

A Consultation
Document

August 2007

The Merger of the Health and Safety Commission and the Health and Safety Executive: Changes to Legislation governing Health and Safety in Great Britain

A consultation document on amending the Health and Safety at Work etc. Act 1974

To create a new unitary body through merging the Health and Safety Commission and Health and Safety Executive

This will be achieved by:

A. Abolishing the current Health and Safety Commission (the Commission) and three person Health and Safety Executive (the Executive) and creating a new unitary body to be called the Health and Safety Executive.

B. Transferring the functions and powers of the current Health and Safety Commission and Health and Safety Executive to the new Executive, including.

- the powers of the Commission to establish inquiries (with the consent of the Secretary of State) and investigations; and
- the restriction on the Commission that prevents it giving directions in relation to individual enforcement decisions.

C. Extending to the Secretary of State the restriction on intervening in individual enforcement decisions and also not permitting him to withhold publication of investigative and inquiry reports.

D. Appointing the Chair and members of the new Executive in a similar way to the current Health and Safety Commission except that:

- the maximum permitted number of members other than the Chair will increase from nine to eleven; and
- there will be one member specifically appointed following consultation with organisations representing local authorities.

E. Setting down the means of appointment and key responsibilities of the Chief Executive.

F. Adding certain provisions to enhance arrangements to support Local Authority regulatory activity.

G. Imposing a Duty on the new Executive to have regard to the Better Regulation principles in the conduct of its regulatory functions.

H. Updating and modernising the legal drafting of those parts of the Health and Safety at Work etc. Act which are to be amended in any case.

A Consultation Paper issued by the

Department for Work and Pensions on behalf of
The Parliamentary Under Secretary (Lords); Lord McKenzie

August 2007

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Foreword by Lord McKenzie

I am pleased to commend the proposal in this Consultation Document on merging the currently separate legal entities of the Health and Safety Commission and three person Executive into a new unitary body; a proposal which they themselves have brought forward in agreement with the Department for Work and Pensions.

The present governance arrangements for health and safety have served the nation well. We have the best safety record in the European Union, and have seen a reduction in work-related ill health from 40 million days lost per year in 2000/2 to 30 million in 2005/6. This owes much to the expertise and experience of the Commission, the Executive, their enforcement partners in local government, and many others in business, the Trade Unions, and elsewhere.

But the time is now right to review the governance structures which date from the 1970s. The world of work has changed significantly since then. The challenges facing the Commission and Executive are very different, with less emphasis on creating the legislative framework, and much more on making it work; and standards of public sector governance continue to evolve and change.

The aim of this reform is to create a new unified non-executive body to present a strong, clear and accountable external face, and which can internally provide better challenge and support for the executive team. In so doing we are retaining the features of the current system to which we and stakeholders attach importance: its independence, the strong employer/employee input, the close partnership with local authorities, and the importance of duly authorised officials continuing to take enforcement decisions.

I am confident that the changes set out here will not increase burdens on business, but will strengthen the accountability and focus of the present system, provide a better and clearer service to stakeholders and enhance health and safety outcomes all round.

Summary of the Proposal

<p>What is being consulted on?</p>	<p>The proposal relates to reforming the legislation governing health and safety by amending the Health and Safety at Work etc. Act 1974 to:</p> <ul style="list-style-type: none"> • create a new unitary body through merging the Health and Safety Commission and Health and Safety Executive. 	<p>Relevant paragraphs</p> <p>3.1 - 3.31</p>
<p>How will this proposal be taken forward, and when will it be implemented?</p>	<p>It is proposed to make changes to legislation through a Legislative Reform Order made under the Legislative and Regulatory Reform Act 2006. Subject to the outcome of consultation and the Parliamentary process, it is expected that the changes will be implemented in April 2008.</p>	
<p>Consultation</p>	<p>This consultation is being made in accordance with the requirements of the Legislative and Regulatory Reform Act 2006 and the terms of the Government's Code of Practice on Consultations.</p> <p>All responses should be received by 31 October 2007</p>	<p>Annex D</p>

Chapter 1: Introduction

1.1 This consultation paper sets out in detail the Government's proposal for amending the legislation governing health and safety to achieve the merger of the Health and Safety Commission and three person Health and Safety Executive.

Why the changes are needed

1.2 The Health and Safety Commission¹ (the Commission) and the Health and Safety Executive² (the Executive) were established by the Health and Safety at Work etc. Act 1974 (HSW Act). The governance structure and arrangements of the Commission and the Executive including composition, functions, powers and duties are set out in the HSW Act.

1.3 The Commission has for some time been aware of the changes in business practices and the development of better governance structures in public sector bodies. It has discussed how the governance structure of both the Commission and the Executive could be updated to reflect these developments without making changes to primary legislation. While improvements have undoubtedly been achieved, the Commission has concluded that these do not go far enough, and amendment of the governance

structure set out in the HSW Act is needed.

1.4 As a result the Commission sought the public's views through the publication of a consultative document³ in December 2006. This set out 'in principle' proposals for merging the current Commission and three person Executive into a new unitary body and bringing together their powers and functions. The positive response from the majority of stakeholders to that consultation, allowed the development of this detailed consultation document to proceed.

Policy purpose behind the proposal

1.5 Currently the Commission and the Executive are two separate Non Departmental Public Bodies (NDPBs) established by the HSW Act. Both are Crown bodies. The policy purpose behind the proposal in this consultation is to improve still further the way in which they perform their regulatory functions. This is to be achieved by merging the two existing bodies into a new unitary body, thereby greatly improving overall governance. In particular, it will provide:

- greater clarity through focusing on a single national regulatory

¹ Information on the Commission is available at: <http://www.hse.gov.uk/aboutus/hsc/index.htm>

² Information on the Executive is available at: <http://www.hse.gov.uk/aboutus/hse/index.htm>

³ HSC's 'A stronger Voice for Health and Safety' Consultative Document is available at: <http://consultations.hse.gov.uk/inovem/gf2.ti/f/3938/118373.1/PDF/-/CD210.pdf>

body, responsible for promoting the cause of better health and safety at work. Currently powers and functions are split between the two bodies, causing some confusion externally, and creating unnecessary internal organisational complexity;

- better strategic oversight of the full range of managerial and regulatory functions of the new unitary body;
- a more effective challenge function to the new unitary body's senior management team; and
- an improved basis for the partnership with local authorities and other key stakeholders.

Who the proposal will affect

1.6 For external organisations the effects should be to provide a more transparent governance structure and focus for engagement. Internally the effects should be to establish clearer and more effective direction for the organisation.

1.7 The proposal will directly affect:

- the Commissioners, staff and officials of the Commission and the Executive; and
- local authorities, their officials and elected representatives.

1.8 It will indirectly affect:

- other public bodies and stakeholder groups;
- health and safety duty holders; and
- those authorities whose legislation, codes of practice or guidance relate to the HSW Act.

1.9 It is proposed to introduce the reform by means of a Legislative Reform Order (LRO) made under section 2 of the Legislative and Regulatory Reform Act 2006⁴ (LRRRA). This consultation is being conducted in accordance with the provisions of section 13 of the LRRRA. Views are invited on all aspects of the consultation paper, and a number of specific questions are set out in Annex B of this document.

Legislative Reform Order Making Powers

What can be delivered by Legislative Reform Order?

Section 1

1.10 Under section 1 of the LRRRA a Minister can make an LRO for the purpose of 'removing or reducing any burden, or overall burdens, resulting directly or indirectly for any person from any legislation'.

⁴ The Legislative and Regulatory Reform Act is available at: <http://www.cabinetoffice.gov.uk/regulation/reform/bill/>

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1.11 Section 1(3) of the LRRRA defines a 'burden' as:

- a financial cost;
- an administrative inconvenience;
- an obstacle to efficiency, productivity or profitability; or
- a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

1.12 Section 1(6) defines 'legislation' as:

- a public general Act or local Act; or
- any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other subordinate instrument.

Section 2

1.13 Under section 2 of the LRRRA a Minister can make an LRO for the purpose of securing that regulatory functions are exercised in a way that is transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed.

1.14 The term 'Regulatory functions' is defined in section 32 of the LRRRA as:

- a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or

- a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity.

Section 20 Orders

1.15 Section 20 of the LRRRA enables a Minister to exercise the order-making powers under sections 1 and 2 together with the power to make an order under section 2(2) of the European Communities Act 1972 in a single instrument. This enables a single order to implement Community law under section 2(2) of the 1972 Act and, for example, to remove or reduce burdens resulting from pre-existing statutory provisions.

Preconditions

1.16 Each proposal for a LRO must satisfy the preconditions set out in section 3 of the LRRRA. The questions in this document are designed to elicit the information that the Minister will need in order to satisfy the Parliamentary Scrutiny Committees that, among other things, the proposal satisfies these preconditions.

1.17 For this reason, your views would particularly be welcomed on how each aspect of the proposed changes in this consultation document meets the following preconditions:

- **Non-Legislative Solutions** – A LRO may not be made if there are non-legislative solutions which will satisfactorily remedy the difficulty which the LRO is intended to address. An example of a non-legislative solution might be issuing guidance about a particular legislative regime.
 - **Proportionality** – The effect of a provision made by a LRO must be proportionate to its policy objective. A policy objective might be achieved in a number of different ways, one of which may be more onerous than others and may be considered to be a disproportionate means of securing the desired outcome. Before making a LRO the Minister must consider that this is not the case and that there is an appropriate relationship between the policy aim and the means chosen to achieve it.
 - **Fair Balance** – Before making a LRO, the Minister must be of the opinion that a fair balance is being struck between the interests of the person affected by the LRO and the interests of any person adversely affected by the LRO. It is possible to make a LRO which will have an adverse effect on the interests of one or more persons only if the Minister is satisfied that there will be beneficial effects which are in the public interest. A Minister must take into account any new or increased burdens when considering whether or not this condition is met.
 - **Necessary protection** – A Minister may not make a LRO unless he considers that the proposal does not remove any necessary protection. The notion of necessary protection can extend to economic protection, health and safety protection, and the protection of civil liberties, the environment and national heritage.
 - **Rights and freedoms** – A LRO cannot be made unless the Minister is satisfied that it will not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise. This condition recognises that there are certain rights that it would not be fair to take away from people by using a LRO.
 - **Constitutional Significance** – A Minister may not make a LRO unless he considers that the provision made by the LRO is not of constitutional significance.
- 1.18 It should be noted that even where the preconditions of section 3 of the LRA are met, an LRO cannot:
- deliver ‘highly controversial proposals’;
 - remove burdens which fall solely on Ministers or Government departments, except where the burden affects the Minister or Government department in the exercise of regulatory functions;

- confer or transfer any function of legislating on anyone other than a Minister; persons or bodies that have statutory functions conferred on or transferred to them by an enactment; a body or office which has been created by the LRO itself;
- impose, abolish or vary taxation;
- create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits;
- provide additional authorisation for forcible entry, search or seizure, or compel the giving of evidence;
- amend or repeal any provision of Part 1 of the LRRRA;
- amend or repeal any provision of the Human Rights Act 1998; or
- remove burdens arising solely from common law.

Devolution

1.19 The LRRRA imposes certain restrictions regarding LROs and devolution agreements. The restrictions relating to Northern Ireland and Scotland are not relevant to this proposal. The LRRRA's restrictions in relation to Wales include a requirement for the agreement of the Welsh Ministers to a proposed LRO where the Order confers functions on them. It is part of the proposed LRO that the HSW Act should be amended to allow

the Secretary of State, if he so wishes, to appoint members of the Executive after consultation with the Welsh Ministers. This amounts to conferring a function on the Welsh Ministers, and therefore their consent is required to this proposed LRO.

Consultation

1.20 The LRRRA requires Departments to consult widely on all LRO proposals and to collect evidence on a number of issues from a wide range of consultees. The list of consultees, including the devolved administrations, to which this document has been sent, is at Annex A. It is also available on the Internet at:

- [<http://www.dwp.gov.uk/consultations/2007>]
- [<http://www.hse.gov.uk/consult/live.htm>]
- [<http://www.direct.gov.uk>]

1.21 Comments are invited from all interested parties, and not just from those to whom the document has been sent. A response form is at Annex B.

1.22 This document is available in a range of formats, including Easy Read, Braille and audio on request from:

Name: Ruth Feather
Address: Improving Working Lives
Division
Department for Work and
Pensions,
The Adelphi,
1–11 John Adam Street,
London WC2N 6HT
Phone: 0207 712 2446
Fax: 0207 962 8524
Email: ruth.feather@
dwp.gsi.gov.uk

1.23 The consultation period begins on 08 August 2007 and runs until 31 October 2007. Please ensure your response reaches us by that date. Please send your consultation responses to the address above, or by email to ruth.feather@dwp.gsi.gov.uk

1.24 When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of a larger organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled. We will acknowledge your response.

1.25 We have sent this consultation document to a large number of people and organisations who have already been involved in this work or who have expressed an interest. Please do share this document with, or tell us about, anyone you think will want to be involved in this consultation.

1.26 The information you send us may need to be passed to colleagues within the Department for Work & Pensions and published in a summary of responses received, and referred to in the published consultation report.

1.27 A note explaining the Parliamentary process for LROs to be made under the LRRRA can be found at Annex C.

1.28 This consultation document follows the format recommended by the Cabinet Office for such proposals. The criteria applicable to all UK public consultations under the Cabinet Office Code of Practice on Consultation are set out at Annex D.

Disclosure

1.29 Normal practice will be for details of representations received in response to this consultation document to be disclosed, or for respondents to be identified. While the LRRRA provides for non-disclosure of representations, the Minister is required to include the names of all respondents in the list submitted to Parliament alongside the draft LRO. The Minister is also obliged to disclose any representations that are requested by, or made to, the Parliamentary Scrutiny Committees. This is a safeguard against attempts to bring improper influence to bear on the Minister. It is envisaged that, in the normal course of events, this provision will be used rarely and only in exceptional circumstances.

You should note that:

- if you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymise it.
- in all cases where your representation concerns information that may be damaging to the interests of a third party, the Minister is not obliged to pass it on to Parliament if he does not believe it to be true or he is unable to obtain the consent of the third party.

1.30 Please identify any information which you or any other person involved do not wish to be disclosed. You should note that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post consultation review unless accompanied by an additional specific request for confidentiality, such as an indication in the tick-box provided for that purpose in the response form at Annex B.

Confidentiality and Freedom of Information

1.31 It is possible that requests for information contained in consultation responses may be made in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you do not want your response to be disclosed in response to such requests for information, you should identify the information you wish to be withheld and explain why confidentiality is necessary. Your request will only be acceded to if it is appropriate in all the circumstances. An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding on the Department.

1.32 If you want to find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Name: Charles Cushing
Address: Department for Work and Pensions, Adjudication and Constitutional Issues, Information Policy Division, Freedom of Information Unit, 1-11 John Adam Street, London WC2N 6HT
Phone: 0207 962 8581
Email: charles.cushing@dwp.gsi.gov.uk or carol.smith14@dwp.gsi.gov.uk

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1.33 We value your feedback on how well we consult. If you have any comment on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Name: Roger Pugh
Address: Department for Work and Pensions' Consultation Coordinator, Room 2A, Britannia House, 2 Ferensway, Hull HU2 8NF
Phone: 01482 609571
Email: roger.Pugh@dwp.gsi.gov.uk

1.34 In particular, please tell us if you feel that the consultation does not satisfy these criteria. Please also make any suggestions as to how the process of consultation could be improved further.

1.35 If you have any requirements that we need to meet to enable you to comment, please let us know.

What will we do after the consultation?

1.36 The responses to the consultation will be published in December 2007 in a report that will summarise the responses. The report will assist the Parliamentary Scrutiny Committees in their deliberations on the proposed Reform Order.

Chapter 2: Background to the policy and legislation at issue

Background to the legislation

2.1 Prior to the 1970's, there existed many separate pieces of legislation regulating health and safety in relation to specific trades or work practices. In 1967, the Government of the day published a consultative document with a view to consolidating all such legislation in one Act. A Royal Commission was established under the chairmanship of Lord Robens to look into the feasibility of this project, the result of which was the Robens Report - "Safety and Health at Work" (1972)⁵. The report made many important recommendations as to how safety and health within the workplace should be improved, including:

- an independent national single authority for safety and health at work with its own identity and budget under the direction of a departmental Minister;
- an authority with a comprehensive range of executive powers and functions; and
- a managing board of the authority to be composed of people drawn from relevant fields of interest and experience.

2.2 Flowing from this, the HSW Act was passed in 1974 with wide support covering health and safety⁶ in Great Britain. The Act sets out the general health and safety duties of employers and others. It is supported by 'relevant statutory provisions' which come under the umbrella of the Act; these include provisions such as the Factories Legislation, existing before the advent of the HSW Act, as well as health and safety regulations made under the HSW Act. In this way, the Act applies generally to all employers but the relevant statutory provisions impose particular duties in particular circumstances, such as specific industrial sectors. As well as a duty to protect their staff, employers and the self-employed also have duties in relation to their work activities to protect members of the public. The Act includes provision for the enforcement of the relevant statutory provisions, including prosecution of health and safety offences.

2.3 While Robens recommended a single authority, the Parliament of the time decided to create two separate bodies: - the Commission to oversee safety and health legislation, and the three person

⁵ Safety and Health at work - Robens Committee (1972 cmd 5034).

⁶ This excludes for example: food, pollution, marine and aviation safety. There are other Acts that were in force prior to the establishment of the HSW Act and should be complied with in conjunction with the Act.

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Executive to enforce the requirements of the Act. This allowed for the Commission to make arrangements for the general purposes of Part 1 of the Act, and for the Executive to enforce and/or exercise the powers within the Act on behalf of the Commission. Consequentially, the respective compositions, powers, functions and duties of the Commission and the Executive are separately set out in the HSW Act.

- 2.4 The sponsoring department for the Commission and the Executive is the Department for Work and Pensions.

Current situation

- 2.5 The Commission is the principal body in relation to the regulation of health and safety at work in Great Britain. It ensures that the necessary arrangements are in place, so that the health and safety of people at work and members of the public are protected. The Commission's duties include proposing regulations and approving codes of practice, directing investigations and inquiries, arranging for the provision of information services and conducting relevant research. The composition of the Commission is set out in section 10 of the HSW Act, which states that it 'shall consist of a chairman appointed by the Secretary of State and not less than six nor more than nine other members appointed by the Secretary of State'. Three members are appointed after consulting organisations representing employers, and three after consulting organisations representing employees. This enables the Commission to perform its functions in a way that reflects the interests of broad stakeholder constituencies.
- 2.6 The Commission currently has nine members (excluding the Chair) and meets 10 times a year, usually on an open basis. There are currently a number of advisory committees who provide the Commission with expert advice on specific topics such as Nuclear Safety and Construction.
- 2.7 The Executive is the operating arm of the Commission. It advises and assists the Commission in its functions and has specific responsibility, shared with local authorities, for enforcing health and safety law. The composition of the Executive is also set out in section 10 of the HSW Act, which states that it 'shall consist of three persons of whom one shall be appointed by the Commission with the approval of the Secretary of State to be the director of the Executive and the others shall be appointed by the Commission with the like approval after consultation with the said director'. The Executive prepares proposals for the Commission, makes recommendations and carries out the Commission's decisions. The Commission gave a formal direction to the Executive (in 1976) to carry out on its behalf all that is necessary in relation to section 11(1) and (2) of the HSW Act including general purposes, research,

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information and advisory services and regulation making. However the Commission cannot direct the Executive in individual enforcement decisions, including prosecution (HSW Act section 11(4)).

- 2.8 The Executive currently consists of the Chief Executive, Deputy Chief Executive (Policy) and Deputy Chief Executive (Operations). It is supported by around 3,000 staff. Roughly half of these are inspectors. The Executive also employs economists, lawyers, policy officers, technical specialists and administrative personnel.
- 2.9 The Health and Safety Laboratory (HSL)⁷, is a laboratory-based agency of the Executive which employs about 400 staff and conducts investigative work and scientific research related to occupational health and safety. The HSL is made up of inspectors, as well as scientists. All of the Executive's staff are (crown) civil servants.
- 2.10 410 local authorities⁸ work in partnership with the Executive to enforce the requirements of the HSW Act. Local authority officials meet dutyholders and visit individual premises, and are responsible for specific service sectors such as catering, distribution, leisure and retail. The Health and Safety (Enforcing Authority) Regulations 1998 allocate the enforcement of health

and safety legislation at different premises between local authorities and HSE.

Reasons for the current proposal

- 2.11 The idea of bringing the Commission and the Executive together has been considered on previous occasions and as noted above (see paragraph 2.1) a unitary body was originally recommended by Lord Robens. However, because their constitutions were established by primary legislation, a formal merger requires amendment of the HSW Act. In the last few years there has been an attempt to reproduce the intended governance arrangements through a closer working relationship between the Commission and the Executive, for instance with more detailed monitoring of financial and operational performance. While improvements have resulted, the effect has been judged insufficient to capture the full potential gains in improving governance.
- 2.12 This led the Commission to produce a consultative document⁹ asking its stakeholders for their views 'in principle' on whether the two organisations should merge, and setting out proposals for how this might be done. The document asked for views, among other things, on the structure, size and composition of the governing Board of any such unitary body. 80% of

⁷ Information on the work of the Health and Safety Laboratory is available at: <http://www.hsl.gov.uk/>

⁸ Information on the work of Local Authorities and their partnership with HSE is available at: <http://www.hse.gov.uk/lau/>

⁹ See Chapter 1 Para 1.4, and the results of the HSC's consultative document 'A stronger voice for health and safety' is available at: <http://www.hse.gov.uk/aboutus/hsc/meetings/2007/170407/c36.pdf>

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respondents agreed that the Commission and the Executive should merge to form one organisation. Similarly affirmative answers were received to the other supplementary questions.

2.13 Following these positive consultation results, the Commission decided to continue down the merger route as the best way of improving governance arrangements. In the knowledge that the LRRRA offered the means of amending the HSW Act the Commission asked for the processes under the LRRRA to be instigated with this more detailed consultation on its proposals.

2.14 It is proposed that the amendments to the HSW Act will be made by an order ('the Order') under section two of the LRRRA. This section allows Ministers to:

- make provision modifying the way in which a regulatory function is exercised;
- make provision amending the constitution of a body exercising regulatory functions; and
- make provision transferring/delegating regulatory functions.

The above functions include creating a new body to which functions can be transferred and abolishing the old body. Crucially, the Order cannot create or remove any regulatory function.

2.15 To this end, the new Order will be limited to the merging of the two bodies, and the existing powers and functions will be transferred to this new unitary body. The Order will also modify existing provisions in line with the new working arrangements. The body will continue with the day to day business of the Executive as normal and the end result should be that the new body retains all the previous regulatory functions of the Commission and the Executive. All rights will be retained. The new body will be a Crown body.

2.16 It is considered that the merger would not carry any adverse financial consequences for business or the public. In summary, the proposal is seen to have two key advantages in terms of improving governance and thereby the way in which regulatory functions are performed, namely by:

- providing a single entity for the promotion of better standards of health and safety at work; and
- improving the strategic direction of the resulting unitary body and creating an effective internal challenge function.

To capture this, the Commission and the Executive have jointly agreed a statement which is reproduced below.

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High Level Statement

2.17 The Commission and the Executive's intention is to establish a new unitary body which provides transparency and accountability and acts in a way which is proportionate and consistent. These elements will be the premise of the revised HSW Act, and duly reflected in the delivery of the new Executive's functions.

Vision

To re-energise health and safety in Britain by transposing the expertise and experience of the Health and Safety Commission (HSC) and Health and Safety Executive (HSE) into a new unitary body incorporating the statutory responsibilities of both HSC and HSE.

Mission

To create a new governance model for HSE by migrating the separate legal entities (the Commission and Executive) into a new unitary body with the following tasks: total accountability for HSE's performance; clear control of strategy for the development of 21st century safe and healthy workplaces; significant enhancement of its position as the leading player in the health and safety system; and deeper partnerships, particularly with local authorities.

Values

The new corporate HSE will build on the values of HSC and HSE, being:

- independent in its advice and the way it takes decisions;

- open and inclusive in its approach and working methods; and
- professional, proportionate, consistent and accountable in all it does.

Model

We plan a governing Board consisting of a Chair and up to 11 other members. These members (as now) should be chosen after consulting organisations representing employers, employees, and others, including local authorities and professional bodies. The existing 3 person Executive will be abolished as a separate legal entity. Local authorities will be key partners, especially as co-enforcers alongside HSE staff. The changes are set out in the diagram below.

Functions

The main functions of the governing Board will be to oversee all the activities in the organisation, and ensure that high standards of corporate governance and ways of working are maintained. In particular, the Board will:

- provide overall leadership of the health and safety system in Great Britain;
- define HSE's strategic aims, and ensure that HSE makes best use of its financial and human resources to meet its aims;
- review regularly HSE's performance against agreed goals and objectives, and monitor the controls which enable risk to be assessed and managed;

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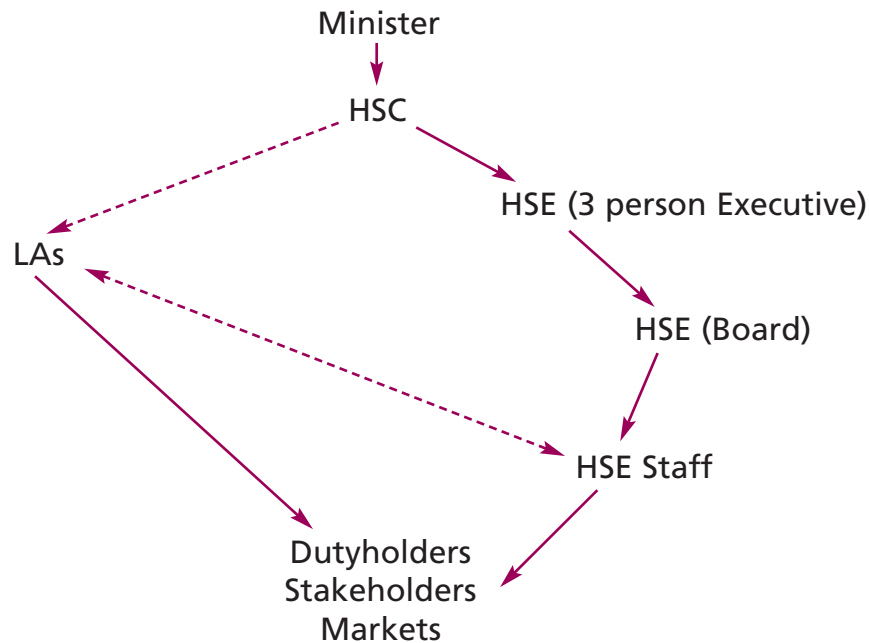
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- work in partnership with the senior management team while providing necessary support and challenge; and
- ensure that HSE maintains and enhances its relations with external stakeholders, notably local authority

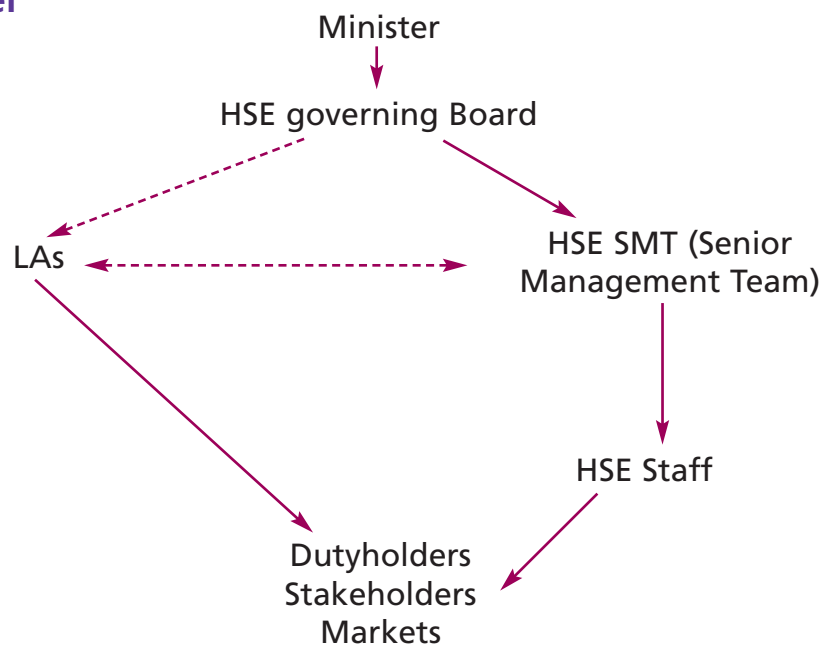
partners, business and employee representatives.

Individual enforcement decisions will continue to be taken by officials in HSE and local authorities.

Existing Model



The New Model



Chapter 3: The details of the proposal

- 3.1 As previously explained, the current shared governance arrangements between the Commission and the Executive are set down in the HSW Act. In the light of this, it is proposed to amend a number of aspects of the HSW Act to achieve the primary objective of creating a new unitary body. These various aspects are detailed below.
- A. **Abolishing the current Health and Safety Commission (the Commission) and three person Health and Safety Executive (the Executive) and creating a new unitary body to be called the Health and Safety Executive.**
- 3.2 It is proposed that the Commission and the Executive be merged to form a new unitary body. A revised governance structure based on this unitary body and in keeping with modern governance guidelines will widen the governing Board's knowledge of the organisation and improve transparency, accountability and decision making.
- 3.3 As part of the HSW Act, the Commission and the Executive were established as two separate NDPBs, with the Commission making arrangements for the general purposes of Part 1 of the Act, and the Executive enforcing and/or exercising the Commission's powers under the Act on its behalf. The merging of the two organisations will remove this extra layer of bureaucracy and improve oversight and accountability of the day to day administration of the HSW Act.
- 3.4 It is also proposed that the new unitary body should be called the Health and Safety Executive ('the Executive'). The name is familiar with stakeholders and in Government and is a well recognised 'brand name'. While the merging of the two organisations could facilitate a change in the current corporate identity, preserving the brand name of the Health and Safety Executive ensures that there will not be significant re-branding costs and will facilitate building on current public awareness and reputation.
- 3.5 All reference to the Commission in the HSW Act would be deleted and the term 'the Executive' would refer to the new unitary body. Current staff appointed to the Executive would automatically become appointed staff of the newly constituted Executive, retaining their status as civil servants, employed by the Crown. The new unitary body, like its predecessors, would exercise its functions on behalf of the Crown.

CHAPTER 3:

The details of the proposal

- 3.6 Section 10 (and Schedule 2) of the HSW Act establishes the two NDPBs as separate entities and the names of the Commission and the Executive. It is proposed that this provision is repealed and replaced with new sections 10A and Schedule 2A which establishes the new unitary body.
- B. Transferring the functions and powers of the current Health and Safety Commission and Health and Safety Executive to the new Executive, including.**
- the powers of the Commission to establish inquiries (with the consent of the Secretary of State) and investigations; and
 - the restriction on the Commission that prevents it giving directions in relation to individual enforcement decisions.
- 3.7 It is proposed that the current functions and powers of the Commission and the Executive be transferred to the new unitary body so that powers and functions exercised by the current Commission would in future be exercised by the new Executive. None of the statutory functions of the Commission and the Executive will be removed. This is in conformity with section 2 of the LRA which does not allow the removal or creation of any functions, only the transfer of functions from one body to another (see paragraphs 2.14 – 2.15). However a few changes will be made to the functions and powers of the new Executive.
- 3.8 It is envisaged that the new Executive will build on the current working methods of the Commission with some modifications to bring it into line with the way modern non-executive boards operate. Although the new Executive will be free to manage its own procedure as it sees fit, it will be required to consult the Secretary of State before making or revising its rules and procedures for dealing with conflicts of interests. It must also publish from time to time a summary of its rules and procedures which will improve the transparency of the organisation by publicising the way the new Executive will carry out its business.
- 3.9 It is proposed that the Commission's powers in section 14 of the HSW Act to direct investigations and inquiries be adapted as a consequence of the new unitary structure, to enable the new Executive to investigate and make a special report, or authorise another person to investigate and make a special report. The new Executive (with the consent of the Secretary of State) can also direct an inquiry to be held. This will allow the new Executive to remain impartial when it comes to these matters.
- 3.10 The intention as now is that enforcement decisions, including prosecutions will continue to be taken by duly authorised officials. In order to effect this principle it is proposed that the restriction currently placed on the Commission by section 11(4) of the HSW Act will be retained in respect of the new

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Executive. The new Executive will therefore not be permitted to give its officers, servants, agents or partners any directions as to the action to be taken under a relevant statutory provision in a particular case. This restriction will also be reinforced within the new Executive's enforcement policy statement and is consistent with current public law and administrative principles.

3.11 It is also intended to publish in advance of the new arrangements coming into force a formal statement specifying the precise terms in which the new Executive will delegate its powers on enforcement issues to officials. Introducing a legislative requirement that the new Executive publish such a statement is still under consideration and your views on this would be welcomed.

3.12 Section 11 of the HSW Act lists the general functions and powers of the Commission and the Executive and section 13, elaborating on section 11(6), sets out further powers of the Commission. It is proposed that the HSW Act is amended so that all functions and powers are transferred to the new Executive and the additions highlighted above are incorporated. Section 14 of the HSW Act (power of the Commission to direct investigations and inquiries) will be amended to incorporate the essential features of the current arrangements into the new governance structure. Schedule 2

paragraphs 8 & 9 of the HSW Act (proceedings) may be amended (as per paragraph 3.11) to reflect that the new Executive cannot give directions on enforcement matters.

3.13 The direction given to the Executive in 1976 under section 11(4) which instructs the Executive to exercise, on behalf of the Commission, the Commission's functions as the Commission sees fit, will lapse as all the Commission's functions will transfer to the new Executive¹⁰.

C. **Extending to the Secretary of State the restriction on intervening in individual enforcement decisions and also not permitting him to withhold publication of investigative and inquiry reports.**

3.14 There will continue to be a restriction placed on the new Executive in relation to individual enforcement decisions, (see paragraphs 3.10 – 3.11 above) and it is proposed that the same restriction is placed on the Secretary of State. The Secretary of State will therefore not be permitted to give any direction as to the enforcement of the relevant statutory provisions in any particular case.

3.15 It is also proposed to remove the provision that the Secretary of State may withhold all or parts of reports produced in relation to investigations or inquiries. This will bring this provision in line with the Freedom of Information Act 2000 to which both the Commission's and the Executive's publication

¹⁰ All formal directions given to the Executive by the Commission will lapse as a result of the merger.

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schemes¹¹ and statement of openness currently contribute.

3.16 It is proposed that section 12 of the HSW Act (control of the Commission by the Secretary of State) is replaced and section 14 (power of the Commission to direct investigations and inquiries) amended to incorporate these additional provisions.

D. Appointing the Chair and members of the new Executive in a similar way to the current Health and Safety Commission except that:

- the maximum permitted number of members other than the Chair will increase from nine to eleven; and
- there will be one member specifically appointed following consultation with organisations representing local authorities.

3.17 It is proposed that the size of the new Executive is increased to not less than seven and not more than eleven non-executive members (plus the Chair). The HSW Act currently states that the Commission shall consist of not less than six and not more than nine members plus the Chair. These provisions will maintain the current balance of the Commission, while providing the option for including further members to reflect other interests, if this is deemed worthwhile. Members will continue to be appointed by the Secretary of State.

3.18 It is proposed to retain the current provision that a Deputy Chair may be appointed, but in line with modern corporate governance practice, the Chair, in addition to the Secretary of State, should be involved in the appointment.

3.19 It is proposed that, as now for the Commission, the new Executive will comprise three members appointed by the Secretary of State after consultation with organisations representing employers; and three members after consultation with organisations representing employees.

3.20 One additional provision is proposed, namely that one member should specifically be appointed by the Secretary of State after consulting with organisations representing local authorities.

3.21 The remaining members of the new Executive (up to four other members) can be appointed by the Secretary of State to reflect such interests as the Welsh and Scottish Ministers, or other appropriate organisations including professional bodies. The involvement of the devolved administrations is new. The intention for widening the composition of the new Executive stems from the current Commission and Executive's work in improving health and safety within the workplace. Allowing a greater number of interests to be reflected within the governing Board will further widen the new Executive's capacity.

¹¹ Information on the Commission and the Executive's publication schemes and statements of openness are available at: <http://www.hse.gov.uk/foi/index.htm>

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3.22 It is proposed that the HSW Act is amended to increase the minimum membership of the new Executive from six to seven and the maximum membership from nine to eleven (plus the chair), and to provide for the new consultation requirements and the change in process when appointing a Deputy Chair.

E. Setting down the means of appointment and key responsibilities of the Chief Executive.

3.23 It is proposed that a provision detailing the appointment of the Chief Executive is included within the HSW Act. This appointment replaces the current three person Executive of which the Chief Executive is a part. The Chief Executive will:

- be appointed by the new Executive (with the approval of the Secretary of State) and is accountable to the new Executive for his or her actions;
- have their terms and conditions determined by the Secretary of State;
- be delegated the power to appoint staff (including inspectors) of the new Executive;
- oversee the arrangements for enforcement of the relevant statutory provisions as required by section 18 (1) of the HSW Act; and

- be responsible for the financial accounts of the new unitary body. This role is currently held in partnership with the Chair of the Commission, as both the Chair and Chief Executive are Accounting Officers for the Commission and the Executive respectively. It is intended that there be specific mention within the HSW Act as to the Chief Executive's reporting duties and responsibilities in relation to the oversight of the financial accounts of the new Executive.

3.24 It is proposed that the person appointed as Chief Executive may not at the same time be Chair or a Member of the new Executive. This element will be extended to include all members of the new Executive's staff to underpin the non-executive nature of the new unitary body.

3.25 It is proposed that the new Schedule 2A to the HSW Act incorporates the provisions concerning the appointment and financial accountability of the Chief Executive.

F. Adding certain provisions to enhance arrangements to support Local Authority regulatory activity.

3.26 It is proposed that provisions which help to update and strengthen the partnership between the new Executive and local authorities are incorporated into the HSW Act. In addition to one member of the new Executive being appointed after consulting organisations representing local authorities

(see paragraph 3.20), the following provisions are proposed:

- the inclusion of local authorities in the list of bodies to whom the new Executive should make arrangements to provide an information and advisory service. This will ensure that there is a system in place to continually update local authorities on the new Executive's current guidelines and procedures;
- the requirement that the new Executive consults with local authorities before issuing enforcement guidance. This will improve the way the new Executive and local authorities work in partnership in the enforcing of the Act; and
- the inclusion of a requirement on the new Executive and local authorities to put in place defined procedures for exchanging information and working together.

3.27 Section 11 of the HSW Act sets out, as part of the general functions of the Commission and the Executive those who must be provided with an information advisory service. Section 18 of the HSW Act sets out the role of local authorities in the enforcement of the relevant statutory provisions. It is proposed that section 18 is amended, and a

new section 11A is drafted, so that these new provisions are incorporated.

G. Imposing a Duty on the new Executive to have regard to the Better Regulation principles in the conduct of its regulatory functions.

3.28 It is proposed that a requirement be placed on the new Executive to carry out its regulatory functions¹² with regard to the Better Regulation Principles¹³ to make explicit the main policy objective underlying the proposal. It is particularly intended that the new governance structure created by the merger will improve consistency, transparency and accountability. It is therefore proposed that an addition be made to the functions and powers of the new Executive in keeping with the principles of better regulation and current legislative terminology.

3.29 Section 11 of the HSW Act states the general functions of the Commission and the Executive. It is proposed that the new section 11A, which replaces this section, begins by requiring the new Executive to have regard to the Better Regulation principles when carrying out its regulatory functions.

¹² Regulatory Function is defined in the LRA Act as:(a) a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or (b) a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity. Also see paragraph 1.14

¹³ Better regulation principles are set down in section 21 of the LRA and provide that regulatory functions should be carried out in a way which is transparent, accountable, proportionate and consistent

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H. Updating and modernising the legal drafting of those parts of the Health and Safety at Work etc. Act which are to be amended in any case.

3.30 In this process the opportunity will be taken to modernise the wording and layout of the HSW Act in those areas which will be amended in any case.

3.31 It is also proposed that the sections of the HSW Act set out below are amended as a consequence of merging the Commission and the Executive, or where the Act refers to persons no longer in existence eg: the Minister of Agriculture Fisheries and Food (section 50 HSW Act). Furthermore many elements or wording have not been changed since the Act was put in place in 1974, and it is proposed to modernise the wording where possible. The affected sections are as follows:

- section 15: Health and safety regulations;
- section 16: Approval of codes of practice by the Commission;
- section 17: Use of approved codes of practice in criminal proceedings;
- section 27: Obtaining of information by the Commission, the Executive, enforcing authorities etc;
- section 28: Restrictions on disclosure of information;

- section 43: Financial Provisions;
- section 45: Default powers;
- section 50: Regulations under the relevant statutory provisions;
- section 53: General interpretation of Part 1;
- section 55: Functions of, and responsibility for maintaining, employment medical advisory service; and
- section 59: Duty of responsible authority to keep accounts and to report.

Costs and benefits

3.32 It is considered that there should be significant benefits arising from merging the current Commission and the Executive through better external focus and internal direction, and no financial consequences for business or the public more generally. Therefore a partial Impact Assessment has not been prepared.

Transitional Provisions

3.33 The transitional provisions are:

- **Investigations and Special Reports** – power for the new Executive to take over the authorisation by the Commission of a person to investigate and make a special report under section 14(2) of HSW Act. This includes the power to authorise the abandonment or

continuation of any such investigation. The new Executive will also honour any agreements made by the Commission regarding remuneration of that person or for any expenses relating to the cost of the investigation/compiling the report.

- **Inquiries** – power for the new Executive to take over the direction given by the Commission for an inquiry to be held. The new Executive will also honour any agreements made by the Commission regarding remuneration or for any expenses relating to the cost of the inquiry.
- **Agreements entered into with other public bodies** – a provision to the effect that the new Executive replaces the Commission as party to any agreement made between the Commission and other government departments, or any Minister of the Crown, or other public authority to perform their functions; or for that body to perform the Commission's functions.
- **Approval of Codes of Practice** – a provision to deem that the new Executive approved the code.
- **Termination of appointments** – provision made for the current Commissioners' appointments to terminate when the merger takes place. The current Commissioners will be appointed as members of the new Executive immediately after the merger takes place for the remainder of their term of office. The Chair of the Commission will remain in an equivalent post with the removal of their responsibilities as an Accounting Officer. The reappointment of the Commissioners as members of the new Executive will not trigger any requirements set down by the Nolan Rules regarding the procedure for appointments made to public bodies.
- **Accounts and reports** – the Commission's operations in the period of time between its last annual report under Schedule 2 of the HSW Act and the merger taking place will be incorporated in to the first annual report issued under Schedule 2A by the new Executive. The same will happen regarding the Commission and the existing Executives' statements of accounts. On the merger, all rights and liabilities of the old bodies transfer to the new body.
- **Transfer of staff** – staff members currently in the service of the existing Health and Safety Executive will have their terms and conditions of service transferred to the new Executive. This transfer will not affect any employment rights due to the fact that staff of the new Executive are in reality employed by the Crown and will remain so post merger.

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- **Transfer of officers** – the Chief Executive will cease to be the director of the former Executive and will be reappointed as the Chief Executive of the new Executive retaining his role as Accounting Officer and associated responsibility for the financial accounts of the new unitary body; the two other persons of the former Executive will cease to hold this position but remain as staff members with their terms and conditions intact.
- **General transfer** –
 - I. All assets, rights and liabilities of the Commission and of the former Executive, existing immediately before the appointed day, are transferred to the new Executive.
 - II. Any direction given to the Commission by the Secretary of State under section 12(b) of the HSW Act before the appointed day shall be treated as having been given to the new Executive.
 - III. Anything (including any legal proceedings) which is in the process of being carried out by or in relation to the Commission or the former Executive may be continued on and after the appointed day by or in relation to the new Executive.

Binding the Crown

3.34 This proposal will bind the Crown only to the extent that those provisions of the HSW Act that bind the Crown are amended by this proposal.

Possible Parliamentary Procedure

3.35 The Minister can recommend one of three alternative procedures for Parliamentary scrutiny dependent on the size and importance of the LRO. Although the Minister can make the recommendation, Parliamentary Scrutiny Committees have the final say about which procedure will apply.

- **Negative Resolution Procedure** – this allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if neither House of Parliament has resolved during that period that the LRO should not be made.
- **Affirmative Resolution Procedure** – this allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if it is approved by a resolution of each House of Parliament.
- **Super-Affirmative Resolution Procedure** – this is a two-stage procedure during which there is opportunity for the draft LRO to be revised by the Minister.

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This allows Parliament 60 days of initial scrutiny, when the Parliamentary Committees may report on the draft LRO, or either House may make a resolution with regard to the draft LRO.

If, after the expiry of the 60 day period, the Minister wishes to make the LRO with no changes, the minister must lay a statement. After 15 days, the Minister may then make an LRO in the terms of the draft, but only if it is approved by a resolution of each House of Parliament.

If the Minister wishes to make material changes to the draft LRO he must lay the revised draft LRO and a statement giving details of any representations made during the scrutiny period and of the revised proposal before Parliament. After 15 days, the Minister may only make the LRO if it is approved by a resolution of each House of Parliament.

3.36 Under each procedure, the Parliamentary Scrutiny Committees have the power to recommend that the Minister not make the LRO. If one of the Parliamentary Committees makes such a recommendation, a Minister may only proceed with it if the recommendation is overturned by a resolution of the relevant House.

3.37 The Department for Work and Pensions believes that the Affirmative resolution procedure should apply to this LRO. This is because the changes to the HSW Act will have an impact on other primary legislation, but should be considered straightforward as the proposed changes do not amend the fundamentals of the Act itself.

Chapter 4: Legal analysis against requirements of the legislative and regulatory reform act 2006

4.1 The policy objective is to improve the governance arrangements of the Commission and the Executive. It is proposed to achieve this through merging the two bodies and creating a new unitary body. Below, this proposal is analysed against the requirements of the LRRRA.

Non-Legislative Solutions

4.2 As explained in Chapter 2: paragraphs 2.11 – 2.16 (Reasons for the current proposal), a non-legislative solution to achieve the policy objective was attempted. While some improvements have resulted, they have been judged insufficient. It has therefore been concluded that it is necessary to pursue the legislative route to capture the maximum potential improvements in governance.

Proportionality

4.3 The chosen means to achieve the policy objective is the merging of the Commission and the Executive, and consequential fusing of their respective functions, powers and duties. In the process a few minor changes have been made to current

practice, for example in the size and composition of the new Executive as against the current Commission. But overall it is a very focused proposal, which should not require burdensome changes to the way stakeholders relate to the health and safety regulator. For example there is no change in health and safety requirements, or how they are enforced.

The identified gains from this change in governance structure are:

- redefinition of roles and responsibilities towards a more cohesive organisation, which will facilitate collective responsibility and improve the organisation's capacity to utilise the views of its stakeholders and help improve the new Executive's decision making process;
- the inclusion of one member specifically appointed after consultation with local authorities, reflecting the intention to improve the way the new Executive works with local authorities, along with certain other provisions to improve this partnership;

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Legal analysis against requirements of the legislative and regulatory reform act 2006

- defining the Chief Executive's responsibilities, including on finance within the HSW Act. Governance guidance¹⁴ states that the definition of roles and responsibilities of both the Chair and Chief Executive are fundamental to the success of an organisation's governance structure; and
- updating the HSW Act will bring the foundation of the Act in line with current legislative drafting, and regulatory guidelines.

The conclusion therefore is that the proposal is proportionate.

Fair Balance

- 4.4 It is not considered that the proposal will have any adverse effect on stakeholders or the general public.

Necessary protection

- 4.5 No health and safety protections will be removed by the proposal. Indeed particular effort has been made to maintain the existing elements which refer to enforcement, investigations and inquiries (See Chapter 3: paragraphs 3.7 – 3.13).

Rights and Freedoms

- 4.6 It is not considered that the changes proposed would prevent anyone from exercising an existing right or freedom.

Constitutional Significance

- 4.7 It is not considered that the proposal represents significant constitutional reform. The merging of the Commission and the Executive will signify the end of two NDPBs that have been instrumental in meeting the aims envisaged by Lord Robens, and applying and overseeing within Great Britain improvements in safety, health and welfare at work. However the proposal does not change any fundamental functions, duties and powers under the HSW Act. These will remain and in some cases be updated to reflect current regulatory practices and guidelines.

¹⁴ 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)

Annex A: List of Consultees

ACAS
Amicus, the union
AOHNP (UK), an association not employer
Association for consultancy and Engineering
Association of British Insurers
Association of British Theatre Technicians
Association of Chief Police Officers
Association of Train Operating Companies
Astley Chemical+safety
BAE Barrow in Furness
Balfour Beatty plc
BBC
Birmingham City Council - Public Protection Committee
Brighton and Hove City Council
British Chambers of Commerce
British Energy
British Industrial Truck Association
British Occupational Hygiene Society
British Safety Industry Federation
British Safety Council
Brown Safety Eng
Cabinet Office
Centre for Corporate Accountability
Chartered Institute of Environmental Health
Chemical Business Association
Chemical Industries Association
CO Gas Safety
Communication Workers Union
Confederation of British Industry
Confederation of British Industry (Wales)
Confederation of Passenger Transport UK
Construction Clients' Group
Construction Health and Safety Group
Construction Industry Council
Corus Group
Costain Limited
Convention of Scottish Local Authorities
Council of Civil Service Unions
Cyril Sweett Ltd
Department for Environment, Food and Rural Affairs
Department for Enterprise, Trade and Investment – Northern Ireland
Department for Transport
Department of Health
Department for Business, Enterprise and Regulatory Reform
Derwent safety group
Doctrine and Bond

ANNEX A:
List of Consultees

E.ON UK plc
EEF - the manufacturers' organisation
Engineering Construction Industry Association
Environment Agency
Environmental Services Association
Federation of Small Businesses
First Division Association
Forum of Private Business
GMB
Greater Manchester Police Federation
Hazards
Health and Safety Executive Northern Ireland
Health and Safety Lawyers' Association
Health Protection Agency
Highways Agency
Home Office
Hurlock & Daughters Training Ltd
IKEA
Institute of Directors
Institute of Occupational Medicine
Institution of Occupational Safety and Health
Jackson Civil Engineering Ltd
LACORS
Lancashire Health and Safety Officer Group
Lancashire Occupational Health And Safety Group
Law Commission
Liftec Solutions Ltd
Local Government Association
London School of Hygiene and Tropical Medicine
Moneamus Ltd
National Association of Schoolmasters Union of Women Teachers
National Assembly for Wales
National Grid
National Pest Technicians Associations
National Union of Mineworkers
Northern Ireland Law Commission
Nuclear Decommissioning Authority
National Union of Teachers
Office of Government Commerce
Office of Rail Regulation
Picon
Police Federation of England and Wales
Professional Contractors Group Ltd
Professional Health and Safety Services
Prospect
Public and Commercial Services Union
Rail Safety and Standards Board
Richard Altoft and Associates Ltd
RMT
Royal College of Nursing
Royal Environmental Health Institute of Scotland
RPS

ANNEX A:
List of Consultees

Rune Associates Limited	The Society & Faculty of Occupational Medicine
Scotia Gas Networks Plc	The Stroke Association
Scottish Environment Protection Agency	Thompsons Solicitors
Scottish Executive	Trade Union Congress
Scottish Hazards Campaign Group	Unite (Transport and General Workers' Union)
Scottish Law Commission	Union of Construction Allied Trades and Technicians
Scottish Trade Union Congress	UK National Workstress Network
Serco	Unison
Severn Trent Water	United Kingdom Petroleum Industry Association Limited
Sheffield City Council Environment and Regulatory Services	VT Group services
Society of Chief Officers of Environmental Health in Scotland	Welsh Assembly Government
Society of Local Authority Chief Executives	Welsh Local Government Association
St Paul's Community Development Trust	Yorkshire and the Humber TUC
Tarmac Limited	
The Chartered Institute of Wastes Management	
The Chinese Takeaway Association	
The Ergonomics Society	
The Institution of Engineering and Technology	
The International Marine Contractors Association	
The Law Society	
The Office of the First Minister	
The Royal Society for the Prevention of Accidents	
The Scotch Whisky Association	

Annex B: Response form

Response form for the consultation paper on changes to Legislation governing Health and Safety in Great Britain

Respondent Details	Please return by 31 October 2007 to:
Name: Organisation: Address: Town/City: County/Postcode: Telephone: Fax: E-mail:	Ruth Feather Improving Working Lives Division Department for Work and Pensions, The Adelphi, 1-11 John Adam Street, London WC2N 6HT Phone: 0207 712 2446 Fax: 0207 962 8524 Email: ruth.feather@dwp.gsi.gov.uk

Tick this box if you are requesting non-disclosure of your response.

<p>a) Do you think that the proposal will secure that regulatory functions will be exercised so that they are transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed as explained in paragraph 1.13?</p> <p>Comments:</p>
<p>b) Do you have views regarding the expected benefits of the proposal as identified in Chapter 3 of this consultation document?</p> <p>Comments</p>

c) Is there any empirical evidence that you are aware of that supports the need for this reform?

Comments:

d) Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposal intends to address?

Comments:

e) Is the proposal put forward in this consultation document proportionate to the policy objective?

Comments:

f) Does the proposal put forward in this consultation document taken as a whole, strike a fair balance between the public interest and any person adversely affected by it?

Comments:

ANNEX B:
Response form

g) Does the proposal put forward in this consultation prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise, as explained in paragraph 4.6? If so, please provide details.

Comments:

h) Do you consider the provisions of the proposal to be constitutionally significant?

Comments:

i) Does the proposal put forward in the consultation document make the law more accessible and easily understood?

Comments:

k) Do you have views on whether there should be a legislative requirement that the new Executive specify the precise terms in which the new Executive will delegate its powers on enforcement issues to officials (as outlined in paragraph 3.11)?

Comments:

l) Do you agree that the proposed Parliamentary resolution procedure (as outlined in paragraphs 3.37) should apply to the scrutiny of this proposal?

Comments:

Annex C: Legislative reform order-parliamentary consideration

Introduction

1. This reform proposal in relation to the Health and Safety at Work etc. Act 1974 will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by introducing a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (LRRRA). LROs are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament. On that basis, the Minister invites comments on this reform proposal in relation to the Health and Safety at Work etc. Act as measures that might be carried forward by a LRO.

Legislative Reform Proposals

2. This consultation document on the Health and Safety at Work etc. Act has been produced because the starting point for LRO proposals is thorough and effective consultation with interested parties. In undertaking this consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny

Committees that he or she has addressed those concerns.

3. Following the consultation exercise, when the Minister lays proposals before Parliament under section 14 of the LRRRA, he or she must lay before Parliament an Explanatory Document which must:

- explain under which power or powers in the LRRRA the provisions contained in the order are being made;
- introduce and give reasons for the provisions in the Order;
- explain why the Minister considers that:
 1. there is no non-legislative solution which will satisfactorily remedy the difficulty which the provisions of the LRO are intended to address;
 2. the effect of the provisions are proportionate to the policy objective;
 3. the provisions made in the order strikes a fair balance between the public interest and the interests of any person adversely affected by it;
 4. the provisions do not remove any necessary protection;

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Legislative reform order-parliamentary consideration

5. the provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
 6. the provisions in the proposal are not constitutionally significant; and
 7. where the proposals will restate an enactment, it makes the law more accessible or more easily understood.
- include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;
 - identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and
 - give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.
4. On the day the Minister lays the proposals and explanatory document, the period for Parliamentary consideration begins. This lasts 40 days under negative resolution procedure and affirmative resolution procedure and 60 days under super-affirmative resolution procedure. If you want a copy of the proposals and the Minister's explanatory document laid before Parliament, you will be able to get them either from the Government department concerned.

Parliamentary Scrutiny

5. Both Houses of Parliament scrutinise legislative reform proposals and draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.
6. Standing Orders for the Regulatory Reform Committee in the Commons stipulate that the Committee considers whether proposals:
 1. appear to make an inappropriate use of delegated legislation;
 2. serve the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
 3. serve the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
 4. secure a policy objective which could not be satisfactorily secured by non-legislative means;
 5. have an effect which is proportionate to the policy objective;
 6. strike a fair balance between the public interest and the interests of any person adversely affected by it;

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Legislative reform order-parliamentary consideration

7. do not remove any necessary protection;
 8. do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
 9. are not of constitutional significance;
 10. make the law more accessible or more easily understood (in the case of provisions restating enactments);
 11. have been the subject of, and takes appropriate account of, adequate consultation;
 12. give rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant; and
 13. appear to be incompatible with any obligation resulting from membership of the European Union.
7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.
 8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.
 9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at:
 - Regulatory Reform Committee in the Commons; and
 - Delegated Powers and Regulatory Reform Committee in the Lords.
 10. Under negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an order, after which the Minister can make the order if neither House of Parliament has resolved during that period that the order should not be made.
 11. Under affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an order, after which the Minister can make the order if it is approved by a resolution of each House of Parliament.
 12. Under super-affirmative procedure each of the Scrutiny Committees is given 60 days to scrutinise the order. If, after the 60 day period, the Minister wishes to make the order with no changes, he may do so only if it is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft order he must lay the revised order and a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the order, before Parliament. The Minister may only make the order if it is approved by a resolution of each House of Parliament.

How to Make Your Views Known

13. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the person named in the consultation document in this case Ruth Feather, details at para 1.23. When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.
14. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.
15. The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

Delegated Powers and
Regulatory Reform Committee
House of Lords
London
SW1A 0PW
Tel: 0207 219 3103
Fax: 0207 219 2571
mailto: dpr@parliament.uk
Regulatory Reform Committee

House of Commons
7 Millbank
London
SW1P 3JA
Tel: 020 7219 2837
Fax: 020 7219 2441
mailto: regrefcom@parliament.uk

Non-disclosure of responses

16. Section 14(3) of the LRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.
17. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

Information about Third Parties

18. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.
19. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.

Annex D: Consultation criteria

The criteria in the Code of Practice on Consultation published by the Cabinet Office apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory or external requirements (e.g. under European Community law) they should otherwise generally be regarded as binding on UK Departments and their agencies unless Ministers conclude that exceptional circumstances require a departure.

The criteria should be reproduced in consultation documents with an explanation of any departure, and confirmation that they have otherwise been followed.

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage;
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose;

3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain;
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals;
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation;
6. Responses should be carefully and open-mindedly analysed, and reasons for decisions finally taken; and
7. Designating a consultation co-ordinator who will ensure the lessons are disseminated.



INVESTORS IN PEOPLE



Published by the Department
for Work and Pensions
August 2007
www.dwp.gov.uk