

A stronger voice for health and safety

A Consultative Document on merging the Health and Safety Commission and Health and Safety Executive

This consultative document is issued by the Health and Safety Commission in compliance with its duty to consult, under section 50(3) of the Health and Safety at Work etc. Act 1974, bodies which appear to be appropriate before submitting proposals for the making of Regulations.

Comments should be sent to:

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to reach there no later than **5 March 2007**

The Commission tries to make its consultation procedure as thorough and open as possible. Responses to this consultative document will be lodged with the Health and Safety Executive's Information Centres after the close of the consultation period where they can be inspected by members of the public or be copied to them on payment of the appropriate fee to cover costs.

Responses to this consultative document are invited on the basis that anyone submitting them agrees to their response being dealt with in this way. Responses, or part of them, will be withheld from the Information Centres only at the express request of the person making them. In such cases, a note will be put in the index to the responses identifying those who have commented and have asked that their views, or part of them, be treated as confidential.

Many business email systems now automatically append a paragraph stating the message is confidential. If you are responding to this CD by email and you are content for your responses to be made publicly available, please make clear in the body of your response that you do not wish any standard confidentiality statement to apply.

Further single copies of this document may be obtained from HSE Books – see back cover.

Foreword from the Chair of the Health and Safety Commission

Great Britain has one of the best health and safety systems in the world. And one which has constantly adapted over the last three decades to meet new challenges. We have embraced the exacting demands of delivering stretching targets for reducing injuries and ill health, demonstrated a strong commitment to the Better Regulation challenge and made significant steps in working in partnership with key stakeholders and Local Authorities to implement innovative and effective programmes for delivering our strategy.

We believe that our governance structures – the infrastructure that supports our decision-making – have served us well in the past. In particular, the broad partnership nature of the Commission, its independence and its strong links with Local Authorities are assets we wish to maintain. Equally, the shape of the labour market, the nature of workplace risks and stakeholder expectations are very different to those which created the backdrop to the Health and Safety at Work Act thirty years ago. We therefore decided earlier this year that the time was right to look critically at how our governance arrangements compare with best practice, what works well at present and whether we could strengthen the links between strategy and delivery necessary to provide the accountability expected of a public body in the 21st century.

Our conclusion is that merging the Commission and Executive into a single body will give us a more robust governance framework, improve our working practices and create a stronger voice for health and safety in Great Britain. We believe that our proposals take the best from the existing governance arrangements, updating them to instil the drivers necessary for re-invigorating the decision-making framework within which we work and strengthening our existing partnerships, particularly those with Local Authorities.

This consultative document outlines the principles that underpin our blueprint for a new, health and safety authority and an outline of the proposed governance framework.

We look forward to hearing your views on our proposals.

A handwritten signature in black ink that reads "Bill Callaghan". The signature is written in a cursive, flowing style.

Bill Callaghan
Chair, Health and Safety Commission

Foreword from the Chief Executive of the Health and Safety Executive

On behalf of the Health and Safety Executive, I am more than happy to support the Health and Safety Commission in their proposal that our two bodies should formally merge. Whilst we have worked well together in parallel over the years, this merger will improve our governance and ensure an even stronger link between the formulation and delivery of policy. This can only be to the benefit of health and safety in this country.

A handwritten signature in black ink, reading "Geoffrey Podger". The signature is written in a cursive style with a large initial 'G' and 'P'.

Geoffrey Podger
Chief Executive, Health and Safety Executive

Preface

The Health and Safety Commission (HSC) and Health and Safety Executive (HSE) would like your comments on proposals for improving their corporate governance structure and systems. A form is included at the back of this document to help you do this. It repeats the questions set out in the main text below.

Please feel free to copy this Consultative Document (CD) more widely. Further copies are available from the address on the back cover and on the internet on the HSE home page at: <http://www.hse.gov.uk/consult/live.htm>

Acknowledgements

We would like to thank all those who have helped with the development of these proposals. We are grateful to the Office of Public Management (OPM) and the Chartered Institute of Public Finance and Accountancy (CIPFA) for their permission to reproduce quotes from The Good Governance Standard for Public Services (Independent Commission for Good Governance in Public Services, 2004).

Why are we consulting you?

Our aim is to consult a wide range of interested bodies and individuals. We believe that this will enable an open and transparent approach to decision-making, which is essential if policies and decisions are to have widespread ownership and reflect the needs and aspirations of the people they will affect. The analysis of the results of this consultation exercise will feed into our decision-making process and the recommendation we make to Ministers on how to proceed.

What we would like you to do

We would like you to comment on these proposals by **5th March 2007**. We have included a reply form at Annex 1 of the CD summarising the areas where we would welcome your views; it will also help us to analyse responses. You may also respond by completing the response form online at <http://www.hse.gov.uk/consult/condocs/cd210.htm> or downloading the response form and sending it to us at the address below. It is not intended to restrict the scope of the comments: we would welcome any comments you wish to make on the proposals.

Written comments or queries may be sent to:

Ami Badmus,
Health and Safety Executive,
Rose Court,
2 Southwark Bridge,
London SE1 9HS
Tel: 020 7717 6876
Fax: 020 7717 6670
*Email: **governance@hse.gsi.gov.uk***

If you reply to this CD in a personal capacity, rather than as a postholder of an organisation, you should be aware that information you provide may constitute 'personal data' in the terms of the Data Protection Act 1998. For the purposes of this act, HSE is the 'data controller' and will process the data for health and safety and environmental purposes. HSE may disclose these data to any person or organisation for purposes for which it was collected, or where the act allows disclosure. You have the right to ask for a copy of the data and to ask for inaccurate data to be corrected. Please note all replies will be made public unless you specifically state you wish yours to be made confidential.

Many business email systems now automatically append a paragraph stating that the message is confidential. If you are sending your comments by email please state clearly if you are **not** content for your response to be made public.

What happens next?

We will acknowledge all responses and give full consideration to the substance of arguments in the development of proposals; we may also contact you again if, for example, we have a query. When HSC has decided upon its recommendation to Ministers, we will let you know how the work will proceed and how the decision reached reflects the results of the consultation.

Making responses public

To make our consultation process as transparent as possible we make the comments we receive available to the public at our information centre in Bootle. Copies will be made available at a small charge to cover costs, from the following address: Health and Safety Executive, Information Centre, Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS.

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A Stronger Voice for Health and Safety:

Executive Summary

1. The Health and Safety Commission and Health and Safety Executive (HSC/E) have been in existence for thirty years. During that time we have seen tremendous improvements in health and safety at work. Our record on reductions in injuries is one of the best in Europe. Our strategy for addressing health issues is taking effect; statisticians have concluded that we are on target for meeting the ambitious targets for reducing ill health and working days lost set by Government in 2000. Last year (2005/6) saw 4000 fewer serious injuries and 53 000 fewer new cases of ill health. Working with our partners, we have improved protection for workers and the public whilst at the same time simplifying the regulatory regime.

2. There is no doubt that the governance structure envisaged by Robens, with both sides of industry equally represented on the Commission, has stood the health and safety system in good stead, a fact recognised by the Revitalising Health and Safety strategic appraisal. The Commission is rightly valued for its independence. It has provided the experience of industry necessary to develop workable regulation and policies and has delivered the broader support and consensus necessary to implement them in practice. And the balance between both sides of industry on the Commission has made a significant contribution to the trust invested by the public in the HSC/E as a risk regulator.

3. Clearly public accountability is at the heart of good corporate governance. It would be wrong, however, to accept that we could not improve upon our existing structures. Expectations of the accountability and openness of public bodies have moved on apace in the last thirty years. The introduction of Public Service Agreements as part of Departmental budget settlements has set stretching targets for public bodies, targets for which they are accountable. A sound strategy, linked with a strong focus on performance, is absolutely essential to ensure that the targets for the health and safety system are delivered in a way that makes best use of public funds.

4. There is also evidence that many people do not make any distinction between the Commission and Executive. Indeed, it is possible that public statements from two separate government bodies may reduce the impact of our key messages when we need a stronger voice for health and safety.

5. Against this background the Commission and Executive decided to look more closely at its governance framework. The recent focus on governance in the commercial world has been matched in the public sector by a critical examination of best practice. HM Treasury and the Independent Commission

for Good Governance in Public Services have produced excellent guidance documents¹ that we have drawn on in our deliberations.

6. A critical consideration has been that we should not dilute the strengths of the current structures, in particular the independence that comes from being at arm's length from government. While some might argue that a free standing Commission is the only means of ensuring that independence, we have concluded that the advantages of merging the Commission with the Executive into a single Non Departmental Public Body (NDPB) will strengthen our capacity for sound decision-making and improve the links between strategic and policy development with delivery.

7. Of course, delivery of our strategy depends significantly on our partners in the health and safety system. Local Authorities (LAs) are making a substantial contribution – it is estimated this year that at least two thirds of the inspector resource going into HSE's FIT3² Programme comes from LAs. Our proposals take into account the importance of this partnership. We also recognise that any changes must preserve the position whereby individual enforcement decisions are made by officials.

8. This Consultative Document (CD) seeks your views on the conclusions of our review:

Chapter 1 describes the origins of HSC/E and the existing governance arrangements.

- Chapter 2 sets out the case for change. It describes the changing world of work, sets out the rationale for merging the Commission and Executive into a single health and safety authority and elaborates a set of overarching governance principles.
- Chapter 3 outlines our objectives for establishing the governance structure for the new organisation and how we propose to achieve it. It describes our preferred structure for the governing body which will replace the Commission, describes its relationship with the executive arm and our ambitions for improving accountability and openness, and the independence of our enforcement activity.
- Chapter 4 summarises our approach to making the change, the legislative options for merging HSC and HSE and timescales for transition.

¹ Code of Good Practice on Corporate Governance in Central Government Departments (HM Treasury, 2005); Enhancing the Effectiveness of Independent Boards in executive Non-Departmental Public Bodies (Lynton Barker for HM Treasury, 2004); The Good Governance Standard for Public Services (Independent Commission for Good Governance in Public Services, 2004, published by the Office for Public Management (OPM) and the Chartered Institute for Public Finance and Accountancy (CIPFA))

² Fit for Work, Fit for Tomorrow, Fit for Life" See <http://www.hse.gov.uk/aboutus/plans/hscplans/0506/fitfor.htm>

9. We have interspersed the text of this document with specific questions where we would welcome your views. These are summarised in Annex 1. The preface to this document describes in more detail how to let us have your response.

Chapter 1: Current Corporate Governance Structure

The origins of HSC/E

10. The modernisation of health and safety law in Great Britain has its origins in the report “Safety and Health at Work”(1972) known as the Robens report.³ The report was used as the basis for the Health and Safety at Work Act 1974 (HSW Act)⁴. It proposed the introduction of ‘a single authoritative body to facilitate and promote health and safety within the workplace with autonomy, its own budget, executive powers and functions’.

11. The Robens report explicitly recognised the considerable contribution industry based organisations should make to the development of the goal-setting approach to industrial self regulation which was expected to deliver improvements to health and safety. This acknowledged the essential need for “user participation” in the detailed technical work on regulations, standards and codes of practice required to modernise health and safety law.

12. The blueprint for the new organisation was for a separate authority with its own budget and autonomy under the policy directions of a departmental Minister, and a range of executive powers and functions. The non-executive body would include people with experience in the field of industrial and commercial management, in the trade union field, and in the medical, educational and Local Authority (LA) spheres. The executive should be linked up with industry level safety bodies and the work of statutory services, including the Confederation of British Industry (CBI), Trade Union Congress (TUC) and LAs.

13. Most of Lord Robens proposals were adopted in full and formed the basis of the Health and Safety at Work Act 1974 (HSW Act). However, the HSW Act did not provide for a single authority, but two separate Crown Non Department Public Bodies (NDPBs); the Health and Safety Commission and the Health and Safety Executive (HSC/E).

The Health and Safety Commission

14. The Health and Safety Commission (HSC) is the principal body in relation to the regulation of health and safety at work in Great Britain. Its role is to protect the workforce against health and safety risks. HSC takes policy decisions and advises Ministers, including those from other Departments,

³ Safety and Health at work -Lord Robens (cmdn 5034 1972)

⁴ Health and Safety at Work Act 1974 (1974 c 37)

accordingly and, through the Health and Safety Executive (HSE), secures compliance.

15. The structure of the Commission is set out in Section 10 of the HSW Act; it should consist of *not less* than six and *not more* than nine members (excluding the chair) appointed by the Secretary of State (SoS), who is obliged by statute to “consult such organisations representing [employers/employees] as he considers appropriate” for three members from each side.

16. The introduction of open competition to fill posts in line with Office of the Commissioner for Public Appointments (OCPA) guidance has introduced greater openness and widened the scope for appointments from a broad field. Consultation on employee/employer appointments includes the TUC and CBI, although Ministers have appointed members from employer/employee organisations who are not affiliated to these bodies. It is generally accepted that the role of those appointed is not as representatives of their parent organisations but to reflect the interests of their broader stakeholder constituencies.

17. The important regulatory role LAs play in ensuring compliance in the sectors they enforce is also recognised in the governance arrangements. The SoS is obliged to consult such organisations representing LA (Local Authorities Coordinators of Regulatory Services (LACORS), the Convention of Scottish Local Authorities (COSLA), the Welsh Local Government Association (WLGA), the Local Government Association (LGA)) and such other organisations, including professional bodies, as he considers appropriate in filling the remaining posts on the Commission.

18. The creation of the Scottish Parliament and the Welsh Assembly did not result in any changes to the HSW Act; health and safety is a reserved topic and there are no seats on the Commission reserved for members from the devolved authorities. However, HSE has Concordats with both administrations and works closely with them to maintain harmonious working relationships and good communications at all levels on topics of shared interest. HSC designates specific members to work with HSE in building and maintaining sound relations with the devolved administrations and other key stakeholders in Scotland and Wales.

19. The Commission is also empowered by HSW Act to appoint persons or committees to provide it with advice. The structure of advisory committees broadly reflects the composition of the Commission itself, with an emphasis on securing expert technical advice where that is appropriate and operating under a code of practice that sets out how members should observe the standards for public life. HSC/E reviews the remit and need for these standing committees as the opportunity arises.

The Health and Safety Executive

20. The HSE is the operating arm of the HSC. The HSE ensures that HSC's regulatory and strategic activities are conducted within required guidelines.

21. Formally, the Executive consists of three people, including the Chief Executive. The Commission appoints the Chief Executive, with the approval of the Secretary of State (SoS); and the remaining Executive members in consultation with the Chief Executive.

22. It is the duty of the Executive to exercise functions as directed by the Commission. HSE prepares proposals for HSC, makes recommendations and carries out HSC's decisions. The exception is the protection from HSC involvement in decisions about prosecution and individual enforcement (HSWA Section 11(4)(b)). This presumably recognised when the Act was introduced that conflicts of interest could arise if Commissioners were involved in individual enforcement decisions.

23. The position of decision-makers in relation to enforcement is also covered now by a set of principles contained in judge-made law, the Code for Crown Prosecutors, which binds all government prosecutors, the HSC Enforcement Policy Statement and Operational Circulars. The effect is that neither the Commission (nor any of its individual members) nor Ministers can influence a prosecution decision in an individual case without breaching those principles.

Relationship with Sponsoring Department

24. HSC/E's sponsoring government department is the Department for Work and Pensions (DWP). The relationship at present between the SoS and HSC/E is set out in the HSW Act. The SoS can give directions to HSC and is accountable to Parliament for the activities and performance of HSC and HSE. A management statement⁵ updating the existing Framework of Accountabilities, sets out the broad framework within which HSC and HSE operate: their overall aims and targets; conditions of funding; and accountability for performance.

Role of Local Authorities

25. The role of LAs is reflected in HSW Act Section 18, which provides for Ministers to make LAs responsible for enforcement by regulations. The Health and Safety (Enforcing Authority) Regulations allocate the enforcement of health and safety legislation at different premises between LAs and HSE. LAs are the principal enforcing authority in retailing, wholesale distribution,

⁵ Currently being reviewed.

warehousing, hotel and catering premises, offices, and the consumer/leisure industries. Responsibility for enforcement at certain premises may be transferred between HSE and LAs by agreement.

26. HSC's Strategy for 2010 and Beyond expressed an ambition to see HSE and LAs working in closer partnership to a more sensible and better understood division of enforcement and agreed targets within an agreed framework. The partnership is expressed in a Statement of Intent, signed in 2004.

27. A subsequent review of the liaison and governance arrangements between HSC/E and LAs recognised the importance of setting up a regular forum to secure an improved partnership. This forum -the Local Government Panel (LGP) -met for the first time in May 2006. It aims to promote a strategic dialogue on local, central and devolved government issues that impact on health and safety regulatory functions. It will also review the effectiveness and performance of the partnership HSE and LAs. Membership comprises LA elected members from England, Scotland and Wales representing the LGA, COSLA and the WLGA. The Chairman of LACORS and the Chair of HSC jointly chair the panel.

28. Further details on the roles of HSC, HSE and LAs is at Annex 2. HSE's Enforcement Policy is described in Annex 3.

Chapter 2: The Case for Change

The Changing World of Work

29. The economic, social and industrial landscape has changed considerably since the introduction of the HSW Act. The manufacturing base has declined. Small firms have become more important. The labour market is more female, older and diverse. Expansion of the European Union (EU) has provided opportunities for immigrant workers to join the labour market, frequently in jobs where risks are less well controlled. Worker representation has also changed. In 1979 union membership stood at 13 million; in 2005, it was around 6.4 million, a little less than 30% of the workforce.

30. There have also been changes in the risks to which workers are exposed. HSC's ambition to reduce ill health and working days lost, in particular stress and Musculoskeletal Disorders (MSD) related issues, demands a much greater emphasis on influencing management practice in the workplace. This has been particularly evident in the work to encourage large companies and public sector organisations to adopt the stress management standards approach. Having credibility and the ability to influence these organisations is critical if HSC/E is to have the desired impact it wants on health issues.

31. We also aim to ensure that our policies and operational activities protect all people's health and safety in the workplace, whatever their race, gender, disability, age, religion or sexual orientation – indeed whatever their background and outlook on life. To be successful, therefore, we need to be sure that we understand the diverse society in which we operate and conduct our business with sensitivity and respect for people's different needs, vulnerabilities and perspectives on life. While we have made significant progress in realising our ambition to reflect the needs of a diverse society in our strategy, we recognise that securing diversity within our governance structures can ensure that the needs of those we serve are identified and met with less chance of wasted activity and resource⁶.

32. Clearly, expectations of those appointed to public bodies have also moved on in recent years. Appointments are made on the basis of merit whilst striving to ensure the diversity that reflects those served. However, individuals are not appointed simply as representatives of a particular group. They also need the requisite skills, experience and diversity for sound decision-making. This is seen in the trend, as demonstrated by Commission appointments over the last few years, for broad corporate governance skills on strategy, finance, change, audit, HR expertise and so on, alongside the detailed technical understanding of regulation, standards and codes of practice. Where

⁶ Report of the Cabinet Office Short Life Working Group on Improved Diversity in Public Appointments, Cabinet Office, See <http://www.publicappointments.gov.uk/upload/assets/www.publicappointments.gov.uk/slwgreport.pdf>

changing circumstances require a broader skills base, expanding membership can bring in any additional skills or expertise required.

33. There is no doubt that much has already been achieved in the 30 years since HSC/E was established. We have seen a cumulative decline in the number of fatal injuries. In 1975 there were 614 work-related deaths; in 2004/05, there were 212. HSC/E's responsibilities have expanded both in response to major reviews following serious incidents and as a means of addressing technological development and societal concerns. The creation of new legislation has diminished. Our partners and stakeholders in the health and safety system are working more closely with us. We must continue to have their confidence, the confidence of the public and the confidence of Ministers if we are to continue to deliver even more positive health and safety outcomes in the future. Improving our governance arrangements will contribute towards this.

Best Practice in Governance

34. The emphasis on public service delivery and the desire to improve public accountability has resulted in a number of reviews and publications aimed at improving corporate governance. Our review of best practice guidance drew on the most influential of these.

The governors of our public service organisations face a difficult task. They are the people responsible for governance – the leadership, direction and control of the organisations they serve. Their responsibility is to ensure that they address the purpose and objectives of these organisations and that they work in the public interest. They have to bring about positive outcomes for the people who use the services, as well as providing good value for the taxpayers who fund these services. They have to balance the public interest with their accountability to government and an increasingly complex regulatory environment, and motivate front-line staff by making sure that good executive leadership is in place.

Sir Alan Langlands, Foreword to The Good Governance Standard for Public Services

35. The Commission concluded that the priority for any revision to HSC/E's governance arrangements should be to:

- clarify the roles and working relationships between the governing body, its executive arm and Ministers
- improve the public accountability of the governing body for strategic direction, performance and prioritisation of resources
- improve effectiveness of decision-making by drawing on a wide range of experience on all issues relevant to policy and delivery
- provide for better focus on organisational purpose and outcomes for partners in the health and safety system and the public

- give a voice to those key stakeholders
- ensure transparent decision-making and risk management
- retain the independence of inspectors in taking enforcement decisions.

A Stronger Voice for Health and Safety

36. The Commission and Executive has considered how to take the best from the existing arrangements while updating them to put in place a framework which will deliver more transparent decision-making. Retaining the existing two separate bodies is of course an option: it would avoid the need for legislative change and the costs, albeit minor, that always accompany change. But it would also leave in place very old fashioned governance structures, with no formal mechanisms for non-executive director input into helping run HSE. In our view, this is not sensible.

37. We have concluded that replacing the Commission with a governing body at the head of a merged health and safety authority would provide for governance arrangements more closely aligned with current best practice – a single governing body with non-executive directors responsible for holding the operational arm to account for its own performance. We believe that this will provide for a more effective structure, better decision-making and a clearer public and regulatory presence.

38. We recognise that for many stakeholders, the independence of the Commission is paramount – indeed, it is seen as a key strength of the current arrangements. Our intention is that a merged HSC/E will continue to act as a body at arm's length from Ministers without dilution of the powers currently conferred under the HSW Act. This would include the protection of inspectors from interference in prosecution and enforcement decisions.

39. We will also want to see the relationship between HSC and LAs, established under HSW Act, preserved under the new governance structure (see Annex 2 for more details). The LGP (see para 27) which currently provides a forum for HSC and elected members to discuss strategic policy decisions that impact on LA's regulatory responsibilities will continue to provide a direct route to the governing body of a merged HSC/E. This will ensure that the interests of LAs are reflected in the governing body's considerations when setting policy and strategy.

40. We believe that the new governance structure will provide considerable benefits for our principal stakeholders and the public. The opportunity costs of setting up the new structure, funded from existing allocations, will be modest and can be balanced in the longer term by more streamlined support processes for the new body. Should Ministers decide to appoint a larger governing body than the current Commission, this will provide a broader set of skills and experience from which to draw, providing commensurate value for the expenditure. Other benefits, such as those which will arise from more effective decision-making, are more difficult to value in monetary terms.

However, the independence of the governing body within a merged organisation will provide the right conditions for protecting the public interest, by allowing balanced and objective scrutiny of investment decisions with the aim of achieving best value for the public.

A More Accountable Structure

41. The merger of the Commission and Executive will ensure that lines of accountability are much more clearly exposed. The current governance structure, with two separate public bodies, inevitably means less than ideal clarity about accountability for key issues such as resource investment. The Commission publishes its business plan annually and is financed by grant in aid from the Department for Work and Pensions (DWP) for delivering that plan. Formally, the Commission pays the Executive such sums as the Commission considers appropriate for the purposes of enabling the Executive to perform its functions and the HSC Chair and HSE Chief Executive are Accounting Officers for the Commission and Executive respectively. In practice, the Commission provides high-level direction on prioritisation of resources; the detail of resource management is addressed by HSE's Board.

42. We believe that such arrangements do not facilitate the kind of public discussion on resource management which are appropriate to a public body aspiring to best practice in accountability, openness and transparent decision-making. In a merged organisation, Government Accounting rules would place the Chief Executive (CEO), as the senior official, as Accounting Officer with responsibility for maintaining a high standard of financial management and for providing advice to the governing body on matters of financial propriety, prudent and economical administration, efficiency and effectiveness. The CEO may take action in circumstances where the governing body acts without due consideration to value for money, although such action is only generally taken in extremis. Operating within a culture of openness, these arrangements are expected to provide sufficient checks and balances for greater accountability in the use of resources and how they are prioritised for delivering agreed targets.

43. The governing body will also be more clearly accountable to Ministers for overarching delivery of the strategy. This will require it to take a broader view that will go beyond the operational responsibilities of HSE. It will also be responsible for actively taking forward the partnership relationship with local Government so critical to the success of the strategy. Although LAs are themselves autonomous and separately accountable for their enforcement activity, the personal involvement of members of the governing body in the LGP will continue to provide an effective means of agreeing overarching objectives for LAs' contribution to the strategy.

Better Decision Making

44. Improved accountability alone does not guarantee better decision-making. A sound evidence base, expert advice and taking the views of those with an interest contribute to the process. HSC/E has long subscribed to and benefited from such principles.

45. Bringing together the policy making and implementation functions into a single body will serve to enhance the process. The governing body will be expected to have a much greater focus on issues of strategy and policy; to hold the senior management team to account for operational effectiveness and efficiency; and to strive to make decisions that further the organisation's purpose. It will be fully aware of any challenges of implementing policies that it develops and will be able to involve itself at a level of detail that facilitates effective decision-making.

46. Effective relationships with stakeholders and partners will continue to ensure that the governing body can consider a wide spectrum of views in policy development and implementation. Particularly important will be the continued personal involvement and engagement of members of the governing body with business, trade unions, professional organisations and LAs in forums such as the Partnership Board in Scotland, the Local Government Panel (see para 39), specific advisory committees (see para 19) and stakeholder panels.

A Clearer Public and Regulatory Presence

47. Even though HSC/E has established a reputation as an effective and trusted regulator, it is surprising perhaps that, even after thirty years in existence, very few members of the public are able to distinguish between the two bodies. Such lack of clarity flies in the face of our stated intention of speaking more directly to those whom we aim to protect rather than in engaging as experts to experts.

48. But even among those who do understand the distinction, there have been concerns in the past that there may be divisions between HSC and HSE. Even though it is HSE's responsibility to advise on and deliver, not make, policy, these perceptions are unhelpful and may go so far as to undermine organisational effectiveness. A merged body would go beyond addressing this risk: it will give us the opportunity to present ourselves as a single, authoritative and stronger voice for health and safety.

Question 1: Do you agree with our proposals for merging HSC and HSE into a new single authority for regulating health and safety at work in Great Britain?

Principles of Good Governance

49. Drawing on guidance on corporate governance, the experience of other public bodies and informal soundings from key stakeholders, the Commission has agreed an overarching set of principles to underpin the shape and working practices of the new body outlined below.

GOVERNANCE PRINCIPLES FOR A MERGED HEALTH AND SAFETY AUTHORITY

Membership

An overarching aim is that membership of the Governing Body should reflect the diverse society, which it serves. It should be equitably balanced to ensure that the interests of employers and workers are fairly considered. At least one member of the Governing Body should be designated to ensure that the interests and responsibilities of Local Authorities are considered. At least one member should be designated to maintain links with developments in Scotland and Wales.

Corporate Behaviour

Members should act in a way that exemplifies good governance and accountability, upholds corporate values and displays a commitment to corporate decisions.

Selection and Skills

Members should be selected on merit in line with public appointment principles and should be able to demonstrate [as a body] the broad range of skills, experience and attributes appropriate to directing the work of a regulatory body.

Performance and Development

The Governing Body should endeavour to improve their performance and develop professional skills both corporately and individually.

Relationships with Stakeholders

The Governing Body should aim to be an exemplar in the way it consults and involves stakeholders, including holding open meetings and making information available in line with a published statement on openness. Members should be responsible for actively taking soundings from stakeholder constituencies so that their views can be taken into account in the deliberations of the Governing Body. Members should at the same time take account of the views of the wider public, recognising that many workers and employers may not belong to representative bodies.

Enforcement

Prosecution and individual enforcement decisions should be taken by officials and not by the Governing Body.

Question 2: Do you agree with the overarching governance principles for a new merged health and safety authority?

Chapter 3: An Improved Governance Structure

Membership of a New Governing Body

50. The Commission recognises that the public interest will be best served by a governing body that reflects the diverse society it serves. The current balance of membership from employer and employee backgrounds has worked well, as has the inclusion of a member from a LA background. The inclusion of members from other backgrounds provides an assurance that broader public interest considerations are taken into account. We want to see these effective arrangements – and the independence they engender - continue in the new organisation.

51. We will also want to maintain the links with the devolved administrations in Scotland and Wales and we will be ensuring that one or more members are designated to have links with Scotland and Wales.

Structure of a New Governing Body

52. Guidance on corporate governance for public bodies⁷ does not suggest a “best” model. It is a question of adopting a model that best suits the business in providing oversight of strategy development, executive delivery and performance. A key consideration is whether the organisation is primarily concerned with policy development or delivery. Where the emphasis is on policymaking, organisations are generally better served by a governing body of non-executives; a mixed model of non-executives and executives is a better fit where delivery is the prime function.

53. The challenge in bringing together the Commission and the Executive is that the resulting merged organisation will be responsible for both. The Commission recognises that the governance model must therefore provide for transparent policy making while reassuring the public about accountability for effective delivery and the independence of the enforcement function.

54. Clearly, the structure of the governing body of the new merged organisation and its relationship with the executive is critical. We considered two models. The first is a “non-executive model” whereby membership of the governing body is entirely composed of non-executive directors. The executive are not members of the governing body, although they do have defined roles and responsibilities, including the provision of advice. This is a model that has been adopted by other regulators, in particular those whose

⁷ Code of Good Practice on Corporate Governance in Central Government Departments (HM Treasury, 2005); Enhancing the Effectiveness of Independent Boards in executive Non-Departmental Public Bodies (Lynton Barker for HM Treasury, 2004); The Good Governance Standard for Public Services – “The Langlands Report” (Independent Commission for Good Governance in Public Services, 2004)

responsibilities include regulating risks to health, for example, the Food Standards Agency.

55. The second model we explored was the “mixed” model. Under these arrangements, the CEO, with or without members of his senior team, sits on the governing body with non-executive directors. Many of the economic regulators such as the Office of Fair Trading adopt this structure. We explore the arguments for and against adopting each of these models in more detail below.

The “non-executive” model

56. The non-executive model has the advantage of providing a clear separation between governing and executive functions. The establishment of criteria for issues appropriate for decision by the governing body and robust management of meeting agendas can allow it to concentrate on matters of policy, strategy, priorities for delivery and investment.

57. This model also provides for clear lines of accountability. The CEO can be called to account by the governing body, on behalf of stakeholders, for the actions of the executive, in particular for performance and resource management. “Shareholder” interest is provided by the CEO’s responsibilities as Accounting Officer, and general accountability to the Minister and to Parliament.

58. The model is particularly valuable for HSC/E as the independence of the governing body is paramount for maintaining public trust, balanced by the independence of the executive in its ability to make individual enforcement decisions without political interference or partisan influence. The strength of this model, as with the existing arrangements, is that it maximises scope for providing such external assurance. By extension, the governing body’s advice to Ministers can be seen to be completely independent, arrived at following a process of collective consideration of the evidence presented by the executive team, but with the final decision taken exclusively by the non-executive members.

59. There is a risk, albeit marginal, of the governing body giving insufficient weight to the advice proffered by the executive and taking decisions that are at odds with the capacity of the executive to deliver them. However, the Accounting Officer is responsible for advising the governing body on whether its proposals/decisions meet established public propriety and value for money criteria. The governing body must ensure that professional advice on legal and financial matters is available and used appropriately. The provision of speaking rights for the executive, formally built into a statement of working arrangements, would address this. Notwithstanding such arrangements, the internal working relationship between non-executive and executive must itself be one of trust – this is a requirement of any governance model. Appropriate structures, formal and informal, to build and maintain that relationship must be in place, regardless of the model is adopted.

The mixed model

60. The “mixed” model is one that gives greater prominence to the relationship between executive and non-executive with the CEO (with or without senior executive colleagues) sitting on the governing body. The rationale is that executive and non-executive members jointly provide a better balance for informed and authoritative decision-making. By formally giving a voice to the executive, the risk of giving insufficient weight to the operational implications of policy decisions is addressed.

61. There are some risks with this model. A closer relationship between executive and non-executive could result in reluctance on the part of non-executive members to provide the robust scrutiny of performance that is the hallmark of good governance. Supplementing the Audit Committee with independent members will ensure a critical overview of internal control and risk management.

62. It is also possible that the executive team, as civil servants, could be compromised if their votes on issues in open meetings were perceived as giving advice to Ministers in public, dissenting from public governmental decisions or conversely diluting the independence from Government.

Our Conclusion

63. HSC has considered the advantages and disadvantages of both models and concluded that on balance, the aims of bringing HSC and HSE into a merged health and safety authority would be best delivered by a governing body comprised entirely of non-executive directors. We envisage a body of a similar size to the current Commission, but with the scope to increase in size from 9 to 11 independent members in addition to the Chair should the need arise in future.

64. We believe that this form of governance will best maintain the strengths of HSC, making it more acceptable to stakeholders and partners, including LAs. It will help to preserve the important principle that only officials should take individual enforcement decisions. And it will provide the necessary accountability, improved decision-making and a stronger voice for health and safety at work that we are aiming to achieve.

Question 3: Do you agree that the governing body of the new merged health and safety authority should consist entirely of non-executive directors?

Question 4: Do you agree that the governing body should have the scope to increase in size to 11 independent members should the need arise in future? Do you have views on the right size?

Role of the New Governing Body

65. We have explained above the benefits of creating a merged organisation in which the governing body will have a broader remit than that of the existing Commission (see paras 36 -46). Much of the business of the governing body will be similar to that undertaken by the existing Commission (see Annex 2). For example, the governing body will continue to have overarching responsibility for formulating strategy and policy, reviewing the advice offered by HSE staff on policy issues, but being responsible for final decisions on how to proceed. It will also be the owner of strategic partnerships, such as the relationship with LAs ensuring that their interests are taken into account in its considerations. But the role of the new governing body will go beyond this. It will scrutinise programme delivery and expenditure regularly, effectively holding the CEO and his senior management team to account for matters relating to operational effectiveness and efficiency. And the governing body will, in its turn, be held to account by Ministers for the organisation's performance. The practical arrangements for supporting this broader role will be put in place in due course.

Relationship between the Governing Body and the Executive

66. Corporate Governance guidance and literature stresses the importance of distinguishing clearly between the roles of Chair and CEO. The roles are complementary but distinct. The Chair is principally responsible for managing the governing body, ensuring that it provides a policy framework and strategic direction acceptable to key stakeholders and acting as the public face of the organisation. The CEO is responsible for delivering within the established framework and for providing the advice that the governing body needs to make informed decisions.

The chair and chief executive share in the leadership role. The chair's role is to lead the Governing Body, ensuring it makes an effective contribution to the governance of the organisation; and the chief executive's is to lead the organisation in implementing strategy and managing the delivery of services. A good working relationship between the two can make a significant contribution to effective governance.

The Good Governance Standard for Public Services

67. Well-structured supporting processes will ensure that the governing body works closely with the executive to receive and interrogate their advice and understand the operational implications of policy decisions. Formalising roles, relationships (notably between the Chair and CEO) and ways of working and providing strong administrative support to the governing body will be critical to the establishment of a merged organisation and will be a priority in preparing for the transition.

68. Senior members of the management team (CEO and Deputy CEOs) should be present at meetings and the CEO, or the most expert senior staff

member on the topic at issue, should have speaking rights. The Finance Director should attend meetings and the Legal Adviser should be on hand. The governing body will therefore be properly advised before taking decisions.

69. We recognise that it will be particularly important in a merged organisation to distinguish between those decisions that should be taken by the governing body and those that are best left with the executive. We propose to draw up a formal statement that specifies the types of decisions that are delegated to the executive and those that are reserved by the governing body. This will ensure that governors do not become involved with levels of detail inappropriate to their role without compromising oversight or scrutiny but also that major operational issues across the organisation are discussed by the governing body.

Corporate Behaviour

70. Members of the governing body are the public face of the organisation. Their individual behaviour must be beyond reproach so as to represent the values of the organisation and to maintain and enhance its reputation. Our existing arrangements for defining corporate behaviour for Commissioners are set out in a Code of Practice for Commissioners⁸ that draws on Treasury guidance and the Nolan Committee Principles for Public Life. We will update the Code in due course.

Selection and Skills

71. We do not anticipate any changes to the existing arrangements, which follow the Office of the Commissioner for Public Appointments (OCPA) Code of Practice for Ministerial Appointments to Public Bodies⁹, for appointing members. As part of the appointments process, our sponsor department considers the qualities and expertise required. We will keep under review the collective and individual skills of non-executive directors, to ensure that we continue to have sufficient expertise for effective governance in the light of changing demands on the new merged organisation (see para 33).

Performance and Development

72. Good governance maintains the importance of managing and reviewing the performance of the governing body and its members. It is the responsibility of the Chair to carry out group, as well as individual, performance reviews to ascertain the credibility of the governing body's

⁸ Currently being reviewed

⁹ See http://www.ocpa.gov.uk/upload/assets/www.ocpa.gov.uk/codeofpractice_aug05.pdf

decision-making and to regularly review the skills set and roles and responsibilities within the group. We will continue to do this.

Relationship with Stakeholders

73. Good relationships with stakeholders underpin effective decision-making and we want to build and maintain productive partnerships with those who can and will contribute most to our corporate targets and strategy. We have endeavoured to put in place a range of mechanisms that provide for the two way dialogue essential to good governance – examples include our stakeholder conferences on topical policy issues, and our approach to openness and market research that provide a better feel for public perception and views. We will also continue to engage with relevant stakeholders on both a bilateral and group basis, for example through our Advisory Committees, on specific issues.

74. The governing body has an important role in forging links with stakeholders – a two-way role, which requires them to take views and feed them back into corporate discussion. This places particular demands on non-executive directors and we will want to look more closely at whether we can provide more support to them.

The Governing Body should value the perspectives which governors appointed from different backgrounds bring, but should make clear that these appointed governors are not expected to provide the only source of information about the specific groups whose background or experiences they share. Where appointed governors are asked to provide authoritative information about the views and experiences of such groups, they should have access to collecting this information.

The Good Governance Standard for Public Services

Q5: We would welcome your views on whether we should be doing more to enhance our relationship with stakeholders

Enforcement

75. A key issue raised in our informal discussions with stakeholders, internal and external, is that prosecution and individual enforcement decisions should continue be taken by officials. The Commission and Executive believes that this is a key principle and will be consulting with Parliamentary Counsel when the time is right to ensure that the principle is appropriately reflected in legislation (see Chapter 4).

Q6: Do you agree that prosecution and individual enforcement decisions within a merged health and safety authority should continue to be taken by officials?

Name of the Merged Organisation and its Governing Body

76. We know from market research we have conducted that HSE is a well - trusted organisation, compares favourably with other regulators and is seen as having good relationships with stakeholders. We want to build upon that reputation. We propose that we should not create a new name for the merged body (nor incur the expense that would entail) and should adopt the existing title "Health and Safety Executive". The governing body, effectively replacing the existing Commission, will be known as the HSE Board and have a wide remit, setting the policy framework and strategic direction of the new organisation and overseeing the performance of the operating arm.

Q7: Do you agree that the merged body should be known as the Health and Safety Executive?

Chapter 4: Making the Change

77. We have already made a number of smaller scale changes to our governance arrangements in line with central guidance. The merger of the Health and Safety Committee and Health and Safety Executive will allow us to build upon the improvements we have already put in place. Our aim will be for a smooth and incremental transition, building upon what currently works well and providing sufficient time for discussion between the Commission, Executive and our key partners during the preparatory phase on the detailed arrangements. We will provide regular updates on progress through our website and publications.

Legislation

78. Legislation will be needed to establish a new body to exercise the regulatory functions currently executed by HSC/E, and make associated amendments to the Health and Safety Work Act 1974. It will be for Ministers to decide whether to propose primary legislation or to make use of the Legislative and Regulatory Reform Bill that is expected to become law early in 2007.

Timetable

79. We expect to review the responses to this consultation as soon as possible after closure of the consultation period (5th March 2007). The appointment of the current HSC Chair is due to end in 2007 and DWP will be advertising shortly for his replacement.

80. If the outcome of this consultation suggests support for the changes we propose, we will be seeking to put in place the new arrangements as soon as possible. The passage of legislation through Parliament means that it is unlikely that the necessary legislative changes will be made until around the middle of 2008. In the meantime we will want to put in place a sensible working model within the framework of existing legislation that will ease the transition towards establishing the new body.

Annex 1: Consultation Reply Form

Health and Safety Commission
'A stronger voice for health and safety'
The merger of the Health and Safety Commission and Health and Safety
Executive
Consultation Reply Form

(please type or write in block capitals)

Part 1 : Your Details

Your name (if responding as an individual)

If responding as an individual, what is your area of interest?

Name of your organisation

Nature of your organisation / business sector

How many people does it employ?

0 - 50 51 - 250 251 - 500 500+

Address

Postcode

Name of contact

Position held

Telephone number

Email address

If you are responding on behalf of a group of organisations or a trade union;

How many companies or workers does it represent?

0 - 50 51 - 250 251 - 500 500+

Are you a: Employee Employer

Employer Organisation Trade Union representative

HSE employee: Inspector Other

Local authority employee: Inspector Other

Health and safety professional: Other (please specify)

Please indicate if you are happy to be contacted about your comments

Yes No

If you have read the consultation document and have no comments, please tick the box and return the form.

Part 2 : Questions

Question 1 – Do you agree with our proposals for merging HSC and HSE into a new single authority for regulating health and safety at work in Great Britain?

Yes No

Comments:

Question 2 – Do you agree with the overarching governance principles for a new merged health and safety authority?

Yes No

Comments:

Question 3 – Do you agree that the governing body of the new merged health and safety authority should consist entirely of non-executive directors?

Yes No

Comments:

Question 4 – Do you agree that the governing body should have the scope to increase in size to 11 independent members should the need arise in future?

Yes No

Do you have views on the right size?

Yes No

Comments:

Question 5 – We would welcome your views on whether we should be doing more to enhance our relationship with stakeholders

Comments:

Question 6 – Do you agree that prosecution and individual enforcement decisions within a merged health and safety authority should continue to be taken by officials?

Yes No

Comments:

Question 7 – Do you agree that the merged body should be known as the Health and Safety Executive?

Yes No

Comments:

Question 8 – In your view, how well does this Consultative Document represent the different policy issues involved in this matter:

Very Well Well Not Well Poorly

Comments:

Question 9 – Is there anything you particularly liked or disliked about this consultation exercise?

Comments:

Please note: all responses will be placed in HSE Information Centres unless you state specifically that this response, or part of it, should be treated as confidential. To treat your comments on a particular section as confidential, please insert bracketed text 'treat as confidential' within that section's response.

Treat as confidential?

Yes No

How did you hear about this consultation?

HSE consultation letter	<input type="checkbox"/>	HSE website	<input type="checkbox"/>	HELA extranet	<input type="checkbox"/>
LAU newsletter	<input type="checkbox"/>	LACORS website	<input type="checkbox"/>	Word of mouth	<input type="checkbox"/>
HSE Inspector/Official	<input type="checkbox"/>	Local Authorities Official	<input type="checkbox"/>	Trade press article <i>(please specify)</i>	<input type="checkbox"/>

Other *(please specify)*

Thank you for taking time to respond to this consultation

Please email this form to: governance@hse.gsi.gov.uk

Alternatively, you can post or fax the form to:

Ami Badmus
Health and Safety Executive
Rose Court
2 Southwark Bridge
London
SE1 9HS
Fax: 020 7717 6670

Your response can also be completed online or you can download a copy of this response form at: <http://www.hse.gov.uk/consult/live.htm>

Your response should arrive no later than the 5th March 2007

Complaints

If you are not satisfied with the way in which this consultation exercise has been conducted you can complain by contacting **Peter Buckley, Health and Safety Executive, Rose Court, 2 Southwark Bridge, London SE1 9HS. (peter.buckley@hse.gsi.gov.uk)**

We aim to reply to all complaints within 10 working days. If you are not satisfied with the outcome of your complaint, you can raise the matter with the Chief Executive of HSE at the same address. You can also write to ask your MP to take up the case with us. Your MP may refer the matter to the Parliamentary Commissioner for Administration (the Ombudsman) who will investigate your complaint.

Annex 2: The Roles of HSC, HSE and LAs

The Role of the Health and Safety Commission

1. Subject to the authority of the relevant Secretary of State, the Health and Safety Commission (HSC) is the principal body in relation to the regulation of health and safety at work in Great Britain. The HSC's role is to protect the workforce against health and safety risks. They conduct research, provide information, propose regulations and/or approved codes of practice. They are also tasked with maintaining the Employment Medical Advisory Service (EMAS), which provides advice on occupational health matters. All functions are performed on behalf of the crown.

2. Section 10 of the Health and Safety at Work Act 1974 (HSW Act or 1974 Act) specified for a Commission whose membership (excluding the chair) should consist of not less than six and not more than nine other members appointed by the Secretary of State (SoS) (after consultation with other Secretaries of State to whom HSC/E reports) who is obliged by statute to "consult such organisations representing [employers/employees/Local Authorities etc] for three members from each side. All appointments should include the opinions of consumers in accordance with the procedures laid down by the Nolan Committee on Standards in Public Life.

3. Sections 11, 13,14, 16 and 18 and Schedule 2 of the HSW Act and its relevant statutory provisions give HSC's functions as:

- proposing and setting necessary standards (on which HSC is advised by the Executive); and
- through HSE, securing compliance with those standards and undertaking other forms of activity designed to stimulate or support necessary action on the part of people and organisations that create potential harm.

4. The work of HSC includes:

Duties:

- submitting proposals for regulations to Ministers after consultation;
- arranging for the provision of information and advice to Ministers amongst others;
- arranging for the operation of an information and advisory service;

- arranging for research to be carried out, the publication of the results and the provision of training and information in connection with these purposes; and
- paying to the Executive sums considered appropriate for HSE to perform its functions.

Powers:

- approving and issuing codes of practice, with the consent of the relevant Secretary of State and subject to consultation with appropriate Government Departments and other bodies. These are known as “Approved Codes of Practice” (ACoPs);
- making Agency Agreements and Memoranda of Understanding (MOUs) with Government Departments or others, for them to perform functions on HSC/E’s behalf; and with any Minister, Department or other public authority for HSC/E to perform functions on their behalf (subject to those functions being appropriate to HSC’s responsibilities in the opinion of the Secretary of State). A list of Agency Agreements and Memoranda of Understanding is posted on the HSE website¹⁰;
- giving guidance to Local Authorities on enforcement;
- directing HSE, or authorising any other person, to investigate and report on accidents or other matters and, subject to regulations being made by the relevant Minister, directing inquiries to be held; and
- appointing committees. The main committees that HSC has set up are “subject Advisory Committees” or “Industry Advisory Committees”, which respectively advise HSC on particular types of hazard and on health and safety in particular industrial sectors. A list of Advisory Committees is posted on the HSE website¹¹.

5. HSC has endorsed the principles of openness, accountability, provision of information, provision of a Code of Practice and setting up a register of interests. It has extended these principles to its advisory committees; and

- providing any services, facilities or information required by a Government Department or public authority even though they are not required for the general purposes of Part I of the 1974 Act.

6. HSC also consults stakeholders and organisations that have an interest in health and safety, through advisory committees and through public

¹⁰ See <http://www.hse.gov.uk/aboutus/framework/f-2001-3.htm>

¹¹ See <http://www.hse.gov.uk/aboutus/meetings/index.htm>

consultation. HSC has several advisory committees, boards and groups who advise the commission on specific hazardous areas or industries. Most are made up of employers, employees, those with technical knowledge and in some cases trade unions.

The Role of the Health and Safety Executive

7. The Health and Safety Executive (HSE) consists of three members: one is appointed by the commission with the approval of the SoS ie: the Chief Executive (CEO), (who is the chair of the executive), and the other two are appointed by the Commission with the approval of the Chief Executive. All functions are performed on behalf of the crown.

8. HSC has the power under section 11(4)(a) of the HSW Act to direct the Executive to carry out certain functions. This includes section 18 of the 1974 Act to make adequate arrangements for enforcement of the relevant statutory provisions of the 1974 Act. which is carried out in conjunction with Local Authorities (LAs) (see paras 25 -28). In addition, the Executive must exercise any of HSC's functions that HSC directs it to undertake under the HSW Act. A direction from HSC dated 25 November 1976 requires the Executive to prepare proposals on health and safety law, standards and guidance for the decision of HSC, make recommendations to HSC and carry out HSC's decisions. In addition:

- leading for the UK in international negotiations;
- appointing staff;
- assisting the Chief Executive; and
- advising HSC on HSE's performance of its functions, duties and powers.

9. The work of HSE includes:

Duties:

- maintain an Employment Medical Advisory Service (EMAS), which, under statute, gives advice and information concerning the safeguarding and improvement of the health of people at work. This arrangement discharges a responsibility of the Secretary of State under Part II of the 1974 Act, delegated to the Commission;
- provide information on request to a Minister about HSE's activities in connection with any matter on which a Minister is concerned;
- provide expert advice on request to Ministers on matters not relevant to the general provisions of Part I of the 1974 Act;

- acting as a licensing authority under several of the relevant statutory provisions of the 1974 Act, e.g. the Nuclear Installations Acts;
- acting as part of a statutory competent authority, for example, for the assessment of toxic chemicals, jointly with the Environment Agency (part of the Department of Environment, Food and Rural Affairs (DEFRA)), under the Notification of New Substances Regulations 1993. In these matters it acts on its own; and
- agreeing Memoranda of Understanding (MOUs) with other public bodies.

Powers:

- appoint inspectors, whose powers are defined by the 1974 Act.

10. The Executive in turn employs a variety of staff such as policy advisers, statisticians, scientists, lawyers and inspectors who are the front line contacts for HSE.

11. The directorates within HSE are split into two work strands, Operations and Policy. Within Operations are the Field Operations, Nuclear Safety and Hazardous Installations Directorates who all ensure that the health and safety risks within their respective areas are well managed. Each directorate is then split up into geographical or subject area. The Operations strand also includes the Operational Policy and Support Division. Within the Policy work strand are Strategy Division, Policy Programmes, Strategic Programmes, Communications Directorate, Legal Advisors, Corporate Science and Analytical Services (COSAS), Resource Planning Directorate and the Health and Safety Laboratory (HSL)¹².

12. As part of Robens' recommendations HSE spends part of its budget on science and technology. The Health and Safety Laboratory (HSL)¹³ is a laboratory-based agency of HSE, that completes investigative work and scientific research in relation with HSE's work. The HSL is made up of inspectors, as well as scientists.

13. The Executive (as authorised by HSC) assists Ministers in various ways. Therefore the Executive advises HSC and HSC advises Ministers. When HSE officials give advice to Ministers it is done on HSC's behalf and with their concurrence except when given under section 11(5)(b) HSW Act.

¹² See <http://www.hse.gov.uk/aboutus/hse/orgchart.htm>

¹³ See <http://www.hsl.gov.uk/>

The Work of Local Authorities

14. LAs and HSE are responsible for the enforcement of health and safety in Great Britain under the general direction of HSC. LAs and HSE work in partnership to secure HSC's objectives.

15. 410 LAs in England, Scotland and Wales have responsibility for the enforcement of health and safety legislation in more than 1.1 million registered premises. These include offices, shops, retail and wholesale distribution, hotel and catering establishments, petrol filling stations, residential care homes and the leisure industry. Around 12 million people are employed at these premises.

16. In 2004, the HSC and Department for Work and Pensions (DWP) launched a new strategy to improve future standards of workplace health and safety. The new strategy envisaged a significant change in how the enforcing authorities -HSE and LAs work together, the aim being to make them collectively more effective in improving health and safety – reducing the incidence of injuries and ill health in the workplaces for which they are responsible. HSC asked HSE and LAs together to establish a Strategic Programme (“Local Authorities and HSE Working Together”) that would develop and deliver the detailed arrangements for working together in an effective partnership.

17. In July 2004, HSC/E and local government representative bodies signed a “Statement of Intent”, setting out a commitment to partnership – to make the best use of our joint resources. The main elements of the partnership are now in place:

- a stronger voice for local government, through regular meetings with HSC and involvement in policy and programme development;
- joint teams in HSE's regions helping to develop partnership working with LAs;
- joint planning and working focused on HSC's Fit3 delivery programme;
- an interactive Extranet for LAs/HSE to communicate better together; and
- better access to common guidance, technical support, training and research.

18. LAs are showing great commitment to the partnership and HSC priorities. LAs are making a growing contribution to policy and programme governance, design and development. LAs' involvement in partnership working and their uptake of Fit3 priorities in service plans has been a great success. Delivery plans discussed at regional level then enable HSE and LAs to determine the best deployment of their joint resources to deliver the desired national outcomes, while taking account of local and regional priorities.

19. Partnership teams in HSE's regions are crucial in encouraging and co-ordinating the various activities and elements of the partnership and helping to shape LA plans to meet Fit3 priorities. Delivery of HSC's priorities is heavily reliant on significant LA involvement, and the challenge remains in ensuring their commitment is realised.

20. We recognise the importance of regional differences and HSE/LA high-level partnership forums now exist in English regions, Wales and Scotland. This is a strong foundation for our mutual partnership ambitions, achieved by cooperation and mutual respect between local and central government, focused upon common goals.

21. Under the Strategic Programme, revised governance arrangements were put in place. A Local Government Panel (LGP)¹⁴, comprising LA elected members, met HSC for the first time in May 2006. The Health and Safety Executive/Local Authority Enforcement Liaison Committee (HELA)¹⁵, first established in 1975, was reformed and met for the first time in March 2006; the Local Authorities Coordinators of Regulatory Services (LACORS)¹⁶ established a Health and Safety Policy Forum.

22. The Local Authority Unit (LAU)¹⁷ is a specifically designated part of HSE dedicated to developing partnership working between HSE and LAs. Staffing the Unit is a team of HSE staff, some of whom have a LA background, LA Managers and Environmental Health Officers/Practitioners working for HSE, either contracted or seconded for a fixed period of time. LAU's principal roles and responsibilities are as follows:

- promoting partnership working between HSE and LAs;
- supporting LAs in delivering HSC objectives in the LA enforced sector;
- maintenance and development of effective communications between LAs and HSC/E through;
 - the HELA Extranet,
 - the LAU Newsletter
 - liaison with LACORS and other external stakeholders
 - HELA
 - Local Government Panel/HSC (LGP/HSC) meetings

¹⁴ See <http://www.hse.gov.uk/lau/lgp/index.htm>

¹⁵ See <http://www.hse.gov.uk/lau/hela/index.htm>

¹⁶ See <http://www.lacors.gov.uk/lacors/home.aspx>

¹⁷ See <http://www.hse.gov.uk/lau/contact.htm>

- Liaison with regionally based Partnership teams in HSE
- ensuring access to training, scientific support, intelligence and research resources for LAs' Science and Technology Initiative;
- promoting consistency and proportionality of enforcement by LAs; and
- aligning of planning processes and timescales between HSE and LAs on major work initiatives such as the Fit3 programmes.

23. The Strategic Programme is now drawing to a conclusion. However, work continues to maintain and develop the LA/HSE partnership – and HSE will continue to adapt its current structure to meet the challenges of delivery as we move to this post-Programme stage.

Annex 3: HSE'S Enforcement Policy

1. The purpose of enforcement¹⁸ is to:

- ensure that duty holders take action to deal immediately with serious risk;
- promote and achieve sustained compliance with the law; and
- ensure that duty holders who breach health and safety requirements and those who fail in their responsibilities are held to account.

2. The level of enforcement follows the following principles:

- proportionality -in applying the law and securing compliance;
- targeting -of enforcement action;
- consistency -of approach;
- transparency -about how the regulator operates and what those regulated may expect; and
- accountability -for the regulator's actions.

3. It has always been the case that individual regulatory and enforcement decisions are taken by operational managers and not by HSC. This principle will remain a part of the new corporate governance structure. The Governing Body of the merged HSC/E will set enforcement policy (as HSC does now) and review it as necessary. The body will continue to have a strategic oversight. Individual enforcement decisions will remain within the operational management chains who will apply the criteria set within HSC's Enforcement Policy Statement¹⁹.

HSE's Legal Framework

4. The HSC and HSE have been established under the HSW Act. Their constitutions are principally governed by section 10²⁰ of, and schedule 2 of the Act. They are Non Departmental Public Bodies (NDPBs) and carry out their functions on behalf of the Crown.

¹⁸ See <http://www.hse.gov.uk/enforce/index.htm>

¹⁹ See <http://www.hse.gov.uk/pubns/hsc15.pdf>

²⁰ Also see sections 11, 13-14 of HSW Act

5. It is the duty of those responsible for the protection of workers and the public to comply with the HSW Act. The act places specific responsibilities on employers, the self-employed and employees, and associated legislation on owners and licensees, to provide safe workplaces and products (So Far As Is Reasonably Practical (SFAIRP)), as well as guard against risks to health.
6. There are mandatory legal duties within specific areas that need to be approved by HSE before they can operate. The duty to assess risks and take appropriate action is paramount. This allows for own judgement by doing what is necessary to comply with the HSW Act, whether this is done by complying with existing regulations or doing what you see as appropriate in reducing any risk.
7. The HSW Act covers general duties, principles and goals and is accompanied by regulations, ACoPs and standards.
8. The Commission submit regulatory proposals to the Secretary of State, Department for Works and Pensions (SoS for DWP), who will lay them before Parliament.
9. ACoPs are approved by HSC with the consent of the SoS for DWP. Failure to comply with ACoPs may be used in evidence during prosecution.
10. Standards are developed to highlight common practice and can form the basis of regulations and informal guidance.
11. There are other Acts²¹ that remain in force and should be complied with in conjunction with the HSW Act.
12. The Treaty of Rome, European Directives, Standards and Conventions²² maintain minimum health and safety standards (mainly for workers) throughout the European Union.

²¹ For example: Factories Act 1961, Offices, shops and Railway Premises Act 1963, Nuclear Installations Act 1965 and Mines and Quarries Act 1954

²² See <http://www.hse.gov.uk/aboutus/europe/index.htm>

A stronger voice for health and safety

A Consultative Document on merging the Health and Safety
Commission and Health and Safety Executive

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Printed and published by the Health and Safety Executive

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CD210

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