvement, 589 immediate prohibition) of a total
of 9,734 in Great Britain as a whole. Research has consistently shown notices to be a highly effective means of achieving compliance and remedying serious risk.

20. The majority of HSE’s prosecution cases arise from investigations. HSE’s Incident Selection Criteria ensure that the most serious incidents are selected for investigation. In addition to ensuring that the breaches of law that led to prosecution have been put right, HSE actively seeks to publicise the outcome of such cases, to influence others and to maintain public confidence generally.

21. In Scotland, prosecution of health and safety offences follows reports from HSE (or the Office of Rail Regulation or LA) to COPFS; and occasionally, COPFS raise a case themselves on the basis of evidence from other sources such as the Police. The decision whether or not to prosecute is entirely for the Procurator Fiscal. The criteria that COPFS considers are explained in their Prosecution Code.

22. Where a work-related death occurs the Work-Related Deaths Protocol Scotland is followed. This requires a thorough investigation of the circumstances jointly by the Police and HSE, or LA as appropriate, under the direction or guidance of the procurator fiscal. The purpose is to ensure that all possible offences are considered including Culpable Homicide as well as any health and safety offences. The agencies report jointly to COPFS.

23. HSE does not set targets for levels of enforcement. In 2009/10, the COPFS prosecuted in 35 of the 43 cases recommended to them by HSE (a reduction from the levels in previous years). The rate of conviction was 94%, which is consistent with that for the rest of GB, where 469 prosecutions were heard.

Sentencing

24. Sentencing is a matter for the judiciary and the courts, within the legislative and regulatory framework set by the relevant Parliament. There are no sentencing tariffs in health and safety cases.

25. Sentencing practice in Scotland is mainly on a case-by-case basis in the criminal courts, with reference to the wide experience of sentencers in criminal cases and Appeal Court decisions. This is supplemented by legislation where the Scottish Parliament has made specific provision about the use of certain sentencing options, and by the Scottish Appeal Court’s power to issue guideline judgements. In addition, textbooks such as Morrison and Nicholson gather together information on sentencing law and practice. The Scottish courts can have cognisance of the sentencing guidelines for England and Wales, but are not bound by them.

Fines

26. Fines vary from case to case and hence from year to year. In Scotland in 2009/10, the average fine per conviction was £9,210 (the range of fine was between £500 - £70,000) for cases involving HSE-enforced cases, in previous years the average fine per conviction has varied from £249,418 in 2005/06 (reflecting the Transco prosecution which resulted in £15m fine) to £14,370 in 2007/08. For local authority-enforced cases the average fine per conviction was £6,938, and in the previous year £35,667.

- How does the effectiveness of the Health and Safety Executive (HSE) in Scotland compare with the effectiveness of the HSE in England, Wales and Northern Ireland; and whether the organisational structure of the HSE is the best way to manage health and safety in the context of devolution.
27. The 2009 report of the Commission on Scottish Devolution to which HSE gave both written and verbal evidence observed that much of the currently reserved area of health and safety is already dealt with on a day to day basis by devolved agencies (in particular local authorities) and enforced through the Scottish legal system. It noted that HSE appears to have worked to reflect Scottish needs and concerns in its work in Scotland, including by seconding staff to the Scottish Government and working with it on a number of high-profile initiatives including the creation of a free safe and healthy working advisory service (now the Scottish Centre for Healthy Working Lives).

28. The Commission also noted that although HSWA is reserved and HSE’s parent department is the UK Department for Work and Pensions, it is the HSE in Scotland (rather than DWP) which liaises with the Scottish Government and local authorities on a day to day basis. In 2005 Scottish and UK ministers agreed to the creation of a body to co-ordinate the work of the HSE with Scottish stakeholders – the Partnership on Health and Safety in Scotland (PHASS). The creation and development of PHASS, as well as the co-location of HSE officials and those from the Crown Office in order to better facilitate decisions on prosecutions, appeared to the Commission to be good examples of an agency exercising reserved powers taking into account the views of, and working with, those involved in the process.

29. The Hazardous Installations Directorate (HID) in HSE inspects both onshore and offshore major hazard activities in Scotland and the North Sea. HID staff, including topic specialists, are based in Aberdeen, Edinburgh and Glasgow and enforce the same legislation that applies elsewhere in the UK. The major dutyholders in the oil, gas and chemical sectors are often national or multinational businesses.

30. HID staff in Aberdeen in particular routinely interact with senior industry managers on matters that are relevant to industry activity and safety performance throughout the UK. It would be both inefficient and detrimental to the overall effectiveness and impact of HID to have separate arrangements in Scotland. The industry would also find this approach unhelpful and unwelcome.

31. The existence of a separate Executive for Northern Ireland demonstrates that it is possible for health and safety to be devolved. It should however, be noted that there is close working on a range of matters, i.e., trainee inspectors from HSE and HSENI undertake a common programme of training. The Commission recognised that there is no reason in principle why health and safety (or elements of enforcement) could not be devolved. Nevertheless, the Commission questioned whether this would appreciably improve matters for the people of Scotland.

32. The Commission concluded that the creation of a separate Scottish HSE could lead to duplication of effort (in both primary and support functions) as well as a deterioration in expertise on both sides of the Border. It recommended that in recognition of the close interaction of the HSE’s reserved functions with areas of devolved policy, a closer relationship between the HSE in Scotland and the Scottish Parliament should be developed and this has been followed up since the publication of the report.

• **What effect any reduction in the HSE workforce might impact upon the HSE as a whole and its work in Scotland?**

33. HSE is expected to make savings of at least 35% in the funding it receives from the taxpayer over the 2010 Spending Review (SR10) period, 2011/12 to 2014/15. At the same time, the Government has asked HSE to develop plans whereby businesses that are found to be in material breach of health and safety law should, rather than the taxpayer, bear the related costs incurred by the regulator. Preparations for this are underway, for implementation from 6 April
2012, but the actual amount of costs that will be recovered is inherently uncertain. HSE has therefore developed a firm plan only for 2011/12.

34. For the period covered by Spending Review 2010 there will be an altered pattern of activity. HSE expects to maintain its frontline activities of inspection and incident investigation at those businesses and in those sectors across Great Britain which represent the highest risks to the safety and health of workers and the public e.g. construction, waste management and recycling, some areas of manufacturing etc. It does not expect the reduction in government funding to have an adverse impact on its activities in these areas in Scotland. HSE’s work in relation to offshore oil and gas extraction, onshore chemical manufacture and storage and nuclear sites is already covered by cost-recovery and HSE does not expect its work in these areas to be affected adversely by its Spending Review settlement.

35. HSE will, however, significantly reduce the amount of proactive inspection it carries out in the sectors and businesses that are lower risk and who meet their legal obligations e.g. textiles, clothing, light engineering, local authority administered education provision. HSE will continue to investigate incidents in these sectors which meet its existing selection criteria and carry out inspections where there is evidence to suggest that standards are poor or people are at real risk.

- Is there a lack of data on health and safety matters in Scotland, and how does this affect the understanding of potential health and safety problems in Scotland?
- What international comparisons with similar sized countries, or similar risk industries, can be made which could be helpful?
- Whether the HSE have correctly identified the areas of concern and have appropriately targeted their resources in Scotland?

36. HSE collects or accesses a wide variety of information about health and safety, which is currently published in the statistics section of our website. The majority of the available data relates to health and safety outcomes such as the number of workplace injuries and cases of work-related illness. For injuries, this is available down to local authority area. We also publish a limited range of precursor data, relating to exposures and workplace working conditions in Great Britain.

37. There are a number of issues involved in comparing reported accident data from Great Britain with other European countries. While work towards producing statistics on non-fatal injuries that are comparable across Europe is progressing, a key problem at present is that the UK data currently excludes road traffic accidents in the course of work, while the data for most of the other EU members includes such accidents. Furthermore, reporting rates differ between countries, in particular where there are different reporting mechanisms – for example, there is more under-reporting in systems based on employer reporting than those systems based on insurance or social security systems.

38. Self-reported data from the Labour Force Survey shows that the number of people suffering from an illness which they believe was caused or made worse by work in Scotland is not statistically significantly different, for example, from the average across English regions. In respect of working conditions, a benchmarking exercise was undertaken in 2008/09 across Great Britain. This showed that compliance with health and safety legislation in Scotland, as assessed by HSE inspectors, was on a par with compliance in England and Wales.

June 2011
Written evidence submitted by The Chemical Industries Association (CIA)

1. The Chemical Industries Association (CIA) is the largest Association representing chemical manufacturing businesses in Scotland and the rest of the UK. The chemicals sector is Scotland’s biggest export earner, generating around £2.7 billion of manufacturing exports from a revenue stream worth £9.3 billion. The sector accounts for 25% of Scottish manufacturing by turnover and 6% of Scottish manufacturing employment. There are approximately 150 chemical companies in Scotland, many of them Small & Medium Sized Enterprises (SMEs) – however the world’s 3 leading chemical companies (BASF, Dow and Ineos) all have chemical manufacturing factories in Scotland.

2. CIA member companies in Scotland take a very responsible approach to their health and safety obligations, recognising both the legal duties and the expectations of the public that chemical businesses are properly and safely managed. This is essential for the protection of people, the environment, and for effective management of business continuity.

3. CIA maintains a constructive and positive relationship with HSE in Scotland, and the feedback from CIA member companies is that this is generally true of industry/HSE relationships too. We meet HSE Scotland at senior management level at least twice a year, for discussions about industry issues, the way in which the regulator inspects and investigates, and the impact this has on Scottish industry. We have also organised several joint workshops and seminars on key topics – specifically, 3 joint Process Safety events (free for CIA members) in the last 2 years, and a joint event planned for 20th July in Grangemouth to explain the changes to the way in which HSE plans to implement the Control of Major Accident Hazards Regulations (COMAH).

4. While this represents the positive picture of the constructive relationships between CIA, its member companies and HSE there remain several issues of concern about regulatory processes and practices that continue to have a significant impact on chemical businesses. We have raised these issues over the past few years with HSE. In some cases there has been a positive response and steps taken to improve or streamline processes, but in other circumstances, as exemplified below, the issues remain. These issues are mainly HSE-wide, rather than specific to Scotland, but the impact on Scottish businesses is nevertheless significant.

5. The HSE Strategy, published in 2009, is titled ‘Be Part of the Solution’. The chemicals industry certainly has accepted and adopted this challenge, and is delivering world-class performance in occupational safety as well as helping to raise standards in process safety (the safe management of major accident risks). CIA fully appreciates the need for effective regulation in the major hazards sector, however there is no mechanism currently for recognition of these efforts or good performance by reducing regulatory costs on industry best performers - the COMAH charges paid by industry to HSE are high year on year, irrespective of performance. Companies subject to the COMAH Regulations, including chemical and refining businesses, are directly charged for the time spent by HSE in regulating them – this is a charge that is not faced by competitor businesses in the rest of Europe, meaning that in a globalised chemicals industry this acts as a disincentive for multi-national companies to provide investment in Scottish chemical manufacturing and to do business in Scotland.

6. Furthermore, the charge is also applied by HSE to ‘non-COMAH work’ (i.e. occupational health and safety as opposed to major hazard risks the COMAH Regulations apply to) at COMAH sites. This has a disproportionate effect on small and medium sized enterprises
(SMEs) which often have no budget for these costs. The current charge rate is £156 per hour and the ‘multiplier’ effect (more than one inspector x number of days inspection or investigation x 7.5hrs/day x £156/hour) can quickly lead to very high costs that threaten the ability of companies to survive.

7. Land-Use Planning and Hazardous Substance Consent: Chemical and oil refining businesses require a Consent to store and use specified hazardous substances which are necessary for their business on site. The Consent is also the basis of the land-use planning consultation distance which the HSE sets around each major hazard site, and within which it requires consultation on any proposed developments. The system is administered by local authorities – companies which require a new or amended Consent to reflect new processes or business opportunities have to apply to their local authority, which automatically refers the application to HSE for advice. HSE’s current timescale for providing their response on such applications is 6 months and information from CIA member companies indicates that this delay is increasing, partly as a result of staff and budgetary cuts in HSE. This places the chemicals industry including Scottish businesses in a very difficult position – to respond to business opportunities and to secure investment in new plant and processes, industry needs quick answers and reassurance that appropriate consents and permissions will be in place, however it cannot currently get these within a reasonable timescale. The length of time for this process is another example of a disincentive for global chemical companies to invest and do business in Scotland compared to other parts of Europe.

8. There is a wide range of other operational issues that CIA is working on with HSE in support of Scottish chemical businesses, and about which we have been assured recently that improvements are in place. It remains to be seen if these changes result in practical improvement, though as the changes work through it would not be fair to criticise HSE for these aspects at this time. However for completeness the main issues that we have raised with HSE over the past 2 years have been:

- The accuracy and transparency of Intervention Plans provided by HSE which are intended to help industry understand the amount of annual inspection sites will be subject to (and hence charged for). 2-year Intervention Plans have just been prepared and sent to companies by HSE from April 2011. Early indications are that the details these contain, from which business can budget for regulatory costs, are variable and there are also projections of significant additional inspection time and costs in Year 2 (2012/13) compared to previous years.

- Turnover of inspectors in HSE. One result of this is lack of continuity and experience which means that often relationships between company and inspector and knowledge of site processes and procedures has to be continually re-built; this adds to the time industry spends in dealing with HSE inspections, and the cost through COMAH charging.

- A tendency towards more formal enforcement (for example greater use of Enforcement Notices) at an earlier stage than has previously been the case.

9. We have focused in this response on the main areas of concern that chemical manufacturing businesses in Scotland have currently in relation to the way they are regulated for health and safety. In doing so we recognise the valuable role that effective regulation plays, and that chemical companies and CIA as their representative body generally have constructive relationships with HSE in Scotland.

10. As CIA represents chemical businesses across UK, we are in a reasonable position to make broad comparisons with health and safety performance and regulator relationships in other parts of the country. In this respect, CIA’s view is that:
• There is very little substantial difference in health and safety regulation in Scotland compared to other parts of the UK;
• The organisational structure of HSE in Scotland is as effective in Scotland as it is in England & Wales;
• The inspection priorities for the major hazard industries in Scotland are similar to or the same as those for England & Wales, and represent the same broad areas of process safety verification we would expect;
• Problems with HSE resource levels, turnover of staff, implementation of changes in procedures, length of time to determine Consent applications, and the continual issue of COMAH charging are all issues that affect Scottish chemical businesses just as they affect similar businesses in other parts of the UK.

June 2011
Written evidence submitted by The Institution of Occupational Safety and Health (IOSH)

Executive summary

1. The Institution of Occupational Safety and Health (IOSH) believes 3 key conditions are required for occupational safety and health (OSH) excellence: strong leadership; worker involvement; and access to competent advice. Also, that these should be underpinned by adequate enforcement and proactive regulator work. We are pleased to explore these issues in relation to Scotland in our submission to the Scottish Affairs Committee Inquiry.

2. We are concerned that public spending cuts, including 35% cuts to Health and Safety Executive (HSE) budget by 2014, could be harmful both short- and long-term and must be carefully managed. Also that local authority funding for OSH enforcement may be eroded by competing demands, which needs to be avoided. We urge that HSE should not be required to take on additional responsibility (post-Young Review), without being given more resource. And we seek reassurance that construction, manufacturing, waste and recycling and agriculture will be adequately enforced and HSE-provided information via phone line will be available to SMEs.

3. In terms of the recent National Audit Office report on the HSE’s work in Scotland – we note this is generally positive but support its recommendations that HSE should track outcomes of cases it refers to the Crown Office and Procurator Fiscal Service (COPFS). We would also like better understanding of the rationale for and effect of reducing the proportion of major injury case HSE investigations in Scotland from 11% to 6%.

4. Acknowledging the 2006 finding that the worse construction injury data in Scotland is due to a greater preponderance of manual workers in the sector than in the rest of Britain, we propose that consideration be given to trialling ‘Safe-T-Cert’ in Scotland. This is a certificated management system scheme that operates in Ireland as a low-cost tool to raise workplace standards in construction. Further on the subject of piloting, we suggest reporting of work-related road traffic accidents under RIDDOR could be first trialled in Scotland with a view to UK-wide roll-out.

5. We believe collaborative work between stakeholder groups can be greatly beneficial. In particular, that the Partnership for Health and Safety in Scotland (PHASS) and the Scottish Centre for Healthy Working Lives (SCHWL) both have much to recommend them and should continue to be supported and developed. Partnerships such as those between HSE and ‘Step Change’ (oil and gas industry initiative) have also worked well and further such arrangements should be explored. To support resource provision, ongoing funding is needed to cover initiatives such as the ‘Proactive interventions’ course pilot; ‘Health risks at work’ toolkit; and the HSE Scotland web pages.

6. And finally, as Scotland is a predicted growth area for wind farms, offshore wave generation and carbon capture and storage, we have also recommended prioritised funding for regulating the OSH effects of emerging technologies.

Introduction

7. In the submission that follows, we consider work-related health and safety issues pertaining to Scotland, but as this is a reserved matter, also comment on some UK-wide issues. We begin by briefly outlining what we consider to be the pre-conditions for occupational safety and health (OSH) excellence and we conclude with some recommendations for improvements for the Committee’s consideration. We also attach an appendix providing...
The key conditions for OSH excellence

8. IOSH believes the model for organisational OSH excellence includes 3 key conditions:
   • Active senior leadership, cascaded throughout the organisation
   • Involvement and full engagement of employees
   • Access to competent advice about hazards and good practice controls

9. We are pleased to see that the current Health and Safety Executive (HSE) strategy and their business plan for 2010-11 emphasise the need for all 3 elements, see ‘Taking responsibility’.

10. In addition to the 3 key conditions, we also believe that OSH compliance in organisations needs to be regulated by highly competent and well-resourced regulators, providing adequate levels of enforcement and authoritative advice. This is supported by research concluding that fear of enforcement and reputational damage are drivers for compliance. Where enforcement areas overlap e.g. for some transport activities or activities with significant environmental impacts, there needs to be excellent co-ordination to ensure each party can deploy its expertise.

11. If a regulator is under-resourced or has other competing areas of work, there can be both short-term and long-term weaknesses. Examples of the latter include the former UK Department of Energy pre-Piper Alpha deficiencies and, much more recently, the Australian Northern Territories wells regulator and previous US offshore safety regulator Minerals Management Service (MMS) problems, as identified by the Montara and Macondo blowout Inquiries.¹

12. Some of our comments below will refer back to the key conditions referred to above.

The effectiveness of health and safety regulation and enforcement in UK

13. The adequate resourcing of HSE and LA activities is a central and local government matter. IOSH is concerned that national outcomes are likely to suffer if these budgets are significantly reduced, both in the short- and long-term, as noted above. We are also concerned that the major changes in HSE prioritisation announced by the UK government in March are insufficiently evidence-based. We recognise that painful cuts in overall government expenditure are necessary; but believe that these need to be carefully advised, planned and managed to ensure minimum harm to people’s health and safety and to avoid false economies. Scotland needs adequate proactive regulator work in its high risk sectors such as construction, manufacturing, waste and recycling and agriculture and its SMEs need continued access to authoritative free phone advice when HSE’s Infoline ceases.

14. In terms of efficacy, we also believe that OSH-related initiatives should be evidence-based (for example through pilots) and, where not, data on post-implementation effects should be collected, so appropriate lessons are learned as soon as feasible. We note that Scotland with ~8.5% of the UK working-age population can be an ideal location for large-scale pilots of proposed UK-wide OSH initiatives / legislation.

Regulator/enforcer roles and responsibilities in UK

¹ In both these cases, in addition to organisational weaknesses within the relevant OSH regulator, there were also poorly managed interfaces with other regulatory bodies. Both the Australian and the US Inquiries identify long-term government under-resourcing as a primary cause of their regulatory weaknesses.
15. As noted in the US Inquiry referenced above, a major issue for both MMS and the US Coastguard was that successive administrations increased their responsibility for OSH matters without increasing their budgets. IOSH raised concerns following the 2010 publication of Lord Young of Graffham’s recommendations that his proposals increased demands on the HSE, without a corresponding increase in their resources.²

16. We have additional concerns that the OSH enforcement budget within local authorities is not ‘ring-fenced’ so that competing internal priorities (notably for food safety inspections) can result in hidden cut-backs. Many IOSH members are employed by LAs as OSH advisers, rather than inspectors – who typically in Scotland are members of the Royal Environmental Health Institute of Scotland.

17. A more specific area of concern is for work-related road traffic safety, where we have long advocated that injuries should be reportable under RIDDOR to ensure adequate national data collection, investigation and enforcement and deterrence of poor management of occupational road risk.

Health and safety in Scotland

Legal differences

18. As noted in the NAO report on the HSE’s work in Scotland, though HSE has a significant presence in Scotland, some parts of its organisation located there also have responsibilities in other parts of UK, and vice versa. The same is true for many dutyholder organisations. So, for practicality and consistency, IOSH strongly supports retaining OSH regulation and enforcement as a reserved matter and also argued against creating differences in Scotland regarding Corporate Homicide and Corporate Manslaughter legislation.

19. We note that the differences in the Scottish legal system mean that HSE are unable to recover costs incurred in OSH prosecutions; and also that pre-trial publicity is not allowed to avoid prejudicing cases, so is not used for early awareness-raising in other dutyholders. We believe the initiative to pool Procurator Fiscal services for all health and safety prosecutions has been a good example of parties working together to adapt Scottish legal practices to improve outcomes. However, we note that the NAO report found data held by HSE and the COPFS appeared slightly inconsistent and if confirmed, believe the availability of common shared statistics should be urgently addressed.

Effectiveness of interventions

20. For specifically Scottish interventions, we are aware that HSE regularly seek to evaluate their activities. For example their current strategy for the agricultural and fish-farming sector, focusing on local Safety and Health Awareness Days (SHADs) rather than proactive inspections, results from such evaluation. Similarly, they are generating data to evaluate the agreement to move PHASS meetings away from Edinburgh and combine them with local outreach to SMEs.

² For example, the recommendations included that HSE should introduce a code of practice to replace the Adventure Activities Licensing Authority regime and should oversee and monitor it, ensuring “…those planning trips can feel confident that a provider is compliant with the code“ (p.36). And also, that HSE should have an enhanced role in the ‘primary authority scheme’ (p.33).
21. We are less certain that the effectiveness of LA interventions in Scotland is well monitored, being aware of little or no published data. This is a concern, given the current pressures on LA budgets and the fact that 32 LAs provide regulation for over half of Scotland’s workplaces.

22. We note that the NAO report found that HSE does not have an accurate record of the outcome of each of the cases it refers to the COPFS (who bring all prosecutions in Scotland), so cannot determine the conviction rates for Scotland. This being the case, we support the NAO recommendation for better recording by HSE of prosecution data and tracking / recording data on efficacy. We are concerned to note from the report that HSE has reduced the proportion of major injury cases in Scotland it investigates from 11% to 6% and that they do not have information on what impact this may have had on compliance. It would be helpful to understand the rationale for and effects of this reduction.

23. We believe that data on poor performing employers and any non-completed planned proactive inspections of them would be helpful to aid HSE performance evaluation, in both Scotland and other parts of UK.

**Health and safety outcomes in Scotland**

24. The NAO report confirms that outcomes in Scotland are not significantly different from the rest of UK, when employment variations are taken into account. IOSH members were actively involved in the 2006 HSE sponsored research into the causes of fatal and major injuries in construction in Scotland. In this study, the cause of the overall higher accident rate in Scotland was attributed to many more manual workers in Scottish construction than the rest of Britain.

25. An Ireland initiative that could be readily transferred to Scotland is the construction sector certification scheme for smaller employers Safe-T-Cert. This is managed by the respective sector employers’ organisations in Ireland and Northern Ireland as a low-cost tool to raise workplace standards, particularly in smaller organisations for whom full ISO Certification can be daunting and overly complex.

26. As Scotland is a predicted growth area for wind farms, offshore wave generation and carbon capture and storage, we also recommend prioritised funding for regulating the OSH effects of emerging technologies.

**HSE in Scotland and relationships with other stakeholders**

27. HSE regularly hold key UK meetings and sometimes launch UK-wide initiatives in Scotland and their webpage for Scotland provides much useful material, including links to:

- Current business plan
- Current high-priority issues in Scotland
- Key partner groups, notably the Partnership for Health and Safety in Scotland (PHASS)
- OSH events diary, including events organised by other non-profit organisations
- Free subscription to HSE Scotland e-Bulletin newsletter.

28. We see a number of advantages for the partnering arrangements in Scotland:

- All the partnering organisations use the same geographical boundaries
• Scotland is a relatively small nation, so key players are both fewer and more readily identified than in larger communities

• HSE recognised the impacts of devolution and proactively built key relationships, especially where devolved health responsibilities and plans need good alignment with reserved OSH equivalents.

29. PHASS is a valuable initiative, ably led and resourced by HSE, who initiated a review of its work, completed in 2010. It is an early example of HSE’s recognition of OSH professionals’ contribution, as well as involving representatives of employers and employees (see the IOSH ‘key conditions for OSH excellence’ above). As a subset to the PHASS group, representative volunteers from 6 different professional bodies and 2 other member-based organisations meet informally and have one representative on PHASS – currently a Scotland-based IOSH Vice-President. These informal links have resulted in wider sharing of evidence-based good practices and joint improvement initiatives, some involving HSE. Many of these were ‘showcased’ at the IOSH10 Glasgow conference exhibition.

30. In addition to links with non-statutory partners, PHASS is also a link between HSE and Scottish Government. Based on the experience of IOSH members who attend PHASS, we believe this link is valuable and effective. Clearly there are other formal and informal relationships between HSE and Scottish Government of which we are less aware.

31. A vital contributor to many of these joint projects is the Scottish Centre for Healthy Working Lives (SCHWL), part of NHS Scotland, created by Scottish Government in 2005. SCHWL is unique within UK and an excellent example of a Scottish pilot which should be spread more widely (and this has begun, especially in Wales). SCHWL has a holistic programme covering health promotion, occupational health (especially rehabilitation to work) and safety. Its website includes a wide range of practical workplace advice, particularly for SMEs, it runs a free helpline and free advisory visits for SMEs, and an award programme which attracts larger organisations, where internal OSH and OH advisers are more typical.

32. SCHWL has also developed, piloted and evaluated, then published and distributed a range of practical workplace health-related tools, which we feel is a good example for how such initiatives should be managed. We were pleased that SCHWL extended the IOSH-DWP ‘Proactive interventions’ pilot course to Scotland and believe that in addition to the IOSH occupational health toolkit, the programme might usefully make use of the ‘Health risks at work toolkit’. HSE and SCHWL have always worked closely together, and have carried out regular reviews of this relationship – a model for the assessment of results from a pilot intervention. We believe that the Occupational Safety and Health Consultants’ Register (OSHCR) now provides a suitable signposting mechanism for SCHWL for those seeking longer-term external assistance.

33. Proactive partnership working by both HSE and SCHWL is threatened at a time when public expenditure needs to be cut and we suggest evaluation and review should be used to determine cost efficacy and ongoing resourcing.

34. Another partnership area in Scotland covers the offshore sector, where Step Change is the vehicle for achieving UK-wide excellence. HSE Offshore Division successfully manages the role of being both enforcer to Step Change member organisations and good practice adviser to Step Change itself. A recent example of joint working is Offshore COSHH Essentials, consisting of 36 jointly developed and linked free guides, launched on HSE website in March 2010. The ‘advice for managers’ document recommends the use of OSHCR to identify competent consultants when needed. We suggest other such industry partnership arrangements be considered.
**The resulting impacts on dutyholders**

35. We note that the Committee asks about the impact of OSH regulation on ‘businesses’, but believe all dutyholder organisations should be considered. IOSH is certain that ‘good health and safety’ is good for both workers and their employing organisations. There are innumerable examples of successful organisations that have experienced this and case studies are available from HSL and HSE. As indicated above under key conditions for OSH excellence, enforcement and fear of it are drivers for compliance; and SHADs evaluation is also being undertaken (see effectiveness of interventions above).

**In conclusion**

36. In general we believe that the health and safety system in Scotland is typically of high quality – certainly by comparison with most other developed countries. Where we see potential for improvements many can apply to UK as a whole, as well as to Scotland. Our greatest immediate concern is that, not least because outcomes are good on an international scale, either or both UK and Scottish public sector budgets for health and safety will reduce significantly. As well as short-term effects, such a decision could also store up trouble for the future, as shown in the disasters cited above.

37. We judge that HSE and Scottish Government (primarily SCHWL), working together, have pioneered excellent partnering arrangements which could, with advantage, be adopted elsewhere in the UK – though we recognise this will be more challenging in larger, less clearly defined regions. We also believe that Scotland can usefully be used as a pilot area for other OSH initiatives.

38. We would be grateful if the Committee would consider our recommendations for improvement, which are based on our submission (see below).

**IOSH recommendations**

39. IOSH would like to suggest 11 recommendations for the Committee to consider, linked to our evidence, as follows:

   a. Endorse the four evidence-based requirements for excellence in national OSH outcomes and note recent evidence from Inquiries in Australia and USA about the long-term effects of under-funding OSH regulators (paras 8-11).
   
   b. Any changes in work priorities or budgets imposed on HSE and LAs as a result of public spending cuts to be evidence-based or, at the least, planned and resourced so as to avoid negative effects on health and safety and provide early data on outcomes (paras 13-16).
   
   c. Ensure high risk industries such as construction, manufacturing, waste and recycling and agriculture should receive adequate regulator attention and support (para 13).
   
   d. Ensure LA OSH enforcement budgets and outcomes in Scotland are as transparent as the UK-wide HSE budget and published outcomes (para 21).
   
   e. HSE should be able to determine conviction rates for Scotland and provide information on the rationale for and effects of their decision to reduce the proportion of major injury investigations in Scotland (paras 3 and 22).
   
   f. Ensure HSE prioritised funding for assessing, monitoring and suitably regulating the OSH effects of emerging technology. Scotland is the predicted UK growth area for wind farms, offshore wave generators and carbon capture and storage (paras 6 and 26).
   
   g. Data from work-related road traffic injuries to be included in UK OSH statistics, with Scotland possibly used as a pilot for this policy change (para 17).
h. For the Scottish construction sector, which is both a major employer and a planned HSE priority, recommend introduction of the successful Safe-T-Cert scheme (para 25).

i. Ensure that prioritised funding is available to both HSE (including for PHASS) and SCHWL to continue joint working and leadership of voluntary partnership projects ( paras 26-33). Specific examples where funding is needed include:
   - Implementing the IOSH-DWP ‘Proactive Interventions’ pilot in Scotland
   - Continuing to deliver the ‘Health risks at work’ toolkit

j. Explore the possibility of other regulator and industry partnership arrangements, similar to ‘Step Change’ (paras 5 and 34).

k. Consider whether the SCHWL helpline would be a cost-effective replacement for HSE Infoline, if it is discontinued later this year due to budget cuts (paras 2, 5, 13, 31 and 32).

Appendix

About IOSH and our contributions to other Inquiries and reviews

- The Institution of Occupational Safety and Health (IOSH) is the largest membership body for OSH professionals worldwide, with more than 39,500 members in over 85 different countries. We have charitable and international NGO status and one of our 12 current Trustees is a Scottish-based member, as is one of our 6 Vice-Presidents. We currently have over 3,500 members based in Scotland, with 4 Branches and one District meeting regularly in Aberdeen, Edinburgh, Glasgow, Inverness and Tayside.

- IOSH welcomes the priority that MPs, MSPs and others with influence over policy and resources give to work-related health and safety matters. We submitted written and oral evidence to the Work and Pensions Select Committee Inquiries in 2004 and 2008. We held Holyrood receptions for MSPs and others in 2009 and 2010 and have published and provided a series of free authoritative guides for Local Councillors and for MPs, MSPs, MWAs about practical and proportionate health and safety management in their role as employers, e.g. for constituency offices, called ‘Think about health and safety’.

- We provided detailed submissions to Lord Young of Graffham and he addressed our IOSH10 Conference in Glasgow. While not agreeing fully with his report, we believe a number of his proposals have merit. We have responded to the HSE consultation documents issued following his report on RIDDOR and risk assessment tools and have contributed significantly to the creation of the Occupational Safety and Health Consultants’ Register (OSHCR), launched in March 2011 – including the extension of its remit to include health. Over 2,400 consultants are currently registered with OSHCR, of whom 93% are IOSH members, with 180 of them based in Scotland.

- IOSH provided written submissions to both Phase 1 and Phase 2 of the ICL Inquiry (available on the IOSH consultation archive web pages), suggesting areas we thought Lord Gill should cover; however, he interpreted his remit to be more limited. While we welcomed his recommendations in respect of LPG safety, we believe the issue of employing and appointing competent advisers could have been explored, but is now covered partially by OSHCR.

- For more information about IOSH and our work, visit www.iosh.co.uk

June 2011
1. Introduction

1.1. The STUC is Scotland’s trade union centre. Its purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland; reflecting the aspirations of trade unionists as workers and citizens. The STUC represents over 652,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace.

1.2. The STUC participates in the Partnership for Health and Safety in Scotland (PHASS) and is represented on the National Advisory Group of the Scottish Centre for Healthy Working Lives (SCHWL). We support and promote any initiatives that lead to safer and healthier working lives.

1.3. Between May 2004 and July 2009 we supported the families of those who died in the ICL Plastics factory explosion by providing assistance throughout the investigation and the legal proceedings and in securing a public inquiry into the disaster.

1.4. The STUC believes that, in the United Kingdom, we have some of the best health and safety legislation in Europe and arguably the world. The Health and Safety at Work Act (1974) and subsequent regulations have provided the framework that has helped to reduce the headline statistics relating to fatal accidents, major injuries and other injuries that result in over 3 days absence from work.

1.5. However, it is now accepted that the figures presented by the HSE do not reflect the reality of work related death; thousands more lose their lives through occupational disease, work related road traffic accidents and, sadly there have been cases where individuals have committed suicide where pressures of work may have been partly or wholly to blame.

1.6. In drafting this evidence the STUC has drawn on the experience of our affiliated trade unions, our joint work with the Scottish Government and further work with academics and groups with an interest in the field of occupational health and safety.

1.7. The STUC welcomes the Inquiry by the Scottish Affairs Select Committee into Health and Safety in Scotland. However, any inquiry should now try to identify the how accidents rates indicate Scottish workers are at greater risk of fatal or major injury, make recommendations to address this long standing problem but also identify opportunities within the reserved and devolved powers to address the anomaly.

2. Executive Summary

2.1. The STUC concerned that current cuts in the public sector will seriously undermine the effectiveness of the HSE and their local authority counterparts to enforce health and safety regulations. We believe that health and safety should remain reserved but have grave reservations regarding the consequences for our well established health and safety legislation as a result of the “Red Tape Challenge”.
2.2. In Scotland we have been successful in developing strong partnerships to promote higher standards of occupational health and safety but again cuts in public sector resources may well undermine this work.

2.3. The STUC believes that it is important that the Scottish Parliament should be involved in scrutinising Scotland’s health and safety performance and developing strategies across all the appropriate devolved functions to improve our health and safety record.

2.4. We are of the view that claims regarding health and safety legislation being overly burdensome on business are spurious and ignore the fact that if employers meet their obligations there will be economic benefits to the employer, the individual and wider society. When the burdens of health and safety were raised at the Partnership for Health and Safety in Scotland business representatives could not substantiate the argument.

2.5. The findings arising from the National Audit Office that Scottish Workers are at greater risk of fatal or major injury are not new and were first raised by Professors Charles Woolfson and Matthias Beck in a discussion document published in 1999. The STUC welcome this Inquiry by the Scottish Affairs Select Committee and would hope that the issues raised in their discussion paper are considered in this work.

3. Health and Safety Regulation and Enforcement

3.1. The STUC believes that the United Kingdom has the most effective health and safety regulation in Europe and perhaps the world. Since the introduction of the Health and Safety at Work Act (1974) there has been a welcome decline in the number of workplace accidents although the rate of decrease in Scotland has perhaps been slower than in England and Wales.

3.2. In our evidence to the Calman Commission the STUC stated that, at that time we did not feel that there was justification to devolve Health and Safety legislation to the Scottish Government as we recognised the advantages of having UK wide legislation applied consistently across England, Scotland and Wales.

3.3. Our concern going forward would be that the current review of regulation being carried out by the United Kingdom Government could result in the effectiveness of our regulation being diluted.

3.4. Health and Safety regulation and enforcement was one of the reasons put forward by Professors Charles Woolfson and Matthias Beck for the existence of what they called the "Scottish Health and Safety Anomaly". At that time their research indicated that in Scotland only 6.4% of major injuries resulted in a prosecution compared to 10.4% for Britain as a whole. Similarly, they claimed that only one in eight workplace deaths resulted in a prosecution, compared to one in five for Britain.

3.5. A further study, “Safety Last, the Under Enforcement of Safety Law”, commissioned by Unison and undertaken by the Centre for Corporate Accountability

---

2 Safety Last? The Under Enforcement of Safety Law,Unison/Centre for Corporate Accountability, 2002
http://www.corporateaccountability.org/dl/SafetyLast.pdf
showed that within a five year period inspections following major injuries increased from approximately 13% in 1996/97 to 25% in 2000/01. In roughly the same period major 1997/98 to 2001/02 major injuries fell from 2369 to 2308 and over 3 day injuries fell from 10676 to 8913.

3.6. The increased rates identified by the National Audit Office for fatal injuries in Scotland per 100,000 workers of 0.9 compared to 0.4 and 114.7 compared to 99.4 for major injuries is similar to those identified by Woolfson and Beck who estimated that Scottish workers were between 70% and 90% more likely to be killed at work and the number of major incidents were 114.7% compared to a British injury rate of 92.9%, (1997/98).

3.7. The memorandum indicates that the rate of inspections following major injury is now down to 6%. We believe that this reduction accounts for the lower amount of prosecutions. Lower pro-active inspection activity also results in a missed opportunity for employers and business sectors to learn from failures while still exposing workers to risk.

3.8. Scotland’s incidences of major injuries appear to have increased between 2001/02 (2308) and 2005/06 (2772) before decreasing by 2009/10 to 2548.

3.9. Although the HSE in Scotland has not witnessed large scale cuts in front line inspection resources as a result of the recent voluntary severance exercise, we are concerned that cuts in inspection resources will be inevitable in the next two years.

3.10. Evidence indicates there will be massive cuts in the number of workplaces subject to inspections by local authorities in England and Wales. We are not aware of any similar agreement in Scotland but know of at least one authority where there have been significant reductions in the number of workplaces to be included in their planned inspection programme.

3.11. The STUC is concerned that it will be extremely difficult to reduce the incidences of fatal, major and other injuries or occupational disease if we do not provide adequate resources and support to allow enforcement agencies to carry out their duties.

4. Effective Health and Safety Relationships

4.1. The STUC has enjoyed positive working relationships with the HSE in Scotland and we were instrumental in encouraging the then First Minister, Jack McConnell to support the formation of a body of stakeholders with an interest in health and safety.

4.2. The Partnership for Health and Safety in Scotland (PHASS) was formed in 2002 and provides a platform for consultation. While we have been supportive of the partnership our concern is that its consultative function is likely to be limited by a lack of resources in the HSE in the future.

4.3. The Scottish Government has worked with a range of partners to develop initiatives aimed at promoting health at work, initially through Scotland’s Health at Work, Safe and Healthy Working and latterly the Scottish Centre for Healthy Working Lives (SCHWL). This has been productive in promoting pro-active activity on issues such as

---

violence against public service workers, promoting worker involvement in health and safety and supporting the wider work of the Scottish Government’s work on workplace health promotion and accident prevention.

4.4. We believe that there has been significant improvement in the relationships between the HSE and the COPFS in Scotland since the formation of the Specialist Health and Safety Division in 2008. The STUC supported this move following our involvement in supporting many of the bereaved families of the victims in the ICL plastics factory in 2004 and in other cases, particularly in the open cast mining industry. The STUC is of the view that it is still taking too long for fatal accident cases to come to a conclusion, putting the lives of families on hold but also missing the opportunity to take action to prevent similar accidents.

5. Occupational Health and Safety and the Scottish Parliament

5.1. The Scottish Parliament has responsibility for health and the STUC believes that this should include developing occupational health provision within the NHS that is open and accessible to all.

5.2. In Dame Carol Black’s report on the health of Britain’s working age population, “Working for a Healthier Tomorrow” the author identified the problem caused by the historical detachment of occupational health care from mainstream healthcare provision. The STUC shares the view of the author that the savings to the taxpayer in benefit payments and health care costs in addition to the benefits to the wider economy justify investment in occupational health services delivered by the state.

5.3. Occupational health provision as it is currently delivered does not encourage workers to access help. There is a role for occupational health and allied health professionals employed by the state to work with employers and trade unions to deliver healthy and safe working environments before occupational accidents, ill health and disease occur.

5.4. The Calman Commission concluded, that while there was no reason that health and safety matters could not be devolved, there were questions on whether this would appreciably improve matters for the people of Scotland.

5.5. We would support the recommendation in Calman that there should be a closer relationship between the HSE in Scotland and the Scottish Parliament.

5.6. While we believe there would be in advantage in the HSE offering evidence to Committees of the Scottish Parliament as a matter of routine, we are also of the view that the Scottish Parliament should have the ability to scrutinise and debate Scotland’s health and safety performance.

5.7. The STUC is aware that the purpose of the Scottish Parliament’s European and External Affairs Committee is to, among other things, scrutinise the implementation of European Communities legislation. The STUC believes that the possibility should be investigated of convening a Committee of the Scottish Parliament to scrutinise reports

---

from the Health and Safety Executive pertaining to occupational health and safety in Scotland. Any such committee could also carry out work with other Scottish Parliament Committees such as Justice, Health and Sport, Equal Opportunities and the Economy, Energy and Tourism to ensure that every possible effort is being made to promote higher standards of health and safety in our workplaces to the benefit of wider society.

6. The Impact of Health and Safety Legislation on Business

6.1. A report published by the TUC, “The Case for Health and Safety” refers to research carried out by the Government which found that the average firm spends approximately 20 hours and just over £350 a year on the administrative costs of complying with the Management of Health and Safety at Work Regulations 1999.

6.2. The STUC does not believe that the financial sum quoted or the time commitment involved could be described as a significant burden especially if we consider that these figures relate to a survey involving businesses of all sizes and therefore the actual burden on small businesses is likely to be less.

6.3. Our concern in relation to claims that health and safety legislation is over burdensome might be that Scottish employers are using this populist argument to do less on health and safety than their counterparts in England and Wales.

7. Health and Safety and the Labour Market

7.1. Woolfson and Beck also put forward for discussion whether one of the reasons for the disparity in fatal and major rates could be for workers to take on or stay in jobs in areas of high unemployment or social deprivation. They carried out preliminary analysis to examine this theory and suggested that there may be a link between regional unemployment and incident and fatality rates. The STUC believes that this requires further investigation.

June 2011

---

6 "The Case for Health and Safety
Written evidence submitted by Jim McCourt, Inverclyde Advice and Employment Rights Centre (IAERC)

Executive Summary

The current strategy and policy applied by HSE Scotland is evidently failing and has had catastrophic consequences for particular sectors of society. As reported by Beck and Woolfson (The Scottish Anomaly (1996) and other leading research articles the system in Scotland is failing the people it is paid to protect.

It is my view that, in generic terms all data collected by the relevant authorities is grossly lower than in actuality, due to the circumstances that currently prevail, this is inevitable. The reliance of atypical, peripatetic workers in all industry sectors ensures this. This however straddles all jurisdictions in the UK and cannot be held attributable as the sole reason for the Scottish Anomalies.

I believe that the lack of reliable data in employment categories renders OHS Stats in terms of processes understood and recorded and any exposures within that framework renders core data relied upon by HSE as useless and thus unable to lever us towards any meaningful debate on alleviating the situation in a Scottish Context.

1. Effectiveness of health and safety regulation in Scotland and likely impact of HSE cuts

To date there has been no credible attempt to explain the negative bias within the current comparative statistics between Scotland and the UK. It is difficult to anticipate any positive upward trend if the status quo remains in strategy and policy in Scotland.

Our Centre (IAERC) has been involved in two major pieces of work in the last decade that has seen us subject to the workings of HSE Scotland at close quarters. The National Semiconductor UK Cancer Studies of 2001 and 2010, the ICL/Stockline Disaster Report (2007).

Working Examples

ICL/Stockline Inquiry
In the ICL/Stockline Inquiry and subsequent report by Brian Gill it is clear on any level that the failure to regulate was the key cause of the disaster. HSE Scotland had a long history of interacting with ICL Stockline but simply failed to enforce in the key area of safe use of LPG. Whilst the Gill report highlights the need for ACOPS in LPG it is clear that without consistent and genuine governance in HSE Scotland there is nothing to prevent this type of situation occurring again.

Despite field inspectors explicitly advocating prosecution management and senior staff refused to consider this as a viable outcome. This proved to have catastrophic consequences. Why did HSE Scotland adopt this strategy? Gills failure to scrutinise this aspect of proceedings is a key failing. The Gill Report could have highlighted the management failings in this case and worked towards an upstream, critical and preventative solution for future governance in similar scenarios. All transcripts of the trial are available on the ICL/Stockline Inquiry website.

National Semiconductor UK Cancer Study (2001 and 2011)
A concern arose in the local community concerning ill health outcomes for workers who worked at National Semiconductor at Greenock. This led to a study being announced by HSE Epidemiology in Bootle which relied on data and practice in regulatory and enforcement terms gathered and
administered under the auspices of HSE Scotland. The announcement by HSE took place in May 1999. The subsequent study, published in December 2001 found excess rates in four cancers. HSE omitted key workers from this and subsequent date on the basis that they were agency employees and thus too hard to track down. Despite the fact that the workers involved worked in some of the harshest conditions on the site and were reported by the core workers as having some of the worst exposures among all workers on site.
HSE produced a follow up study on August 25th 2010 that was announced as giving the factory the all clear. Stage managed press coverage and ignoring critical data are not the actions expected of a UK Governmental Dep’t involved in such critical work.
It is not the role of HSE to act as Advocates for Industry. No economic consideration should be considered when approaching any company for the purposes of inspectorate and regulatory purposes , the consistently poor statistics for HSE Scotland on prosecutions and Occupational Health outcomes can only mean that the governance at a local level is not fit for purpose. To date the anomalies, long lasting and consistent are inexplicable in evidence terms.

2. Roles and division of responsibilities between the different bodies responsible for health and safety in Scotland.

It is clear that in the ICL/Stockline situation there were clear failings in the systems in place that should have provided support and intervention for the workers. Sensible analysis of the Inquiry statements and proceedings clearly show this. To date there has been no real notable developments by HSE Scotland that has demonstrated a willingness to understand or accept their critical role in the creation of the circumstances that led to the Disaster.
There has to be a single entity responsible for all regulation. No jurisdiction split between Local Authority and HSE for regulatory purposes. A dedicated tier should be devoted to all regulation and enforcement. This should include HSE, Local Authorities, Fire Department and Local Communities.
That the Fire Service did not intervene in the Stockline situation nor HSE elect to prohibit the faulty gas pipe clearly show the ineffectiveness of singular regulatory bodies in terms of the lack of accountability and political will in moving things forward.

3. Impact of poor health and safety regulation on Workers and Communities

In the working examples laid out above, both disasters NSUK and ICL Stockline took place in a non trade union setting. Both were classic examples of the failure of the much vaunted stakeholder strategy, which in effect id controlled by degree of interest from the employer. This inherent imbalance was ruthlessly exposed in the outcomes produced and then denied by the respective state players but most notably by HSE Scotland.

Ironically not one recommendation from any of the reports refers to tightening of the HSCE Regulations, so critical in this setting. Upstream enforcement of this legislation would have the effect of supporting the sector of society most affected the non trade sector of the workforce. HSE own stats state that is 50% safer at work if you are a member of the Trade Union yet we can see no special consideration of resource diversion to this area.

As well as the progression of a single tier regulatory and enforcement arm there has to be linkage with

(a) NHS at Primary Care stage for the purposes of data collection of all negative workplace health outcomes being recorded. Included in this is improved training for GPs in understanding Occupational Health and Health and Safety Matters. There should be a placement of Independent
Occupational Health Specialists funded by Industry and HSE, who as well as providing a service to workers could pool resources and data to analytical purpose to detect trends in particular occurrences or sectorial trends and act at an early stage to ensure they are acted upon.

(b) Connection with Jobcentre Plus. May of the workers affected by the worst conditions are compelled to take work offered for fear of benefits withdrawal. JCP should ensure that all risk assessments and job descriptions are provided to the employee prior to commencement of work. This will help the employee understand the nature of the work they are likely to face and enable them to raise concerns and pass to advisors who can advocate on their behalf.

(c) Updated and stricter employment laws. At present there is an exceedingly low average award for Health and Safety case at Employment Tribunal, the introduction of specialist judges experienced in this field and done so on an interim relief basis within a 7 day period would have a deterring effect on employers and assist in protecting workers affected by the health and safety conditions prevalent in the sector described.

(d) The adoption of the Roving Safety. We believe this is a key and cost effective way of highlighting the worst employers. The reality of working life in Scotland is that there is a pervasive fear in some workplaces allied to systematic discouragement of proper reporting of accidents or near misses. A startling example of this is at the Amazon Site, a distribution centre for goods purchased online. They have a system expressed in the workers terms and conditions that states that if a worker or employee reports a three day absence as a result of a workplace accident if required under RIDDOR (Reporting of Disease and Dangerous Occurrence Regulations, the whole shift loses it Performance Related Pay for the month in question. This is a startling practice designed to deter workers from reporting accidents and is wrong on many levels. It has no place in a fair system.

(e) Critically strict enforcement of the Health and Safety Consultation with Employees Regulations (HSCER 1995) These are the regulations that should govern the working practices and appointment of Safety Committees in Non Trade Union Workplaces. There has been little of no proactivity by HSE this area. In terms of effective resource use, this could be a way forward. Prevention and the precautionary principle are the way forward. Rigorous enforcement of the HSCE Regs would achieve this on many levels.


At a macro level on the working examples provided and at a generic level HSE consistently denies that the stats of Occ Health, accidents and prosecutions are of any concern. To do so would see an admission on many fronts, failure to regulate, enforce etc.
Any analysis of the existing data for Scotland, despite anticipated massive underreporting, shows negative bias in Scotland. Again the higher levels of HSE management in Scotland seem content to progress on this basis. Whatever the reasons for the anomalies in this context, the current conditions that prevail throughout the UK ensure that failure to collect data will continue unchecked.
There should be an Inquiry into the policy and strategies adopted by HSE Scotland. Any future unchecked resource allocation maybe complicit in a continuation of the current strategy. It is critical that the HSE in Scotland is revamped; the current personnel have failed on many levels.

5. HSE research on effective interventions.
HSE core activities should relate to disease and injury prevention which must also entail effective and relevant provision of information to employers and employees and enforcement and prosecution of offenders where necessary. Yet it appears that the inspection visits of HSE staff in Scotland and elsewhere have been steadily eroded in terms of what they have time and resources to check on. HSE recently ran a multi-million pound slips, trips and falls campaign yet ignored major occupational disease problems, such as occupational lung diseases and cancers, in Scotland. It would seem that such campaigns squander resources, are not likely to produce effective interventions in ways that regular pro-active visits, inspections and enforcement will on the major causes of poor OHS in the country.

HSE need to set up investigations of more problem plants especially SMEs like ICL/Stockline to draw out so that inspectors, regulators, workers, ex-workers and communities may be warned about and take action on known and suspect hazards and safety threats. This does not require additional legislation as it is a policy matter.

6. Comparative effectiveness of the Health and Safety Executive (HSE) in Scotland with rest of UK linked to managing health and safety in a devolutionary context

For reasons explored within earlier paragraphs, better mechanisms are needed in Scotland for ensuring information exchange, policy development based on evidence and enforcement. This will ensure greater effectiveness and a better use of resources targeted to often neglected but major problems. Hence HSE organisation needs to ensure more effective working with local authorities, NHS Scotland which is not reserved, SEPA which is not reserved, and other Scottish specific agencies dealing with business and the environment that either impact on or are influenced by work environment issues.

It is notable that bodies such as SEPA have been able to function well as a devolved agency in a devolved country. A partially devolved HSE in Scotland with some accountability on its policies relating to enforcement and prosecutions on workplace injuries and diseases may be possible.

7. International comparisons with similar sized countries/similar risk industries

The Finnish and Scandinavian Models on OH highlight the interventionist strategies in populations of similar sizes can prove successful. Despite this HSE Scotland show no aptitude for pursuing similar models. Ultimately the costs of mortality and bad health caused by Occupation are simply transferred to the public purse due to latency periods and other factors. The precautionary principle as adopted by the comparators named here is a working example of cost effectiveness with obvious benefits for Scottish Workers and their families and the wider communities. That the Scottish Public have operated under a regulatory regime that has failed in a UK context for so long is unacceptable.

June 2011
Written evidence submitted by Scottish Chambers of Commerce

1. Scottish Chambers of Commerce are pleased to have the opportunity to feed into the Scottish Affairs committee’s inquiry into Health and Safety in Scotland. Below, we present some brief comments on the issues that the inquiry addresses, but we look forward to having the opportunity to discuss these in more detail with committee members.

2. We are pleased that the Committee has already been in contact with Aberdeen and Grampian Chamber of Commerce regarding the specific health and safety issues faced by the oil and gas industry. We welcome the Committee’s recognition that different industries have different health and safety priorities and carry different levels of risk. This reflects the key recommendation of the British Chambers of Commerce Health and Safety report of May 2011, which called on behalf of Chambers across the UK for proportionate, industry-specific health and safety regulation.

3. The Scottish Chambers of Commerce are specifically concerned that low-risk businesses are not burdened with excessive costs due to fear of falling foul of health and safety legislation if they do not comply even with regulations that may be disproportionate or irrelevant to their business.

4. The different agencies responsible for implementing business regulation, including health and safety legislation, should ensure that their reporting systems are coordinated and simplified in order to reduce the costs to businesses and other organisations that must comply.

5. Health and safety regulation does impose significant costs on business. However, the BCC’s report found that the perception of the burdens of health and safety regulation often outstripped the actual costs. This perception gap poses a particular barrier to small low risk firms to taking on their first employee. Encouraging such employment is a priority policy for both the Scottish Government and opposition parties in the Scottish Parliament; information addressing misperceptions about the burdens of health and safety regulation must improve in order to break down this barrier to job creation in Scotland.

6. The comments above represent a summary of the Scottish Chambers of Commerce’s main concerns about the issues the Scottish Affairs Committee’s inquiry is addressing. I hope that these comments are helpful in moving the Committee’s inquiry forward. Please do get in touch if we can be of any further assistance at all.

June 2011
Written evidence submitted by Families Against Corporate Killers (FACK)

1. FACK is a growing group of families, united by the bond of having lost loved ones in work-related incidents. These families have formed a national campaigning network which aims to stop workers and others being killed in preventable incidents and which will direct bereaved families to sources of legal help and emotional support as well as advocacy and support for families through investigation, inquests and prosecution. FACK gives a collective voice to those who pay the price for employer negligence, helping equal the voice of employers and business in shaping Government policy on health and safety.

2. Families bereaved as a result of unsafe and unhealthy workplaces are angry and frustrated. They feel they have been robbed twice: once of their loved ones in incidents that should have been prevented if employers had simply obeyed the law on workplace health and safety; and secondly of their right to justice.

3. In this evidence we aim to give a human face to the issue of health and safety.

Executive Summary

4. FACK firmly believes:

a. the Government should recognise the true magnitude of the work-related death toll and massively increase funding for the enforcement of health and safety to ensure workplaces are adequately inspected so that negligent employers can be caught BEFORE they kill someone. Preventing deaths would save the Government money, and would save families unquantifiable heartache.

b. that enforcement agencies - the HSE and Local Authorities - must be proactive and use their full enforcement powers, not just seek to advise and encourage.

c. that those in our justice system should give work-related deaths the priority they deserve, and should prosecute swiftly with the full force of the laws available. Ensure that lessons are learned before more lives are lost. Communicate with families and treat them with compassion as the victims of crime; and

d. that Government should shift from its deregulatory agenda or face the stark reality that, in the health and safety arena, this will result in it having blood on its hands.

Lives Lost

5. The real facts and figures must be published so that the true toll of work-related deaths is recognised. The death “statistics” published by the HSE annually only serve to mask this. The 3 men who lost their lives in the Flying Phantom tragedy, the 16 men killed in the Super Puma helicopter disaster, these deaths don’t “count” as far as the HSE statistics are concerned. But their lives and deaths most certainly do count. When all deaths in work-related incidents are given the priority they deserve, no matter where or how they occurred (whether in the air, on the water, on the roads, by suicide, etc), the real figure for those killed in the UK is nearer 1600, almost 10 times what the “official” HSE figures would have you believe. And that’s before you include the 50,000 who die due to work-related illnesses such as mesothelioma each year. See Safety and Health Practitioner December 2009 -The Whole Story- http://www.shponline.co.uk/features-content/full/the-whole-story and http://www.hazardscampaign.org.uk/pressrelease/hsefatalityfigures.htm.
6. Government, the press, the public at large - all need to know the whole story if health and safety is to be given the priority it deserves and not simply treated as a subject for satire and/or derision. Only when the true death toll is recognised will the correct investment be made to protect the future health and safety of our loved ones.

7. There has been a specialist Health and Safety Division of the Crown Office and Procurator Fiscals Service (COPFS) since July 2009. As well as the Health and Safety Executive, other agencies who submit reports to the Division include the Office of the Rail Regulator, the Maritime and Coastguard Agency, local authorities and the police. The Committee should investigate whether these reports could be used as the starting point for publishing a truer figure.

Who Bears the Burden?

8. It is not business which bears the burden of health and safety regulation, it is families like ours that bear the burden of appalling health and safety implementation. Consider the 15 year old who for some weeks after his father’s death sat in his father’s car, playing his father’s CDs, wearing his father’s clothes, withdrawn from the world. Or his little sister who, at the age of 3 was asked what she wanted from Santa and answered: ‘A big long ladder so that daddy can climb down from the sky and be here’.

Health and Safety Regulation

9. Just as light touch regulation plus risk taking equalled economic disaster, in the health and safety arena, light touch regulation plus risk taking will equal more lives lost and more families robbed of a future with their loved one. Any moves towards the de-regulation of health and safety must be stopped.

Prevention

10. Figures gained using a Freedom of Information request revealed that the number of HSE inspectors had been decimated since the catastrophic loss of life in the ICL/Stockline disaster- a decrease of 16% in 4 years. “There is not an adequate number of health and safety inspectors in the employment of the HSE in Scotland to maintain an adequate system of independent inspection of building sites to oversee the maintenance of reasonable standards of health and safety.” Not our words. Those of Sheriff Davidson who presided over the 2010 Fatal Accident Inquiry into the death of Andrezej Freitag, an experienced 55 year old Polish construction worker who came to Scotland to make a better life for himself and his family, but who returned in a coffin. Killed because his employer did not provide the correct safety guards which would have prevented his fall from the top floor of a block of flats. The Sheriff ruled, as FACK families hear all too often, that Mr Freitag’s death was “entirely foreseeable and preventable”. He said that is a “public scandal”. Enforcement of health and safety must be increased to save lives and stop this public scandal.

11. The Sheriff also ruled the death was “entirely foreseeable and entirely preventable”, a phrase heard all too often by families who have lost loved ones in work-related deaths.

12. During a Scotland-wide safety inspection initiative in February and March 2011, one in five construction sites in Scotland were so dangerous that workers lives were being put at risk according to inspectors. Jeanette Reuben, Head of Construction Scotland, is quoted as saying: “This was the fifth year of the inspection initiative and it is
disappointing to find construction sites taking the same unnecessary risks with their workers' lives." Something needs to change, not least the fact that these inspections tend to be publicised well in advance of them happening. "There should be more unannounced inspections. They always know when an inspector is coming. When you have got a visitor, you clean your house." These are the words of a family member speaking to Rita Donaghy when she was conducting the inquiry: "One Death is too Many: Inquiry into the Underlying Causes of Construction Fatal Accidents". We urge Committee members to read the Donaghy report.

13. Sheriff Davidson also criticised the "absurd" practice whereby inspectors did not carry out follow-up visits to building sites: "I recognise the limited resources available to the HSE, but consider this practice is unacceptable, having regard to the public interest. I recommend henceforth that in every case where a prohibition notice is issued that there should be a re-inspection before the notice is withdrawn to ensure that all matters which gave rise to the issue of the notice have been rectified." Committee members should determine whether this recommendation is being adhered to.

Learning Lessons

14. The investigation of all workplace deaths and major injuries should take place. Currently, only 1 in 19 are. Even where enforcement does take place, lengthy delays are the norm. Two years after the death of Michael Adamson, his sister read about Barry Martin, electrocuted at work in 2003. His employer had failed to ensure power switches were padlocked closed. The judge described the 4 years it took to get that case to court as a “matter of regret”. Louise puts it more strongly because her brother died because of that exact same failure, as did 6 other electricians between 2004 and 2006. All workplace deaths and major injuries must be investigated, investigated swiftly, and the HSE must put out stark warnings and recommendations to others within specific industries, sectors etc. in the aftermath of any incident so that lessons can be learned and implemented before more lives are lost.

An Accident Waiting to Happen

15. 17-yr-old trainee scaffolder Steven Burke fell more than 30ft to his death only 2 days after telling his mum his safety worries. 23-yr-old father of one Craig Whelan was killed in a fireball in a 200ft chimney when on the brink of leaving his job because of safety concerns. And weeks before the death of Mark Wright he’d said his employer was taking so many health and safety risks, someone would be killed one day. He phoned his mum the night before he was killed. He had a new job and was going to hand in his notice. He didn’t get the chance. These accidents waiting to happen are not accidents. Despite this, investigators and prosecutors often treat them as a breach of regulations, not as the safety crimes they are. Those who die as a result of work-related incidents are more often than not the victims of crime. This must be recognised and help must be provided to families accordingly.

Prosecution Processes

16. Families wait many years for answers to the questions: "How did our loved one die? And why?" The family of Dr Graham Meldrum found out in open court the horrific manner in which his head was impaled by the faulty tail lift of a lorry, and this almost two and a half years after his death. The widow of one of the men killed in Flying Phantom tragedy is quoted in December 2010 as saying: "It’s almost three years since my husband died and we’re no nearer finding out if anyone is going to be prosecuted or if we are going to have a public inquiry."
17. While families wait for the outcome of the investigation and prosecution processes, they are often left to battle with the justice system for scraps of information. Brian French, a father of five, and Colin Ferguson were killed when their Land Rover was crushed by a 100 tonne truck at Pennyvenie opencast mine on 26 February 2007. Other than a standard letter received a month later, Brian and Colin’s families received no information from the procurator fiscal until more than 15 months after the deaths of their loved ones. This came only after they wrote to the then Lord Advocate to tell her they had been very patient, and they thought some might say too patient because in the months they waited for news about a prosecution, Jim Griffin (a father of three) was crushed between 2 dumper trucks at Pennyenie.

18. The setting up of the COPFS Health and Safety Division should have improved the communication flow. This should be explored by the Committee.

Deterrent Effect

19. “Not enough individuals with positions of responsibility for site safety are prosecuted.” These are again the words of Sheriff Davidson. Michael Adamson’s employer company was referred to as an “invisible man” now sitting in the dock by the Advocate representing it. Prosecution of the invisible man does not and will never provide justice for the family left behind, nor will it act as a deterrent to others who may choose to play fast and loose with the health and safety of their employees.

20. We are concerned by an apparent lack of appetite to prosecute individual managers and directors in Scotland, and by what we perceive as a desire to plead away cases before they reach court in an effort to clear the backlog of cases which has been allowed to build up over the years. Since the set up of the COPFS Health and Safety Division the case of James Kelly, killed while working for Stirling Stone Ltd is the first case to proceed in Court by way of trial rather than being resolved by way of plea. He was killed on 26 April 2007. The conviction was secured on 11 March 2011.

21. The outcome of prosecutions must be publicised effectively if it is to have the desired deterrent effect on others and preventing further loss of life.

June 2011
The RMT represents over 10,000 members in Scotland, employed in the rail, ferry and offshore sector.

Safety in the rail and ferry sector is regulated by the Office of Rail Regulation and Maritime Coast Guard Agency respectively. Safety in the offshore sector is regulated by the Health and Safety Executive (HSE) and it is in this area we hope this short note assists the Committee in its deliberations.

The PIPER ALPHA tragedy still resonates with our members and the offshore community as does the implications of the Deepwater Horizon accident.

Our main concern is that in incidents of non criminal safety breaches in the offshore sector, prosecutions are currently taken forward by the Procurator Fiscal and not the Heath and Safety Executive. This is in contrast to arrangements in England and Wales where prosecutions are taken forward by the Health and Safety Executive.

This seems to be us a serious anomaly that needs to be addressed. The HSE is the enforcement agency for the Offshore Sector and as such has a high level of knowledge and accumulated experience in understanding the obligations of companies to maintain appropriate safety standards and protect the safety of the workforce. It is also the HSE that investigates breaches of safety and then makes recommendations to the Procurator Fiscal as to whether to bring proceedings against a company.

All the evidence proves cases are not adequately taken forward by Procurator Fiscal, in short our members do not feel this organisation is up to the job. In particular our members are concerned that in the offshore sector where specialist knowledge is needed in pursuing prosecutions the Procurator Fiscal is ill equipped to carry out this role both in terms of resources and expertise.

Moreover as well as not being able to compete with the industry knowledge of the oil companies the Procurator Fiscal simply cannot compete with the amount of financial resources that big oil will throw at cases.

There is a very recent example of the Procurator Fiscal failings when in May 2011 a prosecution against Maersk Oil was abandoned midway through the trial. This was one of the first cases we can recall where the oil company was resisting the charges and the case was being heard before a jury.

A statement appeared in the Press and Journal from the Crown Office stating that the Crown would be taking no further evidence and as far as they were concerned the case was closed. This in itself is worry as the defence being advanced by Maersk was suggesting the men who were seriously injured were to blame because they were breaching procedures. This may leave them vulnerable when pursuing damages claims for the serious injuries they sustained.

RMT believes that for the offshore sector where, following an investigation by the HSE, there is evidence for prosecution of civil breaches of health and safety, then this prosecution should then be pursued by the Health and Safety Executive instead of being referred to the
Procurator Fiscal. In short we believe the English/Welsh approach should be adopted which would allow the HSE not only to investigate but also to prosecute.

11. We would suggest to the Committee that there may be some support within the HSE itself for this approach.

12. Generally the RMT also shares the concerns of the wider trade union movement that the public sector cuts will reduce the effectiveness of the HSE in enforcing health and safety regulations and completely reject claims that health and safety legislation is a burden on business.

June 2011
Written evidence submitted by NFU Scotland

Summary

1. Many in the Scottish farming industry would agree that the sector needs to improve its health and safety record, however, working in isolation, for long hours, with heavy machinery and unpredictable livestock, as well as cultural attitudes means this may be a difficult trend to reverse. NFU Scotland is fully committed to improving the situation.

2. Because the Health & Safety Executive (HSE) can only conduct a limited number of inspections compared to Scotland’s vast extent of Scottish agricultural land, and because Scottish farmers are often too afraid to ask HSE for information for fear of being inspected, the relationship does not operate as well as it could. NFUS therefore recommends that HSE focus on education for farmers and advocate that machinery producers develop machinery with the best possible safety features and information on their safe usage.

Submission

3. Scottish agriculture’s health and safety record could undoubtedly be improved upon and the industry and its representatives will readily agree that this is the case.

4. Scottish farmers face a unique set of circumstances compared to other sectors, however, which must be taken into account - emphatically not to excuse or mitigate - rather to explain why cases of injury and death are perhaps higher on Scottish and UK farms than in other areas of work.

5. Farmers often work in isolation partly because farm incomes have decreased while running costs, including wages, have increased. Where farm businesses will previously have employed dozens of people, farm businesses today are much more likely to be a one- or two-man operation. In addition, farming has become much more mechanised, the machinery involved having become larger too and including moving machinery tractors, HGVs, combine harvesters etc., with moving parts: harvesters, mowers, sprayers and balers, for example.

6. Machinery is expensive to buy, run and maintain and, because it can be used for lengthy periods at a time and is powered by fuel or electricity, can become very hot. Some pieces - such as combines – may only be used at particular times of year and should therefore be thoroughly checked before use. Because of the pressure to complete a certain task within a certain period of time; a task such as harvesting may see farm workers pushing themselves to the limits, working for many hours and days at a stretch in order to get the job done before the weather turns or the crop becomes overripe. The stress involved in tasks such as harvesting, as well as the machinery and accumulating tiredness can lead to mistakes being made and corners being cut. These are the kinds of circumstances in which farmers may compromise their safety in order to ‘get the job done’. This can and does lead to accidents.

7. Other circumstances which lead to accidents are contact with livestock, falls from heights, asphyxiation or drowning, being trapped or contact with electricity. Livestock can be unpredictable and accidents occur even in the hands of the most able and careful stockman and are more difficult to prevent, perhaps than other accidents. Falls from heights, asphyxiation or drowning, being trapped or contact with electricity (this can happen when attachments to large machinery, such as telescopic arms on combine harvesters hit power cables over fields), however, are easier to prevent and are areas, along with machinery-related deaths and injuries, are areas which should be targeted especially.
8. In addition to the fact that agricultural work can be lonely and tiring and involves big machinery and large animals, there is also consensus that cultural attitudes to health and safety issues are wanting amongst farmers.

9. The Scottish farming industry’s relationship with the HSE could be improved. Agriculture accounts for a vast percentage of Scotland’s landmass and it is impractical for the Health & Safety Executive to inspect every inch of every Scottish farming premises. Therefore it is key to target specific farming activities.

10. Farmers are very wary of inspections and fear being penalised heavily if their systems and practices are deemed unsafe. This means that HSE is in all likelihood unable to fulfil its information-giving role as farmers are reluctant to ask for help.

11. Farm Safety and Health Awareness days (SHADs), run by HSE, have, however, proven very effective. SHADs provide practical demonstrations of good practice covering the main causes of injury and death in the agricultural industry, including transport, falls, livestock handling and manual handling.

12. These events are well attended and well received, however, the industry record on health and safety does need to improve significantly and there is more that could be done to encourage this. The HSE ‘Make a promise, come home safe’ campaign, which was launched by HSE in 2009 encouraged farmers to promise their families before heading out that they would not take risks and come home safe at the end of the day. Part of the campaign was to issue farmers with small, brightly coloured knots which could be tied to machinery or sites on the farm which presented a particular risk. The campaign’s sentiment was effective and NFUS is keen to see momentum on the HSE’s wider strategy for agriculture with the ultimate aim of reducing incidences on farms.

13. NFUS is preparing a further campaign, which will initially focus on the major causes of accidents. We shall do this in full cooperation with HSE with the aim being less on inspection and penalty and more about encouraging industry compliance with legal standards and the best health and safety-conscious practice.

14. We shall also work directly with machinery dealers – and encourage HSE to do so as well – to try to ensure that newly developing technology incorporates mechanisms to help prevent accidents and to advocate that machinery dealers fully brief farmers of the risks associated with the piece of machinery in question and ways to prevent accidents.

*June 2011*
Written evidence submitted by the Confederation of British Industry (CBI)

1. Employers recognise that effective and considered health and safety management adds value to a business; a proportionate, risk-based approach in the workplace will reduce injuries and increase business efficiency. The regulatory framework should aim to support this goal. CBI members have welcomed the government’s simplification agenda as a means to reduce the burden on businesses without compromising health and safety outcomes, which will be of benefit in Scotland and across the wider UK.

2. Looking at health & safety in Scotland specifically, the CBI believes that:
   - businesses report a consistent relationship with HSE...
   - ...that is constructive, particularly across sectors that are prevalent in Scotland
   - greater clarity is required on the division of responsibilities between the regulators
   - the Damages Act 2009 risks increases legal uncertainty and will undermine business confidence

Businesses report a consistent relationship with HSE...

3. CBI members consider the HSE in Scotland to be consistent with the effectiveness of HSE in England, Wales and Northern Ireland; there is no deviation with the treatment of firms in Scotland compared with those elsewhere in the UK. This approach is particularly welcome for businesses with multiple outlets across the UK, as it enables them to develop and communicate clear and consistent policies across their organisation. Engagement with business through initiatives such as ‘Step Change in Safety’ and ‘Leading from the Top’ is valuable – in the case of the latter, particularly, as a way of involving senior managers in industry in delivering the goals in the HSE’s strategy.

   ...that is constructive, particularly across sectors that are prevalent in Scotland

4. Given the sectoral mix– in particular, the larger share of the economy held by certain high hazard sectors like the oil and gas industry – Scotland has a particular call on HSE resources as these are allocated on a risk basis. On the whole, business believes that HSE handles these sectors well.

5. This was best evidenced in the wake of the Gulf of Mexico disaster, where close collaboration between HSE, DECC and the industry ensured there was a productive and proportionate response in the UK. Leaning from events in the US, HSE’s reiteration at the time that the UK regulatory framework is fit-for-purpose – in the light of pressure from Europe for further controls – was also welcomed by the industry as a necessary defence of the principle of proportionality.

Greater clarity is required on the division of responsibilities between the regulators

6. HSE is not the only regulator with responsibilities for health & safety in Scotland of course, and where our members report more difficulty is where there is scope for better co-ordination between HSE and the Scottish Government, Fire & Rescue Services, SEPA and Planning Authorities. The multiple regulatory and reporting requirements – and the potential for inconsistent application of the rules within Scotland, over and above differences between Scotland and the rest of the UK – are a constant headache for businesses, particularly smaller firms that lack the administrative capacity available to their larger counterparts, and those with multiple sites.

7. While this problem is not exclusive to Scotland – it is reported by firms all across the UK – the costs that are imposed on businesses are very real. So as to avoid any duplication of – or conflicts between – regulatory requirements, it must be a priority for government to provide greater simplicity for duty holders and reduce the compliance burden on business.
The Damages Act 2009 risks increase legal uncertainty and will undermine business confidence

8. Regulations developed by the HSE, and their proper enforcement, are only part of the picture though; the legislative environment clearly has a key role to play in setting the framework of health and safety. The separate legal system in Scotland allows for different treatment on the same issue, which can cause problems. The decision by the Scottish Government to introduce the Damages (Asbestos-related Conditions) (Scotland) Act 2009 overturning the House of Lords scientifically-based decision in Johnston v NEI International Combustion case is an unwelcome example of this, as it has added significantly to the confusion around pleural plaques, asbestos and the nature of compensation.

9. Compensation should be paid where damage has occurred – for instance where someone develops mesothelioma – not where fear of possible future illness exists. The Damage Act breaks this fundamental principle. Medical evidence shows that pleural plaques “have no effect upon...health at all”. By enforcing compensation when plural plaques are found the Act perpetuates confusion: the very fact that a condition may be worthy of compensation suggests serious illness where there is none.

10. There is a very real risk is that a precedent has been set in Scotland for compensation in other ‘exposure only’ conditions. This inevitably raises the costs of insurance for businesses in Scotland and undermines the Scottish legal system.

11. 
June 2011

---

Written evidence submitted by The Scottish Centre for Healthy Working Lives

Executive Summary

The regulatory system in Scotland is considered fit for purpose and liaison with the newly established Crown Office and Procurator Fiscal Service will streamline enforcement at the most critical level.

The continued reduction in HSE resources and reduced focus on some risk areas coupled with an element of uncertainty on how liaison will work with Local Authorities on inspections and charging regimes and a review of regulation will create uncertainty among duty holders which is not helpful.

Work to engage smaller organisations and ensure appropriate interpretation of regulation must continue, perhaps through partnerships with bodies such as the Scottish Centre for Healthy Working Lives but with mainstream HSE support for the process.

Scotland, lead by HSE, has a sound record in partnership working to reach a range of duty holders. Reducing enforcement reach and resourcing creates a risk to maintenance of high standards and in this case, partnership working and sharing of data across a range of stakeholders will be even more important.

Stakeholder and partner involvement in the creation of the evidence base for Scottish activity would further help local support and engagement across sectors and build on the already unified messages being created.

1. The effectiveness of health and safety regulation in Scotland

1.1 The enforcement of regulation by the Health and Safety Executive and Local Authorities can vary, but regular partnership and cross working between the bodies concerned and their partners helps to reduce this.

1.2 The breadth of current regulation provides for all organisations to identify how and where they fit in the regulatory system and cover all the major risks. The current regulatory system is effective in providing direction and guidance for compliance. Access to this, and other relevant sources of information could be improved.

2. The roles and division of responsibilities between the different bodies responsible for health and safety in Scotland

2.1 Responsibility for health and safety rests with every organisation and employer across Scotland, but to narrow this to regulators and bodies providing assistance to business may be more helpful. At a time when there is continues strain on HSE resources it is important that roles and responsibilities are clarified and that all agencies support each other position. The Scottish Centre for Healthy Working Lives has no enforcement power but is well placed as an independent source of advice and support, to work alongside the regulators, providing free services to business, especially small and medium sized enterprises and those with lesser risk. This frees the
regulator to make targeted inspections while other businesses receive the necessary support to prevent accidents and ill health.

2.2 Experience suggests that smaller organisations do not know or understand which regulator has visited. The exception may be in relation to food inspection where there is more clarity.

2.3 The regulators understand the boundaries but this may be of little consequence to a business that may have different enforcers operating on different parts of the same premises with inadvertent overlap or differences in requirements, priorities and recommendations. It would be advantageous to the end user to have a single regulator appointed or formal communication established between local regulators, perhaps access to and supporting a single inspection recording and reporting system across enforcement and perhaps key partners.

3. **The effectiveness of the relationships between the Health and Safety Executive (HSE), the Crown Office and Procurator Fiscal Service, the Scottish Government, local authorities, and other relevant bodies**

3.1 Scotland presents an exemplar model for partnership working with all key partners invited to, and contributing to improvement of the wider occupational health and safety system. It is important that each partner continues to be represented and committed to this model and that information flows within the organisations themselves.

3.2 The work of the Partnership for Health and Safety in Scotland (PHASS) must continue to be supported. The new format to this groups work and interaction with business is an important step forward. It also provides an opportunity for partners, (both represented on PHASS and those not represented on PHASS) to bring members together and discuss the current system in Scotland. I believe this could be further advanced to make a real difference to thinking and delivery of health and safety in business.

3.3 Work with the new Crown Office and Procurator Fiscal Service is reportedly improving communication and understanding across enforcers and prosecutors and is anticipated to be a much more efficient way of operating the judicial process. PFs and enforcers in the same room talking to each other streamlines the evidence flow and understanding and must be a good thing.

4. **The impact of health and safety regulation upon business**

4.1 Scotland carries the same regulation in terms of Health and Safety as the rest of the United Kingdom. Guidance on and interpretation of this regulation is supplied in the main, by the Health and Safety Executive (HSE) or other external partners for example the Scottish Centre for Healthy Working Lives. Organisations that have access to a “competent person” generally understand and can interpret and implement the regulation and access external support and explanation with relative ease in Scotland. Smaller organisations from across business sectors, including voluntary organisations often struggle to identify how the regulation applies to their circumstance and where to get support for interpretation and implementation.
4.2 Many businesses struggle to interpret the appropriate level of compliance with regulation. A media culture of hyping over regulation and inappropriate or disproportionate actions blamed on “health and safety” does not help the situation, this is not unique to Scotland. While poor practice does exist, there are many more examples of the current system working well to improve health and safety of employees but this goes both unrecognised and unreported in the main.

4.3 A clear business case for compliance with regulation and a focus on success stories appropriate to the sector could strengthen the positive messages going out. This may be especially appropriate in hard to reach and often more dangerous professions such as agriculture, waste management and small construction operations. Good health and safety isn’t a burden, it’s a means to ensuring profit and longevity in your small business.

4.4 Where organisations have difficulty in interpreting regulation, they are at risk of exploitation by scare mongering and unscrupulous traders, furthering the notion that health and safety is over burdensome and disproportionate. Obtaining accurate, timing and proportionate advice can be very cost effective for business. The regulators can do more to promote access to this advice from the Scottish Centre for Healthy Working Lives and other partners.

4.5 The models for good inter agency and partnership working are strong in Scotland and this is to the advantage of Scottish business. These practices are often not observed or taken into account south of the boarder, which could save considerable time and effort on their part.

5. Is there a lack of data on health and safety matters in Scotland, and how does this affect the understanding of potential health and safety problems in Scotland?

5.1 More data and statistics may help focus the mind in a more local context and this would be a positive in terms of provision of services and promotion of positive local messages. This data should not all come from a single source nor focus solely on enforcement, ill health or accident statistics. Key partners should contribute to create an accurate picture of issues, practice and compliance across Scotland which could have a real impact of influencing wider public health messages.

6. How does the HSE know how effective their interventions are?

6.1 Interventions can range from sole originator campaigns to partnership activities and promotion of resources through partners and intermediaries. The level of evaluation in Scotland varies from detailed follow up of participants to no evaluation.

6.2 Interventions may not originate in Scotland making a reliance on other parts of HSE to provide suitable feedback. The importance of feedback to Scotland may, on occasion be neglected as simply part of the larger process making identification of effectiveness in Scotland, hard to differentiate and quantify.
6.3 Data on the effectiveness of interventions could be further supported by improved reporting and data sharing between key partners. There is a framework for measuring the impact of the Scottish “Health Works” strategy which can take evidence from all parties to contribute to the overall impacts of the strategy.

6.4 Support for HSE to run and contribute to localised partnership interventions would strengthen identification of success rates enabling differentiation from UK wide evaluations.

7. How does the HSE monitor the impact of the cases that are investigated, the number that lead to prosecutions, and whether fines are collected?

7.1 Do not have comment on this issue, but the introduction of the specialist Crown Office and Procurator Fiscal Service must have an impact on success here

8. How does the effectiveness of the Health and Safety Executive (HSE) in Scotland compare with the effectiveness of the HSE in England, Wales and Northern Ireland; and whether the organisational structure of the HSE is the best way to manage health and safety in the context of devolution.

8.1 HSE in Scotland has worked hard to successfully engage partners and work closely with devolved powers and departments. Broadening the remit of the HSE office in Scotland to out-with its borders may reduce the effectiveness of this work and create uncertainty of direction among staff and a difficulty of positions for management. This expansion leaves the Scottish HSE office dealing with two judicial systems

8.2 The majority of businesses deal very little with the judicial system but are concerned with the actual regulation and implementation of health and safety on a daily basis. This may be north and south of the Scottish boarder. The reserved nature of health and safety regulation provides the most appropriate system for business.

9. Whether the HSE have correctly identified the areas of concern and have appropriately targeted their resources in Scotland?

9.1 Under the current business plan for Scotland, HSE has identified a way of operating to help target local (Scottish) need and local business variation. Following a national (UK wide) plan for reform may create gaps in the enforcement regime and HSE Scotland should be allowed to continue to develop a business plan appropriate to Scottish business type, risk profiles and successful partnerships.

9.2 Partnership working helps address many issues for enforcement bodies and provision for partnership working, especially in key risk areas, should be maintained in any future planning.

10. What effect any reduction in the HSE workforce might impact upon the HSE as a whole and its work in Scotland?
10.1 HSE is an organisation that has undergone considerable change in recent years and is clearly heading for more. The constant shifting work force makes maintaining good working relationships and partnerships difficult for partners and business alike.

10.2 The potential loss of HSE as a partner in awareness raising events (due to staff reductions), seminars, training and the many other activities that inspectors give time to, to raise the positive profile of the HSE and support their partners, will be a big loss and reduces the credibility of partnership working e.g. everyone else turns up except HSE as they no longer have the resource!!; sends a poor message to business about the role of the major enforcement body.

10.3 The work that HSE does on preventative activities e.g. Health and Safety Awareness Officers, will be a loss and increase the importance of referral to partners such as the Scottish Centre for Healthy Working Lives. The loss of the HSE Info line is also likely to lead to increased demands.

11. What international comparisons with similar sized countries, or similar risk industries, can be made which could be helpful?

11.1 Do not have comment on this issue.

June 2011
Written evidence submitted by the Association of British Insurers (ABI)

1 **ABI**

1.1 The ABI is the voice of insurance, representing the general insurance, investment and long-term savings industry. It was formed in 1985 to represent the whole of the industry and today has over 300 members, accounting for some 90% of premiums in the UK.

2 **Executive Summary**

- Effective Health and safety legislation and supporting regulations are essential across the UK to manage risk in the workplace.
- A common approach to health and safety should apply across the UK for simplicity and consistency.
- Regulation must be balanced with the risk and not become overly cumbersome. They should aim to reduce risk to as low as reasonably practicable.
- The UK’s health and safety record is the best in the EU, with the number of deaths at work significantly fewer than other comparable Western European countries.
- The Scottish health and safety regime has shown improvements in recent years.

3 **UK health and safety legislation**

3.1 The ABI welcomes this review of general health and safety in Scotland. We believe that this presents an excellent opportunity to improve the perception of health and safety among the public, and the understanding of health and safety legislation; and to make the personal injury compensation system fairer and more efficient.

3.2 UK Health and Safety legislation has delivered significant reductions in death and serious injuries over the last 35 years. The rate of work-related fatal accidents is 1.3 per 100,000 - the lowest across the EU (the average rate in the EU is 2.5 per 100,000 workers). The rate of over-3-day injuries is lower than all other Member States except Sweden.

3.4 The ABI supports risk-based, outcome-focused and proportionate regulation. However, we believe that many of the issues around health and safety legislation are not so much the legislation and regulations themselves as misunderstandings as to how they should be applied, or excessive risk-averse guidance growing up around them. Some behaviour is driven by a concern about civil liability proceedings.

3.5 The importance of good health and safety cannot be overemphasised. Procedures and regulations are in place to protect employees and employers alike. Regulations must be in place to protect individuals but these regulations must be proportionate and risk-based, and not stifle businesses in their day-to-day operations.

3.6 The ABI is currently considering its approach to the review of health and safety legislation by Professor Lofstedt which will offer recommendations to the UK Government on how existing health and safety regulations in the UK can be condensed into a more streamlined system. Although the ABI welcomes suggestions on improving efficiency of legislation, changes should be considered with great care. Legislation for health and safety has developed over time to cover a wide range of issues – many of which could not be consolidated without losing impact.
Scottish Affairs Committee Questions:

9 The effectiveness of health and safety regulation in Scotland

According to accident statistics that have been gathered by the HSE, Scotland appears to have a greater incidence per capita than in the rest of the UK. This does not mean that health and safety regulation is not effective in Scotland. It may reflect a number of factors, such as the greater proportion of the workforce employed in higher risk industries, such as agriculture and construction, the spread of population across Scotland and its geography.

10 The roles and division of responsibilities between the different bodies responsible for health and safety in Scotland

There appears to be a good working relationship between the different health and safety bodies in Scotland. However, it is worth pointing out that as the concordat between the HSE and the Scottish Executive only came about in 2010 progress is difficult to measure at this stage.

11 The effectiveness of the relationships between the Health and Safety Executive (HSE), the Crown Office and Procurator Fiscal Service, the Scottish Government, local authorities, and other relevant bodies

The current scheme of splitting responsibilities appears to be working well. However, without a direct comparison between the English and Scottish legal systems and success rates it is difficult to make an accurate assessment here.

12 The impact of health and safety regulation upon business

Good risk management is essential for all businesses. Health and safety regulations are in place to protect customers, employees and indeed businesses themselves. It often appears to businesses that they are over regulated but this usually stems from a lack of understanding of the legal requirements. It is for this reason that a commonsense approach to risk management is important, as recommended by Lord Young in his report “Common Sense, Common Safety”.

13 Is there a lack of data on health and safety matters in Scotland, and how does this affect the understanding of potential health and safety problems in Scotland?

There is good high-level data available from a number of sources, but it is not region specific and cannot be easily broken. Scotland also presents some problems with data collection as there are many rural areas and small businesses that do not report non-fatal incidents as they occur. There are still significant challenges around effectively communicating the importance of health and safety regulations in some of these more remote areas.

14 How does the HSE know how effective their interventions are?

This is a matter the HSE to measure.
15 How does the HSE monitor the impact of the cases that are investigated, the number that lead to prosecutions, and whether fines are collected? This is a matter for the HSE.

16 How does the effectiveness of the Health and Safety Executive (HSE) in Scotland compare with the effectiveness of the HSE in England, Wales and Northern Ireland; and whether the organisational structure of the HSE is the best way to manage health and safety in the context of devolution

In the ABI’s experience, a more common approach has been adopted across the UK, which has removed some inconsistencies. The ABI believes that a common structure for regulating health and safety across the UK is important, so that consistency in approach and enforcement is maintained. The ABI has confidence in the effectiveness of the HSE in achieving this.

18 What international comparisons with similar sized countries, or similar risk industries, can be made which could be helpful?

The insurance industry is expert in risk management, and operates multinationally. We believe that the HSE and other safety authorities can learn from this experience, and we are happy to engage more with the Scottish Government to enable this.

June 2011
Written evidence submitted by Union of Construction, Allied Trades and Technicians (UCATT)

Executive Summary

UCATT is concerned with HSE’s overall approach to improving workplace health and safety. It is the view of the union that it is large-scale inspections, coupled with a high number of enforcement activities and prosecutions that would make the construction industry safer. This approach should be based on extensive legislation and regulation that leaves no room for manoeuvre for employers, who are forced to implement stringent systems of health and safety.

UCATT strongly believes that the goal of the HSE must not only aim to “continue investigating accidents” and “continue taking enforcement action”, but it must aim to largely increase the level of inspections and enforcement. For this it should apply a four-fold approach, in which it massively increases the levels of firstly pro-active inspections, secondly accident and ill health investigations, thirdly enforcement action, and fourthly prosecutions of law-breaking firms whether or not an accident has taken place. However, in order to do so HSE must direct more of its resources to frontline services, which includes a considerable increase in the number of frontline inspectors. This would enable HSE to investigate, enforce and prosecute on an appropriate level. Clearly, such investigation and enforcement activity very often is the only successful mechanism to make companies comply with health and safety legislation.

The effectiveness of health and safety regulation in Scotland

1. UCATT would argue that the effectiveness of health and safety regulation has to be measured against improvement in the health and safety of workers across Scotland. The HSE’s own business plan for 2010/11 accepts that Scotland does not have an acceptable improvement rate in fatal injury over the previous five years when compared to England and Wales. The issue that needs addressing is how the HSE can ensure that effective regulation and minimising of risk be implemented by employers in the workplace. UCATT argues that it’s the strategy for enforcement and investigation linked to regulation that must improve in order to increase the effectiveness of health and safety regulation in Scotland. In this respect UCATT has serious concerns that the cuts being proposed in the HSE budget of 35% to 2015 will seriously reduce the effectiveness of regulation across Scottish workplaces and the impact this will have on inspections, investigations and prosecutions.

2. Scotland has had a historically high level of fatalities when compared with other regions. Much investigation and academic research has been undertaken in this area without any great success or pinpointing of any particular reason why Scotland had performed poorly in relation to fatalities. In Scotland an average of 10 deaths per year occurred from 2006-2009, last year there was reduction in the figure with 3 deaths, though it is too early to say whether this equates to a significant improvement in health and safety compliance and attitudes. Indeed, recent evidence would suggest that the Scottish construction sector has a long road to follow in terms of complying with safety requirements as earlier this year HSE inspectors visited a total of 288 sites where 53 were found to be so far below required standards that formal enforcement notices were issued.

3. Furthermore, the percentage of deaths resulting in the conviction of a company has been alarmingly low in recent years, and it has decreased substantially within a six-year time period. While in 1998/99 42 per cent of construction deaths resulted in a company’s conviction, the figure was as low as 15 per cent in 2003/04. In total in the six-year period between 1998-2004, as few as 30 per cent of construction deaths lead to the conviction of a company (152
convictions following 504 deaths). In Scotland there were only 12 convictions relating to construction deaths over the six-year period from 1998 to 2004. A Centre for Corporate Accountability Report commissioned by UCATT in April 2007 highlighted that imposed in Scotland (£22,000) is less than a third of the level that imposed in Wales (£68,000), and less than a half of the average imposed in England (£49,000).

4. These figures are particularly worrying when taking into account HSE’s own research that found 70 per cent of construction deaths were a result of “management failure”. This point is further emphasised by the fact that an internal audit conducted by HSE in 2006 found that inspectors should be prosecuting in more than twice the number of cases than they currently do, if they complied with HSE’s own criteria defining when a prosecution should take place.

The impact of health and safety regulation upon business

5. Despite government led scare stories around obtrusive health and safety, many of which UCATT believes to be myths to suit political purpose in favour of deregulation and self-regulation of health and safety in the UK, the impact of health and safety regulation on business in Scotland is lessened by the failure of government to introduce legislation on directors duties for health and safety.

6. UCATT commissioned research in 2007 titled “Bringing Justice to the Boardroom” that argued for the need for legal change to bring in statutory health and safety duties for company directors. Our evidence showed that only 44% of organisations have a health and safety director at board level, and that HSE’s own research showed that a 25% reduction in levels of work related injury can be expected on average where a director has health and safety responsibilities. Our view is that the government needs to follow through on the promise made in 2000 to change the law and impose health and safety obligations on directors.

7. UCATT argues that a fundamental change is necessary, which is to impose statutory legal duties in health and safety on company directors and senior managers. At the moment directors of organisations do not have individual legal duties in relation to health and safety; the main duties under the Health and Safety at Work Act 1974 (HSWA 1974) and related legislation refer to the legal entity of a company. Section 37 of the above Act establishes that directors can be prosecuted as a result of consent, connivance or neglect. In order to be prosecuted for neglect, the courts must have ruled that a director has breached a duty.

8. In addition, the provision laid out under section 37 create a perverse incentive in which companies are ‘better off’ not to impose safety duties on a director e.g. in a contract of employment or safety policy. This is the case because not imposing contractual safety duties on directors means that the possibility of prosecution is considerably reduced. The introduction of legal duties on health and safety for directors or senior managers would completely abolish this perverse incentive. According to HSE’s prosecution database, between 2002 and 2007 13 company directors/senior managers were convicted under section 37 of the Health and Safety at Work Act for construction related incidents. This figure compares to almost 350 fatally injured construction workers in the same period. The average fine was as low as £5,970 for offences including breaches of asbestos legislation, falls through roofs and two cases involving fatal accidents.

9. Scotland like the rest of the UK has a robust framework of legislation and regulations in health and safety, which establish that all employers have a duty of care of their workforce that protects their health, safety and welfare. The demands placed on employers are not
overburdening. On the contrary, health and safety protection is – when approached properly - straightforward. The fact is that businesses chose to put other priorities such as financial gains before the safety of their workers. In cases where an employer is not able to guarantee the workers’ safety, we hold that this company should cease to operate as it cannot fulfil basic requirements of duty of care.

10. Far too many workers are placed at risk due to employers being either incapable or unwilling to comply with safety requirements. On a daily basis our officials detect violations to health and safety regulations that put the health and livelihood of our workers in severe danger. Examples include: Risk assessments not being carried out; no PPE provided; untrained workers having to carry out work on asbestos; having to work overtime with risks relating to fatigue and exhaustion.

Reduction in HSE resources

11. HSE’s budget has been curtailed for a number of years. It is faced with another imminent cut of budget in the region of thirty five per cent in the next three years. While UCATT, together with a large number of bodies continuously condemn this cut of resources, HSE itself does not seem to be too concerned. To our knowledge HSE has not publicly condemned the funding cuts and the detrimental effects this would have on its work.

HSE asbestos campaign- Hidden Killer

12. UCATT is disappointed that the asbestos awareness raising Hidden Killer campaign is frozen as a result of the budget cuts at HSE. UCATT believes that the cancellation of this campaign will lead to more asbestos related illness in the construction industry. The feedback from the campaign had been overwhelmingly positive and this cut will impact on safety and endanger lives of construction workers.

Cut to Infoline Service

13. Construction workers hardly ever see an HSE inspector, on average you can expect a visit from an inspector once every 14 years, unless an accident has occurred. If there are dangerous working practices or a dangerous incident occurs it is essential that workers know how to contact the HSE and know that the information they have supplied will be treated with complete confidence.
14. The concerns about how dangerous incidents are reported is made more pressing due to the Conservative-led Government’s decision in March to end unannounced safety inspections in many industries. Although inspections will remain in dangerous industries such as construction it is expected that their frequency will dramatically decline.
15. Given the cuts in inspections that the Government has already announced, it would be logical for the HSE to be making it easier for workers to contact them to report their concerns. The HSE would be better publicising the Infoline number not cutting the service. By increasing the difficulty of reporting workplace dangers the risk to the safety of workers increases.

June 2011
Written evidence submitted by the Health and Safety Division of Crown Office and Procurator Fiscal Service

1. The Health and Safety Division of the Crown Office and Procurator Fiscal Service (COPFS) was established in March 2009. It is a COPFS unit specialising in the investigation and prosecution of health and safety related offences across Scotland. It comprises 3 dedicated offices in Glasgow, Edinburgh and Aberdeen and includes specialist prosecutors who work closely with the Health and Safety Executive, local authorities, and other agencies who report health and safety cases to COPFS. It has benefited from having a dedicated Victim Information and Advice (VIA) officer who works closely with the specialist prosecutors to deliver an effective service to bereaved nearest relatives and others affected by the cases the Division handles.

2. The establishment of the Health and Safety Division was announced by the Lord Advocate in October 2008 as part of an increased move towards specialism within COPFS and in recognition of the significant impact that health and safety incidents can have on the lives of people in Scotland and a key priority is to ensure national consistency in the way complex health and safety offences, in particular those that involve fatalities and serious injury, are investigated and prosecuted. It also deals with those cases which demand or would benefit from specialist health and safety input.

3. It is the duty of the COPFS in Scotland to make initial enquiry into all deaths of which it is made aware and to investigate all such sudden, suspicious, accidental, unexpected and unexplained deaths. Work related incidents leading to fatalities fall within this category and COPFS will receive early reports in relation to such deaths. There is also a duty on COPFS in terms of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to investigate and hold Fatal Accident Inquiries into all deaths resulting from accidents in the course of employment or occupation although the requirement to do so may be waived where criminal proceedings have been concluded against any person in respect of the death or any accident from which the death resulted and the Lord Advocate is satisfied that the circumstances of the death have been sufficiently established in the course of such proceedings.

4. The prosecution of all crime in Scotland is the sole responsibility of the Crown Office and Procurator Fiscal Service which clearly differs from the position in England and Wales. The Health and Safety Executive submits prosecution reports to COPFS but the decision as regards to whether criminal proceedings or a Fatal Accident Inquiry will be raised rests entirely with the Crown.

5. The COPFS Health and Safety Division also has responsibility for the directing of all joint investigations under the Work Related Deaths Protocol where there is potential for prosecution under the Corporate Manslaughter and Corporate Homicide Act 2007 or of other serious criminal offences. The Division works under the terms of the protocol with enforcing authorities across Scotland, principally the police, Health and Safety Executive, British Transport Police and Office of Rail Regulation in this regard. Early involvement and direction of such investigations ensures consistency of approach to this new area of law and sound application of the principles of the Protocol.

6. COPFS values the very positive working relationship which exists between the Health and Safety Division and the Health and Safety Executive at both strategic and operational levels. Since being established the Health and Safety Division has been involved in many non-fatal
cases dealt with by the Health and Safety Executive at a very early stage in order to provide assistance, guidance and direction prior to the reporting of duty holders for prosecution. There is regular liaison between the Health and Safety Executive and the specialist prosecutors in the Division and, indeed, prosecutors attend the Health and Safety Executive's Offices in Scotland on a regular basis in order to meet with Inspectors and to discuss their cases.

7. The Health and Safety Division and the Health and Safety Executive have worked closely in relation to reciprocal training, with Inspectors delivering technical presentations in relation to the law that they enforce and the Health and Safety Division providing input at Health and Safety Executive training sessions, for example, for new Inspectors within the Executive. The Health and Safety Division has also engaged in joint training with Health and Safety Inspectors for the training of Local Authority Inspectors.

8. This approach has been hugely successful in establishing sound operational relationships with Health and Safety Executive colleagues.

9. The Health and Safety Division and HSE also hold regular Strategic Liaison meetings (also involving Office of Rail Regulation) at which policy issues are discussed as well as strategic issues which arise out of ongoing cases.

10. On receiving a report from the Health and Safety Executive, the Health and Safety Division will consider firstly if there is sufficient evidence to support a prosecution and also whether it is in the public interest to raise criminal proceedings.

11. Since the establishment of the Health and Safety Division there has been a commitment to front load the preparation of cases with early disclosure and communication with defence solicitors to ensure that appropriate cases resolve without the need for a trial. This has proved successful and the majority of cases which have concluded since the establishing of the Division have done so in pleas of guilty avoiding protracted court procedures and thus reducing the potential impact on bereaved nearest relatives and significant cost to the public purse.

12. Since setup of the Division only 2 cases have required to proceed by way of trial. The first of those resulted in a conviction as libelled on indictment of 2 companies and in the other, the indictment was ultimately withdrawn on a review of the evidence available to the court. Of those cases resolved by way of early pleas of guilty, 45 had been reported by the Health and Safety Executive. 29 of the cases proceeded on indictment in the Sheriff Court before a jury, where the fine is unlimited. Of those 29 cases 17 involved fatalities. 14 cases were resolved by pleas on a summary complaint before a Sheriff sitting alone.

13. Of 7 cases resolved by way of plea reported by Local Authorities in Scotland, 6 were prosecuted on indictment (one involved a fatality). The remaining case resolved by plea was reported by the Scottish Environmental Protection Agency (SEPA) and proceeded on summary complaint.

14. At the present time the Division is involved in over 20 Health and Safety Executive non-fatal cases at the pre-report stage and there are ongoing joint investigations in relation to fatalities being directed by the Head of the Health and Safety Division. Of the 17 cases involving fatalities, 15 are joint investigations by the Police and the Health and Safety Executive and 2 involve British Transport Police and the Office of Rail Regulation.

15. It has been challenging to reconcile data between the Health and Safety Executive and COPFS.
16. Historically, it is understood that the Health and Safety Executive would count the actual number of charges on a report rather than the number of cases themselves. Given that COPFS retains data on the number of cases prosecuted and concluded, clearly, at the stage the National Audit Office was compiling the report, the figures could not be reconciled. COPFS worked with colleagues in the National Audit Office in order to assist in accurately reflecting the prosecution position. Using that data the National Audit Office established that the conviction rate in Scotland was 94% in 2009 – 2010 rather than the original rate quoted in Scotland as ranging between 77 and 80%. It is noted in the Memorandum that there is an explanation from the Health and Safety Executive that following the establishment of the Specialist Health and Safety Division within COPFS the HSE were requested to review older cases which took up additional resources and this resulted in a significant reduction (46%) of cases recommended to COPFS for prosecution. It is not clear to COPFS as to how the establishing of the Division inevitably led to this. COPFS would expect that any cases in which there appeared to be a sufficiency of evidence so as to justify prosecution (and in which there was no other legal impediment to prosecution) would be reported to COPFS for such consideration.

17. In relation to sentencing in Scottish courts, the specialist Health and Safety Division prosecutors presenting health and safety cases refer Scottish judges to the Sentencing Guidelines for England and Wales and commend them as persuasive in addition to referring to Scottish Case Law on the topic.

June 2011
Written evidence submitted by Scotrenewables Tidal Power Limited

We are a tidal energy developer based in Orkney and my main point concerns the fact that there is very little guidance surrounding safe practices when working in, on and around tidal or indeed wave devices in quayside and offshore environments.

We currently have to follow ‘Health & Safety at Work Regulations’ and will be able to benefit from some of the aspects concerning offshore wind farms, however these both fall short in providing a robust and relevant set of regulations and guidance for marine renewables as a whole. In contacting the HSE for support, they too struggle to offer suitable advice to support our practices. We have therefore had to rely upon Health & Safety consultants to advise, at considerable cost to ourselves.

July 2011
Written evidence submitted by the Scottish Hazards Campaign

Executive Summary/Recommendations:

In this submission, the Scottish Hazards Campaign comments on the portrayal and perceptions of occupational health and safety (OH&S); OH&S data; the OH&S record in Scotland; international comparisons; occupational health services; enforcement resources; enforcement priorities and the deregulation agenda; impact on business; roles of different bodies in Scotland; the procurator fiscal service; the role of Trade Unions; the need for a Scottish Hazards Centre. We make the following recommendations:

* Call for a clear commitment from the Scottish Government to improving OH&S in Scotland, and, if this is forthcoming, move toward devolution of OH&S regulation and enforcement;

* Create, strengthen and resource an effective partnership on occupational health and safety in Scotland, including in its remit action to:- address inadequacies in data collection, analysis, publication and use;- identify and address challenges particular to Scotland; and - treat OH&S as a major public health issue

* Reverse cuts and substantially improve the resourcing of enforcement bodies, and prioritise their core enforcement role;

* Strengthen OH&S legislation/regulation in specific areas, including corporate accountability, stress, requirement to provide OH services and asbestos;

* Strengthen and enforce the roles and rights of trade union safety representatives, and resource a Scottish Hazards Centre to provide OH&S information, advice and support to vulnerable and unrepresented workers;

* Work toward a comprehensive occupational health service delivered through the NHS.

Scottish Hazards Campaign

The Scottish Hazards Campaign (SHC) network campaigns for improved worker health and safety throughout Scotland and joins with others internationally to campaign for improved working conditions throughout the world. It is part of the UK Hazards Campaign and the European Hazards Network. The Campaign has an active network of 350 members throughout Scotland. The majority are trade union health and safety representatives, shop stewards, equality and learning representatives. Members also include OH&S professionals and people involved in related campaigns, eg asbestos, RSI, FACK (Families Against Corporate Killers).

Submission

1. Our members see the daily impact of both good and inadequate management of OH&S in their workplaces and among their members/work colleagues. The Campaign has major concerns about the present state of workplace health and safety in Scotland and, even more so, about the implications for working conditions of the current financial crisis and projected public sector cuts.

2. Portrayal and perceptions of OH&S
We are concerned by negative public perceptions of OH&S. These perceptions are underpinned by consistent underestimation of the size of the problem by the Government and the Health and Safety Executive (HSE). They have also been strengthened by the Government’s strongly expressed view that OH&S regulation is a ‘burden on business’ and an apparent acceptance that a certain level of workplace death, injury and ill health is inevitable.

Headline figures on work related deaths in Scotland appear to show that 25-30 people die each year through work. – painting a totally false picture of the real situation. This figure neglects those whose deaths have been caused by accidents reported through other channels, eg work related road traffic deaths, air and sea accidents and the much higher numbers who die each year from occupational diseases including cancer and coronary heart disease. The TUC\(^1\) concludes from the research that at least 20,000 people die annually through work but states that the real total could be double that. In Scotland this translates to a minimum of 2000 deaths per year due to occupational injury and disease. Compare this to the most recent Scottish Government figures for:

Deaths: Homicide 78
Deaths: Road Traffic accidents 270

**Work related injury, ill health and death is a major public health issue.** Accurate reporting of its impact and its inclusion as an integral part of public health campaigns would raise its profile, encourage action to address it more effectively and counter misleading perceptions.

### 3. Data

It is accepted that OH&S incidents, injury and ill health is under reported. In particular, statistics regarding occupational disease are disputed, in part through lack of good data. We would reiterate the statement of the 2008 report of the House of Commons Select Committee\(^2\): *We are concerned that HSE is struggling to cope with its occupational health remit. It admits to basing its occupational health policy on an incomplete data source and is failing to meet its occupational ill health targets, and call on the HSE to take urgent measures to address this.*

### 4. OH&S in Scotland

The Scottish Hazards Campaign is aware that the level of work related fatalities and major injuries in Scotland has been consistently higher than that of the UK as a whole\(^3\). The government and HSE explanation for this is that Scotland has a higher percentage of workers in highly hazardous sectors. We do not accept this as a full explanation and believe that other factors will be involved. Research by Woolfson and Beck\(^4\) indicate that some of these might be lower prosecution rates and lower levels of fines, a concentration of areas of high unemployment and the additional difficulties in enforcement caused by Scotland’s geography. Even if we were to accept the government’s assessment, disproportionate fatalities and injuries would be a strong argument for a disproportionate level of resourcing for the HSE in Scotland. However, the opposite is true, with Scotland getting 7.2% of the HSE cake to cover 8.5% of the working population.\(^5\)

---


\(^3\) 2009/10 .9 fatalities per 100,000 as compared to .4 in England and Wales


5. International Comparisons
We are concerned also by the false impression given by the Government and the HSE that the UK is an exemplar in the field of OH&S. In January 2010, a well recognised H&S risk index\(^6\) ranked the UK as only 20\(^{th}\) among OECD countries and 30\(^{th}\) internationally.

Through its involvement in the European Work Hazards Network, SHC has looked at different models of OH&S support and enforcement. Those which have been particularly impressive were Finland, Sweden and Denmark (although unfortunately in Denmark and Sweden there has been some erosion of services due to changes in government policy).

Occupational Health Services
The UK is particularly poor in the provision of occupational health services. HSE figures indicate that two thirds of working people in the UK have no access to occupational health expertise and support, and a study undertaken by the Institute of Occupational Medicine for the HSE found that only 3\(^{\%}\) of UK companies provided all the key elements of occupational health support.\(^7\) The UK situation compares badly with most European Countries.

A strong case can be made that within European and even UK law, we are in breach regarding provision of OH services. Within European law, The Framework Directive (89/391) requires that all workplaces should have preventive occupational health services. This in turn is based on the International Labour Organisation Convention 161. The UK has yet to ratify this convention which requires ratifying countries to formulate and implement a coherent national policy on OH services, and to progressively develop OH services for all workers. The HSE has brought a prosecution under regulation 5 of the Management Regulations (Dundee Council 2006) because it did not provide access to OH services. The Global Strategy on OH for All (WHO, 1995\(^8\)) stated that all workers should have access to OH services.

SCHWL
In relation to OH services, the Scottish Hazards Campaign welcomes the establishment by the Scottish Government of the Scottish Centre for Healthy Working Lives and in particular the new pilot Working Health Services Scotland rehabilitation services. However, this provides only one of the key elements of an OH service to only some workers and is therefore only a first step toward addressing Scotland’s totally inadequate OH service provision.

---


This ‘scores countries on their performance across eight indicators, including: work related fatalities and accidents, number of accidents causing work absences, number of deaths from work related diseases, expenditure on health, life expectancy, government effectiveness, regulatory quality and the total number of ILO (International Labour Organisation) conventions ratified.’


Models for good OH Services are not hard to find. See the STUC\(^9\) for a full discussion of OH in Scotland.

### 6. Enforcement Resources

SHC is deeply alarmed by the cuts being imposed in enforcement bodies. Your Committee will be well aware of the 35% cut being imposed on the HSE. Although Local Authorities have not yet been able to give detailed information on proposed cuts in Environmental Health Services, it is clear that they will be affected by across the board cuts in LA funding.

These resource reductions follow years of similar cutbacks. Recent research shows a 21% cut in the number of Environmental Health Officers in Scotland over the last 15 years\(^10\). In July 2010, academics Steve Tombs and David Whyte reported that over the past decade there have been dramatic falls in UK rates of OH&S inspections, investigations and prosecutions.\(^11\) In relation to HSE enforcement in Scotland, the University of Stirling’s Occupational and Environmental Health Research Group (OEHRG)\(^12\) stated in 2008: “In Scotland, …numbers employed dropping year on year from 2003/4 when the figure was 304 full-time equivalents (FTEs) down to just 264 in April 2008, a fall of over 13 per cent. …Frontline inspectors covering factories and agriculture have dropped by over 16 per cent. Offshore inspectors are down by 20 per cent and only one inspector covers all of Scotland’s quarrying industry.”

SHC has consistently argued for additional resources for both the HSE and Local Authority Environmental Health services. In 2004, we gave evidence on this to the Work and Pensions Selection Committee inquiry into the work of the Health and Safety Commission and Health and Safety Executive\(^13\).

Your Committee will be aware that the 2004 Select Committee recommended a doubling in the number of HSE inspectors. In 2008 that same Committee said The HSE aims to meet a 60:40 ratio of proactive and reactive work, however we heard that not only are businesses likely to have an HSE inspection just once every 14.5 years but that also accident investigations are being scaled back. Academic research has highlighted the influence of the number of inspections on levels of compliance with health and safety obligations.

### 7. Enforcement priorities and the deregulation agenda

There is strong evidence that, as stated by the 2004 Select Committee conclusions, it is inspection, backed by enforcement, that is most effective in motivating duty holders to comply with their responsibilities under health and safety law.\(^14\) The current government appears to accept this as

---


\(^10\) Royal Environmental Health Institute of Scotland (2011)


\(^13\) saying: The SHC has been extremely concerned by cutbacks in HSE funding. It is angered by statistics which indicate the inability of the HSE to carrying out its inspection and investigation role to anything approaching an acceptable level. We are equally concerned by under resourcing of environmental health services. This is not a criticism of the individual inspectors who, we believe, often share our frustration.

\(^14\) Also see Davis, C (2004) *Making Companies Safe: What Works?* Centre for Corporate Accountability,
they propose to continue proactive inspections of some high risk sectors. However, they are failing to follow the logic of the evidence by proposing to stop proactive inspection of most sectors despite some of them having comparatively high rates of ill health and injury. We would reiterate the conclusion of the 2004 Work and Pensions Select Committee that the HSE should concentrate on and strengthen its enforcement role.

Alongside our concerns about the reduction in resources to HSE and LA enforcement is concern about the deregulation agenda of the current government as indicated in the remit given to the Lofstedt Review and the tenor of the material on the Red Tape Challenge website. The Lofstedt review is titled: An independent review of health and safety legislation. However, the 10 questions posed in its call for evidence do not include any request for feedback about regulations which might need strengthened or new areas which require regulation. Examples of these would be regulations on workplace stress and more effective legislation on corporate manslaughter/homicide. Question 9 asks for example of where EU directives have been unnecessarily enhanced but does not ask for examples of where they may have been unnecessarily weakened, eg Working Time Regulations. Asbestos Regulations and translation of the 1989 Framework Directive on Health and Safety at Work.

8. Impact on business

One of the arguments for deregulation is that OH&S regulation threatens jobs and job creation by imposing too big a burden on business. However, the evidence does not support this. One of the cuts being made by the HSE is to the information helpline. Our understanding is that this helpline dealt with over 200,000 per year many of whom are small businesses. A TUC spokesperson said: The HSE Infoline has, for many years provided an invaluable service to both health and safety representatives and to small businesses. … The government claims to want to help small businesses but it is them who will be affected most by the closure of the service. A private H&S consultancy firm echoed this: “The government’s recently published plans ‘Good Health and Safety, Good for Everyone’ talk about making things easier for small businesses and improving access to information. It is hard to see how the decision to close these services squares with this.”

The HSE has consistently argued that good OH&S management is good for business and the evidence bears this out. Claims of an increasing burden of regulation are not true. In fact, examination of the level of regulation shows that there is now 46% less regulation than in 1974 and 37% less than 15 years ago. In financial terms, the British Chambers of Commerce estimate the annual total cost to industry as 2.2bn. However, that must be put into perspective alongside the findings of an HSE 2008 economics briefing which estimated the cost of each workplace

---

10 In 2006 the OECD itself accepted that countries with very different levels of regulation had experienced equal levels of success in generating employment. (OECD (2006) Job Study accessed at http://www.oecd.org/document/38/0,3343,en_2649_33927_36261286_1_1_1_1,00.html
A 2011 US Economic Policy Institute research paper concluded that regulations do not have a negative impact on the job market and can sometimes spur job creation http://www.epi.org/publications/entry/regulation_employment_and_the_economy_fears_of_job_loss_are_overblown/
fatality as 1.5m, and a government regulatory impact assessment\(^{20}\) in 2006 put the cost of non-asbestos occupational cancer alone at between 3.3 and 12.3bn. Complaints from business about the cost to them of this ‘compensation culture’ are challenged by a 2008 analysis by the UK Health and Safety Executive (HSE)\(^{21}\) which concluded that: “Although the costs of workplace injuries and work-related ill health are attributable to the activities of the business... the bulk of these costs (3/4) fell ‘externally’ on individuals and society.”

The need for clear regulation and strong enforcement is underlined by both the recent banking crisis and the Deepwater Horizon disaster in which lack of regulation played a large part and the current crisis facing care homes. Shocking cases such as Southern Cross, the Winterbourne View home in Bristol and the Elsie Inglis home in Edinburgh highlight the need for strong enforcement. It is informative to compare the inspection timetable of Social Care and Social Work Inspection Scotland (once in 12 months or once in 24 if ‘low risk’) to that proposed by the HSE for most workplaces (none).

9. Roles of different bodies responsible for OH&S in Scotland
The complexity of division and co-ordination of roles and responsibilities in this area is multiplied by differentiation between devolved and reserved bodies. With health, local authority enforcement, fire, environment all devolved, SHC believes that, given a clear commitment to the improvement of OH&S by the Scottish Government, devolution of OH&S would lead to more effective partnership working. The Campaign is part of the Partnership for Health and Safety in Scotland. We have welcomed the establishment of PHASS and our inclusion in that body. However, we feel that its remit, role, resourcing and power do not enable it be as effective as such a partnership should be. We would argue for a much stronger role for the Scottish Parliament and Government in OH&S legislation and enforcement.

10. Procurator Fiscal Service
The Scottish Hazards Campaign welcomed the establishment of the dedicated Health and Safety Division within the Procurator Fiscal Service in 2009. However, we feel it is too early to know how effective the new service will be. Our members, and in particular those who have lost family through work related death, remain very concerned by low levels of prosecution, inadequate penalties, long drawn out time frames for prosecution and lack of support for victims and their families.

11. Role of Trade Unions
It is known and acknowledged by the HSE and both Governments that workplaces with active trade union health and safety representatives are 50% safer\(^{22}\). Yet, the statutory rights of those representatives to time off for H&S duties, to education and training, to inspect the workplace, are not effectively protected.

With further devolution, the Scottish Parliament could ensure enforcement of these rights and a strengthening of the role of trade union H&S representatives through the introduction of PINS (provisional improvement notices) and extend their work by enabling the development of roving safety representatives. This could be particularly important at a time of cuts when the

---


use of temporary, agency and sub contracted workforces will increase. There is evidence from the UK and elsewhere that such arrangements can be effective.  

**Scottish Hazards Centre**

It is also important to consider the provision of information, advice and support for non-unionised workers. A Scottish Hazards Centre would build on the effective role trade unions have played in reducing incidences of occupational ill health in unionised workplaces²⁴. It would be a front line service, providing advice, information and support services for individual workers and groups of workers in Scotland who are not unionised, who do not have access to OH&S expertise, with particular emphasis on those most exposed to risks²⁵. The evidence is that if these workers gain knowledge and are supported in raising issues/taking action their employers and work colleagues will also benefit. A separate paper putting forward detailed proposals regarding such a centre is available.

*September 2011*

---


²⁴ This includes work currently being undertaken by the STUC, Scottish Hazards Campaign and the SCHWL to improve OH&S management and increase worker involvement in OH&S in the not for profit sector.

²⁵ This includes: workers in hazardous industries and their local communities; those in unorganised workplaces; those working in SMEs; those new to work (and young workers); those with disabilities; older workers; home and agency workers; those living in areas of deprivation; those from ethnic minority communities; migrant workers and refugees; those working in the voluntary/community and social enterprise sectors.
Written evidence submitted by Thompsons Solicitors Scotland

Introduction

Thank you for being given the opportunity to respond to this most important matter. Health and safety is one of the single most important areas of legislative competence which remains wholly with Westminster. It is an area that impacts daily upon the lives of every Scottish citizen.

Thomsons Solicitors is keen to highlight the following points in this consultation response:

- Government cuts should not be made at the expense of health and safety.
- A renewed emphasis needs to be put on the prevention of accidents and injury in the workplace and elsewhere.
- Stronger legal mechanisms are required to reinforce the responsibility of employers to ensure the safety of employees and to ensure that action is taken following fatal accidents.
- The needs of victims need to be put at the heart of any health and safety strategy.

Thomsons Solicitors Scotland

Thomsons Solicitors are the largest trade union and personal injury practice in Scotland. We have over 32 years experience in representing victims of industrial accident and disease as well as campaigning for changes in the law to improve workers’ rights and health and safety.

Thomsons Solicitors represent the vast majority of the country’s trade unions. We also represent charities that assist victims of asbestos related conditions. Thomsons Solicitors are therefore in a unique position to comment upon industrial accidents and disease and how the legal system, together with the health and safety environment, impact daily upon workers in terms of accident, injury and disease.

If invited to do so, we would welcome the opportunity to give oral evidence to the Committee.

Response focusing upon certain areas of interest to the Committee

Because of the word constraints, we shall concentrate particularly upon the following, key, issue:

“The effectiveness of health and safety regulation in Scotland”

Thomsons Solicitors believes that this is the single most important area that the Committee is considering.

Health and safety crime

It is essential to initially highlight that breaching health and safety legislation is a crime. It is Thomsons’ view that breaking health and safety legislation however is not treated with the seriousness it deserves. For as long as the perception remains that this is not a “proper crime” that devastates lives the effectiveness of health and safety legislation will not be maximised.

An alternative Health and Safety model

An effective health and safety model should encompass.

- Prevention (which is of course the most important aspect)
- Punishment of the wrongdoer
- Proper treatment of the victims and their families
- Recognising and properly accommodating the role of compensation in improving workplace safety.

**Prevention**

The prevention aspect of health and safety regulation is failing. In our experience as trade union solicitors, we have seen no drop in the number of people who approach our firm each year through our trade union clients for assistance with work related injuries, disease and death. Our statistical analysis suggests there is no reduction in workplace injury and our observation and experience is that far too many workplaces remain unsafe and in a condition which breaches health and safety regulation.

Our concern is that the economic downturn is likely to cause employers to “cut corners” in health and safety at the expense of workplace safety.

**Employees as enforcers of health and safety**

From the perspective of proactive investigation and enforcement, the simple fact is that the Health and Safety Executive have limited resources. With the economic pressures on central government and likely budget reductions, this situation is likely to only get worse.

There is a resource however that Thompsons feels is under used in the prevention of health and safety- employees. Investigation and similar proactive power should be placed into the hands of employees and their representatives (Trade Unions).

Employees and their representatives should be given the statutory power to go to Court and obtain their own direct enforcement remedies such as interdict or injunction (stopping an employer from undertaking certain activities that are dangerous) or specific implement (directing an employer to take certain steps). These civil remedies must be robust enough to be effective: Thus, the Judge hearing the case should also have the power to order a civil penalty; and the power to call the parties back after an appropriate period to check that matters have improved, and if they have not, to hold the employer in contempt of Court and punish them accordingly. On the principle that the “polluter pays,” the employer should also be liable for the legal costs.

Thompsons Solicitors also strongly feels that the Health and Safety Executive (HSE) should have a whistle-blowers’ hotline for reporting health and safety breaches by employees. The HSE should also have strict time limits for investigating all such complaints. To be effective, such investigations should be carried out immediately and without pre-warning the employer of any visit.

**Roving health and safety representatives**

It is submitted that there should also be a system of permitting and empowering highly trained roving health and safety representatives. Such individuals could be paid by trade unions. The benefits of such a move would be:

- Improved policing of health and safety
- Better, more targeted, use of resources

**Punishment and penalties**
This serves two purposes:

- Punishment – in order that victims and their families can see that justice is done
- Prevention through deterrence

A key strand for improving the prevention of accidents is deterrence. It is our submission that there will only be a real deterrent, which will impact positively on health and safety, where there is a realistic prospect of individuals being punished and facing custodial sentences.

Thompsons Solicitors supported the Member’s Bill on Corporate Homicide brought forward by Karen Gillon MSP in the last Scottish Parliament. The Bill contained provision in relation to individual crimes which could be directed against directors and managers. It is our view that the Corporate Manslaughter and Corporate Homicide Act 2007 by expressly excluding individual criminal responsibility did not go far enough in reinforcing a company’s responsibility for health and safety through the prospect of punishment for corporate killing.

The real prospect of individual punishment including custodial sentencing in this situation would reinforce health and safety.

**Proper Treatment of Victims and their families**

As with any crime the system in relation to health and safety must give a proper place to the victims. It is submitted that this goes beyond giving them support through the VIA. Indeed it is arguable that our obligations under the European Convention on Human Rights demands more than that.

The European Convention on Human Rights is drafted in a way that the rights, as presented in the Convention, are done so in a hierarchical format with the most important rights first. Article 2 is the right to life. This covers the situation where there has been death and serious injury which could have resulted in death.

Proper health and safety regulation therefore needs to place the victims at the heart of the process.

Thompsons Scotland’s experience in assisting families who have lost loved ones is that the families always need the following:

- Answers – they require to know what happened, why it happened and how it happened
- That lessons have been learned – and others will not suffer in the same way and for the same reasons as they have
- That the wrongdoer is properly and proportionately punished
- That they are left financially in a position where they can carry on with their lives

**Fatal Accident Inquiries**

A victim-focused system should ensure that Fatal Accident Inquiries (FAI) are organised with all due speed to enable them to get answers. Any review of health and safety regulation should therefore include a review of the FAI process.

At present the FAI system does not work. There are many problems with the system as it stands but the main areas of concern are:

- Delays
- Too much discretion as to what will be investigated
Determinations have no “teeth”

**Delays**

As described above, and as shown in the statistical analysis attached to this submission, there are significant and unacceptable delays in Fatal Accident Inquiries being set up. Despite it being ‘mandatory’ under the Fatal Accident and Sudden Deaths Inquiries (Scotland) Act 1976 to hold an FAI after a death at work there is a large number of cases where no inquiry is held.

Our statistics from our cases show:

- The average time from death to Inquiry is 30 months
- There were no cases where an FAI was held in under a year
- In 30% of instances it took between 3-4 years for an FAI to be held
- There was no FAI in 29% of instances
- An FAI was held in 44% of cases
- No decision has been made in 27% of cases

This principally occurs because of the delays in criminal prosecutions and the practice and procedure whereby an FAI will not be commenced until the criminal prosecution is concluded.

It is our view that there is no need to delay the commencement of an FAI. This is not the practice in England where a Coroner’s Court will be immediately set up following the death and which Court will be commenced, and on occasion stayed pending the outcome of other investigations. We would propose that a similar approach be taken with FAIs in Scotland.

We appreciate the importance of sub judice and the need not to prejudice any criminal proceedings but it is very common for the scope of an FAI to be much wider than the scope of a criminal investigation. We see no reason therefore why the FAI cannot be commenced and only certain aspects explored in evidence with the Inquiry reconvened at a later date when the criminal prosecution is concluded.

**Discretion as to extent of Inquiry**

At present the Sheriff hearing the Fatal Accident Inquiry has a significant amount of discretion as to what evidence will be heard and what aspects of the death will be investigated. Under the legislation, the Sheriff is not required to investigate failures in systems which led to the death but instead it is a matter entirely for the Sheriff’s discretion. From the perspective of health and safety, a full investigation into any breakdown in systems is essential.

Thompsons Solicitors see that such discretion means that the ability of FAIs in Scotland to properly contribute to improving health and safety is curtailed. There should be a mandatory requirement for all FAI’s to investigate the following:

- Date, place and time of death
- Cause of death
- All circumstances that led to the death including failures of systems of work and breaches of health and safety
- Anything that would have prevented the accident or the death
- Changes which require to be introduced (either in an individual workplace, a sector or an industry generally) to prevent future similar accidents
More robust enforcement of FAI recommendations

It is at the Sheriff’s discretion whether to make recommendations for improvement after a FAI and there are no sanctions for failing to meet such recommendations. This has had tragic consequences in the past.

In the interests of accident prevention it is essential that the proposed changes in a FAI determination are backed up with sanctions. Giving the Judge the power to recall the parties before him / her a period of time after the FAI to ensure that any recommended changes have been implemented and imposing penalties if they are not followed would benefit the victims of the fatal accident and prevent similar fatal accidents in the future.

Forum

At present FAIs are heard in the Sheriff Court. We would submit that this sends out the wrong message. Article 2 of the European Convention on Human Rights places the right to life as one of the most important rights every citizen has. Health and Safety ought to be afforded that high priority both in perception and fact. It is therefore far more appropriate that FAI’s be heard and determined by Judge’s at the Court of Session.

Reducing delays with criminal prosecutions

While there is no doubt that the creation of the specialist prosecutors unit has created a centre of excellence in terms of knowledge of health and safety legislation, it has not had a sufficient impact upon the time it takes for criminal prosecutions to conclude.

There is a tendency on the part of the prosecutors to permit the defender’s solicitors time to work towards an agreed indictment / charge and narrative in relation to which they are prepared to plead guilty. While on one view a plea of guilty takes away from the families the trauma of listening to evidence in Court, this process can, and in our experience does, take very long and causes significant delays. It is also our experience that the families feel completely marginalised by the process.

The delays in health and safety prosecutions should be contrasted with the significantly quicker rates of prosecution and conviction for Murder and Culpable Homicide shown in the letter from the COPFS dated 27 September 2011 in response an FAO request on the subject. (Appendix 3).

Proposed solutions to the problem of delays in criminal prosecutions would be:

- Judicial management
- Families should be more involved in the process
- Impose time limits

Lord Cullen’s Review

Lord Cullen has carried out a review of the Fatal Accident Inquiry system in Scotland at the request of the Scottish Government and Scottish Parliament. Lord Cullen’s review was however limited. It is Thompsons’ view that the review failed to consider matters in the wider, and important, context of health and safety.
Our submissions and proposed changes to the Fatal Accident Inquiry system have at their heart the impact upon health and safety regulation and accident prevention. We therefore see it as entirely appropriate for the Select Committee to look at this matter.

Proper Treatment of Victims – the compensation process

A System That Presently Encourages Delay Tactics

The compensation process can and does play an important role in health and safety regulation. As long as employers believe that they can “get away” with injuring their employees or that they can string out and delay payments of compensation, they will take health and safety less seriously.

The statistical analysis attached to this submission shows that despite changes in recent years such as the Voluntary Pre-Action Protocol, there remain significant delays in insurers paying just recompense following claims being made for workplace accidents. Claims are taking far longer than they ought to and victims are therefore not receiving just recompense at the time they most need it, during the immediate aftermath of the accident.

In Scotland there is the Voluntary Pre-Action Protocol which is a procedure solicitors and insurers can elect to follow to progress compensation claims. It is a scheme which was created through discussions between insurance industry representatives and personal injury solicitors specifically to speed up the claims process. Under the protocol an insurer should fully investigate a claim and give a final view upon liability within three months of the claim being intimated. The vast majority of country’s insurers subscribe to the protocol but our statistics show:

- Insurers often fail to meet this protocol
- Insurers still initially reject claims which they settle months or sometimes years later.
- When insurers do decide to settle a case they all too often initially offer too little which again results in significant delays in settlement.

There is no pressure on insurers to settle cases quickly and in fact, on one analysis there is a financial benefit given to insurers to delay claims.

A disparity exists between legal costs that are payable where a case settles extra judicially (before Court proceedings are raised) and those payable if a case is settled immediately after Court proceedings are raised which are concluded on the “undefended scale”.

Legal costs under the undefended scale are lower than if the case settles extra judicially. If an insurer settles a case before Court proceedings are raised they might be required to pay legal fees on the Voluntary Pre-Action Protocol scale of somewhere between £1,000 to £2,000. In contrast, legal fees on the undefended scale will be only a few hundred pounds.

The undefended scale is so low because the model assumes that the lawyer has had to do virtually no legal work because it also assumes that there has been no meaningful discussions with the defender either before or after court proceedings are raised.

The incentive therefore exists for insurers to prolong the case until court proceedings are raised, not submit a defence and then settle the case so their legal costs are on the “undefended scale”. We would submit that the tactic is not only morally inappropriate but it can be argued as amounting to an abuse of the Court process.

Insurers should not be permitted to take advantage of the loophole that allows them to prolong cases in order to pay significantly reduced fees through settling a case on the undefended scale.
Indeed, in our submission, the system of fees should bring pressure to encourage fair and early settlement in appropriate cases.

**A System that Encourages Deductions from Victims Damages**

Legal costs are a fairly controversial area at present. There is the Jackson Review in England & Wales and the on-going Sheriff Taylor Review in Scotland. The populist narrative in the media suggests that legal fees are too high. Our experience shows the opposite position is true.

The guiding principle, from a health and safety perspective and indeed from principles of fairness and natural justice, demand that the ‘polluter pays’. Under the present system not only can the polluter employ questionable tactics to minimise what they require to pay in legal fees (as set out in the previous section) but even when they are unable to employ such tactics they are still not required to pay the full legal fees of the injured party’s solicitors.

It is well recognised that the legal costs which the losing party requires to pay at the conclusion of a court case are less than the actual legal fees incurred. This is because the system for assessing what fees ought to be paid is based on a block fee model. A Judicial Account is prepared by the winning party following the block fee model. This is assessed by the Auditor of Court. It is generally considered that the fee recovered from the losing party by way of Judicial Account represents only 60-70% of the actual legal fees involved in pursuing the case on behalf of the successful party. Unless the injured party is represented by trade union, similar organisation or their solicitor is prepared to accept such a reduced fee they will be required to pay the shortfall from their damages.

It is for this reason that victims of injury and disease in Scotland regularly pay fairly large amounts of their damages as solicitors’ fees even when they have been successful in pursuing a court action for compensation. It is not uncommon for solicitors (but certainly not Thompsons) to require their clients to pay 25% or more of their damages as fees at the end of a successful case.

This is in stark contrast to the position in England and Wales where full legal fees are recovered from the negligent party or their insurer and where the injured party therefore always retains their full damages. That is to say, where the polluter fully pays.

Victims of injury should be no worse position in Scotland. From a health and safety perspective, it should, as it presently is, be cheaper to injury an employee in Scotland. Full legal cost recovery should therefore be introduced in Scotland.

**Appendix 1 – Statistical Analysis of Thompsons Fatal Workplace Accident and Disease Cases**

**Percentage of cases where an FAI was held**

<table>
<thead>
<tr>
<th>Percentage</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No Fatal Accident Inquiry held</td>
<td>29%</td>
</tr>
<tr>
<td>No decision yet made</td>
<td>27%</td>
</tr>
<tr>
<td>Fatal Accident Inquiry held</td>
<td>44%</td>
</tr>
</tbody>
</table>

This table highlights two facts:

- In a large number of cases (29%) no Fatal Accident Inquiry is held at all
- The extremely large number of “no decision” cases reinforces the statistics which show the extremely long delays there can be in relation to FAI’s being held
Length of time from death to Fatal Accident Inquiry

<table>
<thead>
<tr>
<th>Length of time</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 1 year</td>
<td>0%</td>
</tr>
<tr>
<td>1-2 years</td>
<td>64%</td>
</tr>
<tr>
<td>2-3 years</td>
<td>6%</td>
</tr>
<tr>
<td>3-4 years</td>
<td>30%</td>
</tr>
</tbody>
</table>

Cases where criminal charges were brought

<table>
<thead>
<tr>
<th>Status</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>No charges</td>
<td>44%</td>
</tr>
<tr>
<td>Criminal charges</td>
<td>24%</td>
</tr>
<tr>
<td>Ongoing investigation</td>
<td>32%</td>
</tr>
</tbody>
</table>

- This again reinforces the delay factor
- It also shows in how few cases charges are brought

Appendix 2 – Statistical Analysis of Thompsons Non Fatal Workplace Accident and Disease Cases

Length of time from claim being intimated until insurers admit liability or confirm a willingness to negotiate settlement

<table>
<thead>
<tr>
<th>Length of time</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within 3 months</td>
<td>4%</td>
</tr>
<tr>
<td>3-6 months</td>
<td>10%</td>
</tr>
<tr>
<td>6-12 months</td>
<td>27%</td>
</tr>
<tr>
<td>12-24 months</td>
<td>27%</td>
</tr>
<tr>
<td>24-36 months</td>
<td>29%</td>
</tr>
<tr>
<td>36-48 months</td>
<td>13%</td>
</tr>
<tr>
<td>Longer than 48%</td>
<td>13%</td>
</tr>
</tbody>
</table>

(Based upon a review of cases over a 2 year period)

Appendix 3 – Statistics Taken From ‘A Breach of Protocol’

(Journal of the Law Society of Scotland February 2008)

Insurers Response to Letters of Claim

<table>
<thead>
<tr>
<th>Response Description</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offer made pre-litigation</td>
<td>22%</td>
</tr>
<tr>
<td>Liability denied pre-litigation</td>
<td>27%</td>
</tr>
<tr>
<td>No formal response (insurers delayed for so long that court proceedings were raised before they admitted or denied liability)</td>
<td>51%</td>
</tr>
</tbody>
</table>
NB 99.5 % of all cases were successfully concluded (including the cases where liability was denied and there was no response)

Increase in First Offer Obtained by Raising Court Proceedings

<table>
<thead>
<tr>
<th>Court</th>
<th>Sum Total of First Offers</th>
<th>Sum Total of Final Settlements</th>
<th>Multiple Achieved</th>
<th>Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>£2,068,486</td>
<td>£4,892,292</td>
<td>2.27</td>
<td></td>
</tr>
<tr>
<td>Court of Session</td>
<td>£1,399,602</td>
<td>£3,679,696</td>
<td>2.9</td>
<td></td>
</tr>
<tr>
<td>Sheriff Court</td>
<td>£668,884</td>
<td>£1,212,596</td>
<td>2.0</td>
<td></td>
</tr>
</tbody>
</table>

Average Pre Litigation Offer Compared to Average Final Settlement

<table>
<thead>
<tr>
<th>Average Pre Litigation Offer</th>
<th>Average Final Settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>£3,000</td>
<td>£6,810</td>
</tr>
</tbody>
</table>

Appendix 4 – Not printed (available on request)

October 2011
This submission is made by Oil & Gas UK, the trade association currently representing 180 member companies covering all parts of the UK upstream oil and gas business. Members include Operating companies and a wide cross section of the supply chain. Around 200,000 people are employed in the sector in Scotland.

Our consideration and response to the questions posed by the inquiry are set out below and are presented in the context of a major hazard industry operating within a UK legislative framework but largely within Scottish jurisdiction. The response also focuses on major hazard management regulation and practices while acknowledging the general duties on oil and gas related companies to provide safe places of work and safe systems of work.

1. The effectiveness of health and safety regulation in Scotland

1.1 Offshore oil and gas exploration and production is classified as a major hazard industry and as such operates in a strict regulatory regime. The particular nature of offshore oil and gas exploration and production and its attendant hazards has led to the development of a range of industry specific goal-setting Regulations underpinned by the general duties on all employers set out in the Health & Safety Work Act. These industry-specific Regulations focus primarily on the identification and control of major accident hazards and have evolved and matured since the 1990’s. Prior to that time, the industry had a range of prescriptive Regulations that were subsequently deemed to be inappropriate and ineffective by the Cullen report from the Public Inquiry into the Piper Alpha Disaster of 1988. The industry is regulated by the Offshore Division (OSD) of the Health & Safety Executive (HSE); the establishment of the OSD also being a recommendation of the Cullen Report.

1.2 The industry believes the current legislative framework and regulatory regime to be very effective in managing health and safety risks and delivering good levels of health and safety performance. We regard the major hazard management approach typified by the Safety Case Regulations and related major hazard regulations to be “best in class” and a model for other parts of the global oil and gas sector to observe and replicate. Oil & Gas UK has been engaged in a regulatory review process at European Commission level since the Deepwater Horizon disaster of April 2010 and there is an emerging acknowledgement among EU regulators and other member states that the UK offshore legislative framework represents best practice in relation to major hazard regulation.

1.3 The EC has now published a draft Regulation on offshore oil and gas safety in a drive to further reduce risk and that draft Regulation draws heavily upon UK major hazard legislation in terms of technical content. Oil & Gas UK continues to advocate our strong opposition to these proposals which risk undermining current high UK safety standards by introducing a period of uncertainty and confusion during which we will be required to make the transition from existing UK Regulation to the new EU Regulation. Our view remains that the EU Regulation adds no material risk reduction benefit to existing arrangements but will introduce an unnecessary administrative and bureaucratic burden on our industry to adopt and implement the Regulation. We are also concerned by the shift in regulatory control away from Member States to the EU. Oil & Gas UK and industry colleagues in other European national oil industry associations remain engaged with our national authorities to ensure that current standards of safety are not compromised by unnecessary new
legislation from Brussels. We also believe that the regulation of our industry by HSE OSD is both appropriate and effective and more is said on this aspect in later responses.

1.4 Although we avoid complacency at all times, we believe that health and safety regulation in Scotland in its current form and to the extent that it affects the offshore oil and gas industry, is very effective. It is the product of considerable effort over many years of operating experience and is wholly aligned with the nature and scale of our business. A good example of how the industry is not complacent was the creation of OSPRAG, a forum to drive the UK’s response to the oil spill incident in the Gulf of Mexico. This comprised representatives from operator and contractor companies, the trade unions, the UK Government and regulators. Its work gave rise to a high degree of confidence in the current regulatory regime and reassurance that it drives the right health, safety and environmental behaviours.

2. The roles and division of responsibilities between the different bodies responsible for health and safety in Scotland

2.1 Our member companies deal with a number of bodies responsible for health and safety in Scotland, namely:

- The Offshore Division of the HSE in relation to safety on offshore installations and connected activities;
- HSE inspectors from the Hazardous Installations Directorate in relation to shore-based processing facilities designated to be major hazards sites under the Control of Major Accident Hazard (COMAH) Regulations;
- HSE Inspectors from Field Operations Division who deal with onshore facilities such as fabrication workshops and warehouses etc.; and
- Local Authority Environmental Health Officers who regulate Company onshore office premises

2.2 We are not aware of any issues or difficulties arising from those roles and divisions of responsibilities. They are all well established and well understood and the arrangements appear to function well. Our main interactions are with OSD Inspectors with whom we enjoy an effective working relationship, more comment on which is made elsewhere in this response.

3. The effectiveness of the relationships between the Health and Safety Executive (HSE), the Crown Office and Procurator Fiscal Service, the Scottish Government, local authorities, and other relevant bodies

3.1 We are not aware of any issues or difficulties with these relationships and believe them to function effectively from an offshore oil and gas industry perspective.

4. The impact of health and safety regulation upon business

4.1 The fact that offshore oil and gas exploration and production is clearly a major hazard activity dictates that we are a risk management driven rather than regulatory compliance driven industry. That is to say even if there were an absence of regulation in a specific area, our obligation to protect people and physical assets would cause us to implement the necessary risk control measures and hence to incur the attendant cost impact irrespective of regulation. Oil & Gas UK is currently engaged with HSE in an exercise to assess and quantify the economic impact on our industry.
industry of specific major hazard Regulations that go beyond the general duties of the Health & Safety at Work Act. This is a significant project and the impact assessment is due to deliver results early in 2012.

4.2 We do have some appreciation of the vast sums of money spent on securing the safety of our offshore installations and people, but the HSE cost impact assessment will allow us to quantify that in a way we have hitherto been unable to do. As stated earlier we do not consciously differentiate between those costs attributable to regulatory compliance and those we would ordinarily incur as a responsible industry intent on managing its major hazards and keeping its people safe at work.

4.3 One notable cost item impacting our industry is the HSE charging regime that applies to major hazard industries whereby the industry pays for almost the full range of HSE regulatory and enforcement activities. This is a significant burden on member companies and is a particular cost element of business over which members have little or no control. This cost aspect will feature in the HSE regulatory impact assessment.

5. Is there a lack of data on health and safety matters in Scotland, and how does this affect the understanding of potential health and safety problems in Scotland?

5.1 We can really only speak for the offshore oil and gas industry where we would contend that there is a wealth of health and safety data that enables us to understand our performance and to identify areas for improvement in health and safety performance. Furthermore, the information looks at both company specific and industry performance enabling analysis and learning at both levels. The industry has mature performance management metrics that include both leading and lagging indicators to give a more rounded picture of health and safety effort and performance across the industry. The HSE OSD manages a range of offshore oil and gas industry performance data that is shared widely but more crucially, the industry maintains more comprehensive statistical data that we interrogate and use to inform improvement efforts. Companies in our sector maintain their own data while Oil & Gas UK also carries out annual benchmarking exercises to help gauge cross-industry performance. Additionally, the oil and gas industry sets specific targets in key areas such as hydrocarbon release reduction and manages data to track progress against those targets and to help target improvement effort where that is necessary.

6. How does the HSE know how effective their interventions are?

6.1 Although this question is more appropriately directed at the Regulator, we are able to offer a view as the “regulated” in this context. HSE interventions in our industry include safety case assessment, inspections, incident investigations, complaint investigations, follow-ups etc. The OSD programme of inspections of offshore installations is extensive and risk-focused. In addition to routine inspections; OSD periodically initiates “key programme” (KP) inspections with a specific focus on an acknowledged risk area. The current example is KP4 which is on the theme of asset ageing and life extension in recognition of the maturity and projected remaining life of the UKCS basin, and potential risks associated with ageing infrastructure. The industry regards OSD inspections as an additional line of defence in that Inspectors are able to identify and highlight any weaknesses in the duty holder’s safety management system or major accident hazard management and risk control measures.

6.2 OSD investigates incidents occurring on offshore installations on the basis of actual or potential severity. Complaints made to OSD typically using the anonymous reporting facility are also subject
to investigation. The industry recognises the obligation of OSD to undertake investigations and always cooperates fully to achieve effective outcomes. Although we would of course prefer there to be no need for OSD investigation of incidents or complaints; we regard all such investigations as learning and improvement opportunities. From the industry perspective therefore, we would support the view that HSE interventions are typically effective in supporting performance improvement where such is necessary.

7. **How does the HSE monitor the impact of the cases that are investigated, the number that lead to prosecutions, and whether fines are collected?**

This question can really only be answered by HSE.

8. **How does the effectiveness of the Health and Safety Executive (HSE) in Scotland compare with the effectiveness of the HSE in England, Wales and Northern Ireland; and whether the organisational structure of the HSE is the best way to manage health and safety in the context of devolution**

8.1 In relation to offshore operations; our members deal with HSE on both sides of the border as there is significant industry activity off both the East and West coasts of England. We are not aware of any significant disparity in modes of operation or effectiveness between HSE Inspectors either side of the border. That probably results from the Offshore Division being a single industry focused part of HSE and functioning well as a “joined-up” organisation. The HSE OSD Inspectors on both sides of the border are essentially regulating the same companies, doing the same things to the same high standards of safety, with only geography differentiating the business areas. We are satisfied that the organisational structure of HSE as it affects our industry is both appropriate and effective.

9. **Whether the HSE have correctly identified the areas of concern and have appropriately targeted their resources in Scotland?**

9.1 We can answer only for the offshore oil and gas industry and believe that HSE does identify areas of concern and responds appropriately to those concerns. The OSD resource base in Aberdeen appears to be well aligned with industry need and in our view is adequately staffed to fulfil its role. The UK national approach adopted by HSE as referred to in our response to question 8 above, means that the Aberdeen resource is supported by technical specialist Inspectors based in Bootle who participate in inspection and investigation activities where appropriate. An emerging issue that could adversely impact the HSE capacity to discharge its regulatory workload is the very real prospect of new EU Regulation on offshore safety (see response at 1 above) that has the potential to unnecessarily burden HSE.

10. **What effect any reduction in the HSE workforce might impact upon the HSE as a whole and its work in Scotland?**

10.1 As far as we are aware there are no proposals for reductions in the HSE OSD workforce. The oil and gas industry is subject to a charging regime to the extent that the OSD is essentially self-financing. This effectively means that OSD is “ring-fenced” from reductions in staff numbers affecting other divisions of HSE where central funding is required to support the headcount. We are aware of difficulties faced by OSD in terms of their ability to recruit and retain high calibre
employees and there is a current recruitment campaign to restore the division to its establishment headcount.

11. *What international comparisons with similar sized countries, or similar risk industries, can be made which could be helpful?*

11.1 The most obvious comparisons would be Norway, Denmark and the Netherlands, where there are similar oil and gas industries and broadly equivalent regulatory regimes.

*November 2011*
Introduction

1. SRG is the largest surface mining coal producer in the UK currently employing around 900 people across its 9 production sites and head office functions. SRG also has extensive property ownership with interests in land development and regeneration as well as renewable energy.

2. SRG is committed to creating a culture dedicated to the prevention of accidents and work related ill health. We seek to achieve this by providing a consistent standard of training to ensure competence at all levels and by the robust management of health and safety across all our business activities.

3. SRG plays a leading role in the promotion and development of health and safety in the UK surface coal mining industry by actively leading and participating in industry initiatives primarily through the Confederation of UK Coal Producers (CoalPro) Health and Safety Committee and its associated technical working groups.

4. SRG did not participate in the initial phase of this inquiry but was subsequently asked to provide a written submission based on perceived differences in health and safety between Scotland and the rest of the UK in certain industry sectors including the quarrying/minerals sector.

5. This submission summarises the views and opinions of SRG and has been structured using the headings from the published terms of reference for the inquiry.

The effectiveness of health and safety in Scotland

6. SRG’s main business activities in Scotland involve surface coal mining operations undertaken by its main operating subsidiary Scottish Coal. Health and safety in the quarrying/minerals sector is enforced by the Health and Safety Executive’s Quarries Inspectorate which currently has one Inspector based in Edinburgh.

7. In recent years SRG has experienced two serious accidents which resulted in fatalities, one involving its employees and one involving a 3rd party contractor. One of these accidents also resulted in a prosecution. Such incidents inevitably led to relationships with the HSE becoming highly formalised and for a period of time both SRG and other CoalPro members expressed concern that the HSE was not being consistent and felt that these were clear signs that a more robust approach was being taken to health and safety enforcement in Scotland compared with the rest of the UK. In 2009 a restructuring within the HSE resulted in the reformation of the Quarries National Team which has a UK wide structure and this has undoubtedly resulted in improved relationships between the HSE and the industry and a more consistent approach to health and safety regulation is now being taken across the UK.

The roles and division of responsibilities between the different bodies responsible for health and safety in Scotland

The effectiveness of the relationships between the Health and Safety Executive (HSE), the Crown Office and Procurator Fiscal Service, the Scottish Government, local authorities, and other relevant bodies
8. SRG considers that the current HSE structure with the local Quarries Inspector in Scotland reporting to the Quarries National Team is a satisfactory arrangement. The quarrying/minerals sector in the UK is a relatively small, tight knit community and collaboration on a UK wide basis between the various regulatory authorities, trade associations, trade unions and companies operating within the sector is fundamental to ensuring that there is a consistent approach to the development and promotion of health and safety standards across the industry. We appreciate that the HSE is able to deploy highly experienced officials into a specialist industrial sector by pooling its resources on a national basis. It is considered that this is equally beneficial to the HSE and the industry.

9. SRG supports the recent introduction of the Crown Office Procurator Fiscal Health and Safety Division. We see value in specialist prosecutors dealing with health and safety cases. However, it is important that the approach to enforcement in Scotland is consistent with that taken elsewhere in UK.

10. Whilst SRG has unfortunately had recent experience of fatal accidents in our workplaces, this experience has also given rise to concerns about the legal process following such a fatality at work. The main problem is the length of time that is required to organise a Fatal Accident Inquiry (FAI), to bring the inquiry to a conclusion and to disseminate the findings of the inquiry so that any lessons can be learned. By way of example, a fatal accident in February 2007 led to a number of immediate quarry vehicle and traffic management improvements in SRG workplaces many of which are only now, nearly five years later, being introduced in the wider industry following the publication of the Sheriff’s determinations from the FAI in June 2011.

11. It is suggested that it should be incumbent on the regulatory authorities to ensure that the lessons from accidents are disseminated as soon as possible after the event. We understand that care must be taken to ensure nothing is done that may be prejudicial to a legal investigation or inquiry, but our experience is that lessons from fatal accidents are not being disseminated quickly enough to other members of the industry. We are aware of the findings of Lord Cullen’s review of FAI legislation and we would support any proposals to modernise the FAI procedures. We would also encourage the relevant authorities to examine mechanisms to accelerate the FAI process.

The impact of health and safety regulation upon business

12. SRG’s business philosophy is that good safety is good business. We consider that the current level of health and safety regulation is proportionate to the risks involved in our business activities and that the HSE is taking a sensible and proportionate approach to enforcement in the minerals sector. We would be concerned if health and safety regulation in Scotland was to differ from the rest of the UK. Industry wide consistency is essential and this also facilitates the deployment of industry experienced officials in the HSE.

Is there a lack of data on health and safety matters in Scotland, and how does this affect the understanding of potential health and safety problems in Scotland?

13. SRG does not consider that there is a lack of data on health and safety matters in Scotland. There is a suitable amount of information on HSE activities, accident statistics and Scottish health and safety initiatives freely available on the HSE web site. Statistical information in a specialist industry is statistically more sound if collated and analysed on a UK basis rather than just a Scottish basis.

How does the HSE know how effective their interventions are?
How does the HSE monitor the impact of the cases that are investigated, the number that lead to prosecutions, and whether fines are collected?

14. The effectiveness of the HSE’s interventions can ultimately be measured through accident statistics however workplace inspections by Inspectors are also important. SRG values its relationship with the HSE Quarries Inspectorate and we appreciate the proactive interventions by Inspectors during routine visits to our workplaces. We are concerned that the quarrying/minerals sector may be being viewed as a sector which does not require proactive inspections by the HSE and that this might be damaging to relationships. While it is appreciated that the onus is on employers to comply with health and safety legislation, we are of the opinion that the ongoing improvement in the safety culture in our industry can only be sustained if the HSE Quarries inspectorate is sufficiently resourced to undertake proactive as well as reactive work with the industry. This should allow best practice developments to be identified to other operators by a proactive Inspector as he goes about his normal duties. If HSE interventions are only to be reactive in future this means employers will only see an HSE Inspector when something is wrong and that cannot be good for relationships or the development of safe working practices.

How does the effectiveness of the Health and Safety Executive (HSE) in Scotland compare with the effectiveness of the HSE in England, Wales and Northern Ireland; and whether the organisational structure of the HSE is the best way to manage health and safety in the context of devolution?

15. As described previously health and safety in the quarrying/minerals sector is now regulated by the HSE Quarries Inspectorate. The re-establishment of the Quarries National Team in 2009 has been viewed as a positive step and one which is helped the industry in its relationships with the HSE. The Quarries National Joint Advisory Committee (QNJAC) provides a focal point for safety initiatives in what is a relatively small industry sector and it is important that this forum continues to thrive and develop. SRG is of the opinion that the QNJAC structure and the links to the trade associations and individual employers can only be effective on a UK wide basis. SRG sees no benefit in a separate health and safety regulatory regime in Scotland and we believe that it should continue to be a matter reserved for UK Government, if this is the means by which health and safety is managed on a UK-wide basis.

Whether the HSE have correctly identified the areas of concern and have appropriately targeted their resources in Scotland?

What effect any reduction in the HSE workforce might impact upon the HSE as a whole and its work in Scotland?

16. SRG believes that the HSE resources currently covering the quarrying/minerals sector in Scotland is proportionate to the level of activity. Although we are firmly of the opinion that the regulation of health and safety must be undertaken on a UK wide basis we are also of the opinion that it is important for an Inspector from the Quarries National Team to be based in Scotland as is the case at present. This is a specialist sector where suitably experienced officials are essential.

17. What international comparisons with similar sized countries, or similar risk industries, can be made which could be helpful?

18. SRG does not have sufficient knowledge to comment on this matter.

November 2011
Supplementary written evidence submitted by Robert Paterson, Health and Safety Director, Oil & Gas UK

I wanted to write and thank you for the opportunity to give evidence to the Scottish Affairs Committee on 9 November as part of the investigation into Health and Safety in Scotland.

It was very helpful to have the chance to expand on our written evidence and explain to MPs in person the steps the industry has and is taking to make working offshore safer.

During my evidence session, I undertook to send on the link to the survey undertaken by HSE in 2009 to gain an insight into how health and safety is managed and the role the workforce play in health and safety management. Committee Members can find the survey at:

In a response to Graeme Morrice MP, I also agreed to send on information about the number of times companies had been prosecuted for failing to maintain health and safety standards. This information is collected by HSE. Members can find these figures and extra information about the breaches on the HSE website, at:

I hope you found the session useful and please do not hesitate to contact me should you require further information about health and safety in the UK offshore oil and gas industry.

November 2011