



Department  
for Work &  
Pensions

# **The Government Response to the Triennial Review of the Health and Safety Executive**

**June 2014**

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## Foreword

### Foreword

On 9 January 2014, I announced the publication of the Triennial Review of the Health and Safety Executive (HSE), an Executive Non-Departmental Public Body (NDPB). HSE is the national, independent regulator for work-related safety and health.

I am very grateful to the independent reviewer, Martin Temple, Chair of the EEF - the Manufacturers' Organisation, for producing such a thorough report which has been widely welcomed. I support the majority of his recommendations, but there are a couple where we will seek to achieve his aim by a



slightly different route. This Government Response provides details on the actions we will take on all the recommendations and updates on progress made so far, where appropriate.

I want to ensure HSE delivers value for money to the taxpayer, whilst ensuring safety for the nation. At my request, HSE has already made good progress on increasing the opportunities for commercial income, building on work it had already begun. Selling our expertise abroad will not only help businesses and governments to save lives, but, as part of our long-term economic plan, will show the world we're leading the way in exporting expertise overseas.

The Government Response also sets out how HSE will ensure that it continues to improve efficiency and effectiveness in how it delivers its essential functions. This includes measures to review the fee for intervention charging regime, increase transparency, such as publishing clearer performance indicators and setting out clearly how HSE works in partnership with other regulators. Finally, we have taken the opportunity to ensure that the HSE Board has the right remit and appropriate mix of members to lead the above changes.

A handwritten signature in black ink, appearing to be 'MP' with a stylized flourish.

Rt. Hon Mike Penning MP

Minister for Disabled People

## Background

### Background

In April 2013 Martin Temple, Chair of the EEF (the trade body for UK manufacturing companies) was asked to lead the Triennial Review of the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions (DWP). It is Government policy that all Non-Departmental Public Bodies (NDPBs) should undergo a substantive review at least once every three years. This is the first Triennial Review of HSE.

These Triennial Reviews examine:

- Stage 1 - whether the functions of the NDPB remain necessary and whether delivery by an arms length body is the most efficient and effective way to deliver these functions.
- Stage 2 - if it is concluded that the functions of the NDPB should continue to be delivered by an arms length body, whether adequate control and governance arrangements are in place to ensure that the body complies with the principles of good governance.

Having considered the evidence, Martin Temple concluded that there is a continuing need for the functions that HSE delivers, and a very strong case for those functions to continue to be delivered by an arms-length body. Having reached that conclusion, Martin considered whether adequate control and governance arrangements were in place to ensure that the body complies with the principles of good governance.

Martin concluded that, on the whole, HSE is operating with the level of control and governance that should be expected of an arms-length body of its size and profile. He did, however, identify a number of areas where there is scope for innovation and change, to ensure that HSE continues to operate efficiently and effectively in the 21<sup>st</sup> century.

On publishing the Triennial Review, Mike Penning, Minister of State for Disabled People, welcomed Martin Temple's recommendations and, in particular, the opportunity for HSE to build on its well-deserved international reputation and make more progress to grow its commercial income.

The Government has now fully considered all of the recommendations of the Triennial Review. This report provides a Response to those recommendations and updates on progress made so far in implementing them, where appropriate.

## Introduction

### Introduction

The Government considered the 38 recommendations made by Martin Temple. The recommendations and any actions the Government will take have been grouped together in this Response where they are inter-related.

The recommendations split into four sections:

- HSE Delivery and Performance
- HSE Commercial Options
- HSE Interaction with Other Government Departments and Regulatory Bodies
- HSE Corporate Governance.

The page numbers referenced against each set of recommendations refers to the explanation of the relevant recommendation in the Triennial Review report itself<sup>1</sup>.

The Response finishes with a summary of Next Steps. DWP will publish updates at key milestones, setting out progress in delivering the Triennial Review recommendations.

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<sup>1</sup> HSE Triennial Review (published 9 January 2014):  
<https://www.gov.uk/government/publications/triennial-review-report-health-and-safety-executive-2014>

## HSE Delivery and Performance

### HSE Improving Delivery and Performance

#### Fee For Intervention (FFI) (pages 58 – 62)

I recommend that HSE's planned review post October 2013 should include:

- stakeholder representation in the review team to provide assurance of the impartiality of the findings
- the views of stakeholders on how FFI is working
- if FFI is to be retained, whether the threshold for FFI has been set at the right level
- whether there is evidence that the anticipated incentives to comply have made a difference and improved health and safety performance
- whether there have been any detrimental impacts on the behaviour of HSE Inspectors and/or those inspected and/or on health and safety performance
- consideration of alternative sources of income, which should be tested against the same criteria.

I recommend that, unless the link between “fines” and funding can be removed or the benefits can be shown to outweigh the detrimental effects, and it is not possible to minimise those effects, FFI should be phased out.

The Government remains committed to the underlying principle of the FFI cost recovery regime: *businesses that are found to be in serious breach of health and safety law – rather than the taxpayer – should bear the related costs incurred by the regulator in helping them put things right*<sup>2</sup>. However, we recognise that Martin Temple found that a number of stakeholders were concerned about how the regime and, in particular, how misperceptions of it might have potentially damaged previously positive relationships between HSE and those it regulates.

The Minister for Disabled People instructed HSE to set up a Review Panel, under an independent chair, to consider not just the operation of FFI, but also the impact charging has had on the relationship between HSE and business.

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<sup>2</sup> Good Health and Safety, Good for Everyone, published March 2011:  
<https://www.gov.uk/government/publications/good-health-and-safety-good-for-everyone>

## HSE Delivery and Performance

The Panel members are:

- Professor Alan Harding (Director, Heseltine Institute for Public Policy and Practice at Liverpool University) - Chair
- Ken Moon (Wessex Regional Chairman, Federation of Small Businesses)
- Dan Shears (National Health and Safety Officer, GMB Union)
- Fiona Walshe (Deputy Director, Health and Wellbeing in DWP - HSE's sponsorship department).

In July 2014, the Review Panel will report to the HSE Board, who will make recommendations to the Minister for Disabled People on the future of the FFI regime. The review will be published once the Minister has had an opportunity to consider its findings.

I recommend that, as an urgent action, there should be at least one independent person involved at the first formal stage in FFI appeals for HSE to ensure that the appeal process is independent and impartial, and is seen to be so.

In light of Martin Temple's comments, HSE has already taken action on his recommendation on the process for FFI appeals. From the 1st April 2014, it amended its FFI appeals process to include independent representation from the outset of the queries and disputes process. Revised guidance to support the new process is available on the HSE website<sup>3</sup>.

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<sup>3</sup> <http://www.hse.gov.uk/fee-for-intervention/>

## HSE Delivery and Performance

### Measuring Performance (pages 66 – 69)

I recommend that HSE, the National Audit Office and the Cabinet Office Efficiency and Reform Group work out ways to measure cost effectiveness to enable better and more effective comparisons of performance to be drawn with other similar regulatory bodies in future Triennial Reviews. Preferably this information should be in the public domain in a format that is readily understandable to all.

I recommend that HSE considers how its activities that are not directly comparable to other public bodies can be measured for cost effectiveness. It would bring HSE much closer to being able to make transparent what it is that it provides that is of value to the wider public and the taxpayer.

I recommend that HSE develops and publishes performance indicators for its work to produce guidance. These should include measures that will fall out from robust project management processes, such as whether milestones for delivery are met. It should also seek to assess the impact of the guidance in the relevant audience, for example by surveys and feedback from users.

I recommend that HSE develops and publishes performance indicators for its enforcement activities that seek to address the quality of the service provided to those it interacts with. Where appropriate, this may be based on customer feedback. They should be readily understandable to a lay person.

I recommend that HSE continues to improve its performance on the length of time taken to complete its investigations. It should aim for 95% of non-fatal accident investigations to be completed within 12 months of the accident. In addition, there should be a suitable target for the completion of fatal investigations once HSE has assumed primacy. This should be set once the relevant data is available.

The Government supports the recommendations on measuring HSE's performance. It is committed to publishing improved information to give a clearer explanation of HSE's performance.

HSE's planned actions and activities to deliver its aims are set out in its Business Plan, published at the beginning of each operational year. This includes specific actions on how it intends to manage its resources to achieve best value for the taxpayer. Progress

## HSE Delivery and Performance

against its key activities, milestones and measures is published in HSE's Annual Report and Accounts.

Martin Temple heard much praise about the professionalism of HSE's Inspectors. He recognised that HSE publishes a range of facts and figures on its work but felt these do not always provide an insight into the quality of that work. Martin believed that the addition of customer service/perception measures would provide a more balanced picture of HSE performance.

HSE is now reviewing its performance management systems in light of these recommendations and will have fully implemented a new performance framework, by September 2014. This will include:

- initial benchmarks for the cost effectiveness of its support services. NAO and Cabinet Office will be asked to review and endorse the benchmarks for sharing with other regulators;
- suitable measures and indicators for the activities identified in these recommendations. HSE will begin trialling these new measures and targets during the course of 2014/15;
- customer feedback; and
- reviewing the time taken to complete investigations to identify where improvements in performance might be made and what targets could best support this.

## HSE Delivery and Performance

### Delivery of Professor Löfstedt's recommendations (pages 69 – 70)

I recommend and support the necessary continuation of work to complete Löfstedt recommendations by tidying up and removing redundant legislation and, where appropriate, by consolidate and updating legislation.

The majority of HSE's effort should be to produce good, clear, helpful guidance and to do so in conjunction with all the parties who will be 'users' of that guidance.

The Government is committed to delivering the recommendations from Professor Löfstedt's review 'Reclaiming Health and Safety for All'<sup>4</sup>. The majority of the recommendations have been implemented and work to implement the remainder by the end of 2014 is on track. Updates on implementation of these and other health and safety reforms are published regularly in the health and safety reform progress reports on gov.uk.

HSE is reviewing all of its guidance, testing it to ensure it provides concise, straightforward advice. Since 2010, HSE has reviewed over 800 individual publications. HSE has put in place a rolling programme of regular future reviews of guidance, to ensure it is kept up to date and fit for purpose. These reviews routinely take the views of users into account, however HSE will consider what further action can support greater user involvement.

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<sup>4</sup> <https://www.gov.uk/government/publications/reclaiming-health-and-safety-for-all-lofstedt-report>

## HSE Delivery and Performance

### Europe (pages 70 – 71)

I recommend that the HSE Board should regularly take an overview of how and to what effect HSE resources are deployed in Europe and provide a steer on priorities. HSE should, if possible, publish this information, including assessments of the impact on health and safety outcomes as well as the costs to business.

The Government supports this recommendation.

The Minister for Disabled People asked DWP to further examine the strengths and weaknesses of HSE's approach to negotiating and implementing EU legislation. This appraisal found, as did Martin Temple, that HSE's approach is in accordance with the Government's Guiding Principles for EU Legislation<sup>5</sup> and that it has a strong record in negotiating for the UK. However, ensuring EU regulation is proportionate, as well as effectively implemented and enforced across the EU, should be a priority. This will require collaboration with other EU regulators.

The appraisal identified some specific aspects that the Minister has asked HSE to address to meet this recommendation:

- HSE's EU work is diverse and takes years from an initial proposal to implementation, making oversight of the longer term strategy more difficult. HSE will provide regular updates and overviews to the Minister to support the flow of more topic specific information.
- In addition, in particular in the context of the ongoing EU review of occupational health and safety<sup>6</sup>, senior HSE staff will redouble efforts to build strategic relationships to influence at EU level, as well as working with UK industry representatives, to encourage their participation.
- HSE does well to engage small firms that will be directly impacted by specific EU proposals. To support proposals for simplification, HSE will consider how small firms

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<sup>5</sup> The Guiding Principles for EU legislation are available at: <https://www.gov.uk/government/publications/guiding-principles-for-eu-legislation> along with the associated guidance on transposition of Directives into UK law.

<sup>6</sup> Updates on the EU review will appear on HSE's web page: <http://www.hse.gov.uk/aboutus/Europe/index.htm>

## **HSE Delivery and Performance**

and representative bodies can be better engaged throughout the process and, where appropriate, HSE's impact assessments will address costs to small firms separately, so that they are readily identified.

- HSE will work with other Government departments and better integrate its internal guidance to officials engaged in European work with cross-government guidance (completed).

While Martin Temple's recommendation focussed predominantly on HSE's role in Europe, it is also appropriate for HSE to continue to collaborate with regulators in relevant third countries, including the US, and with international bodies to establish a more streamlined international regulatory landscape, where relevant to occupational health and safety. HSE will increase this activity and, working with other Government departments where appropriate, include information on this in the above updates to the Minister.

## HSE Delivery and Performance

### Work-Related Ill Health (pages 71 – 72)

I recommend that HSE continues to seek new and innovative ideas for interventions that maximise its impact on the continuing high levels of work-related ill health. This will include opportunities to use all forms of media, including social media, to reach the relevant audiences.

The Government supports this recommendation. Martin Temple recognised that delivering effective regulatory interventions in relation to work-related ill health can be particularly challenging. He endorsed HSE's approach to reinvigorating its work to tackle work-related ill health; working as a catalyst to promote and encourage new and innovative ideas for activity, particularly around occupational cancer and respiratory disease.

HSE has been developing partnerships with a broad range of stakeholders. It has launched new web pages designed to facilitate more innovative thinking on improving work-related ill health outcomes.

HSE is prioritising work to address occupational cancer. It is developing plans for a new style of behaviour change campaign, focussed on asbestos, for launch in autumn 2014. Recognising those most at risk of exposure to asbestos are trades people such as plumbers, electricians etc it will make information available through building trade outlets and offer a digital asbestos information tool, accessible using smart phones and tablets.

## HSE Delivery and Performance

### Communications (pages 72 – 73)

I recommend that HSE continues to build on its sector strategies and overall digital strategy to involve the relevant stakeholders in improving the effectiveness of its approaches. In particular, HSE needs to be an expert communicator, based on a good understanding of the audiences, what influences positive behaviour changes and using all the modern forms of media now available including Apps, Facebook and Twitter.

The Government welcomes Martin Temple's support for HSE's sector strategies. These are evidence-based frameworks for planning HSE's interventions to bring about behaviour change and improve health and safety outcomes.

HSE will review its sector strategies, taking account of Martin Temple's findings, and in discussion with the relevant stakeholders. The updated sector strategies will be published by October 2014.

HSE will build on its communications expertise to better influence workplace behaviours. HSE is already undertaking more analysis, such as audience insight research, when planning new initiatives and capturing the lessons for wider use. It has recognised that strategic use of digital communications will be an increasingly important tool in encouraging safer working. To this end, it is further developing its digital capabilities as an organisation by providing training to staff and promoting best practice from across Government departments.

I recommend that the routes for raising a concern with HSE about health and safety at a specific workplace are made clearer on HSE's website, ideally on the Home Page itself.

HSE has amended the homepage of its website to include prominent links to its guidance on resolving workplace health and safety concerns.

## HSE Commercial Options

### HSE Commercial Options

#### Health and Safety Laboratory, Land Use Planning Advice and Charging for visits to organisations with mature health and safety management systems (p75 -83)

The HSE Board will need to consider and evaluate the delivery options, the full business case for any changes, and weigh the risks and benefits. In doing so the Board will wish to develop criteria against which to consider the relative merits of options put before it and it should do this in discussion with DWP.

#### **A - The Health and Safety Laboratory (HSL)**

I recommend that HSL's work to support HSE remains in HSL (as an agency of HSE) at this time.

I recommend that DWP work with HSE and HSL to complete a fuller analysis of HSL's role to decide the best commercial delivery model going forward. The new high-level principles on the role and delivery model of public sector research establishments, recently issued by the Department for Business, Innovation and Skills (BIS) and the Cabinet Office, will provide a useful framework for an in-depth review of which delivery model best serves the unique and distinctive role that HSL provides to Government.

I recommend that this review of HSL is commenced before the end of the current financial year to allow HSL to make the most of the opportunities that clearly exist in global markets to exploit the HSE/HSL brand, for the benefit of the taxpayer.

#### **B - Land Use Planning Advice**

I support HSE's proposal to provide a fee paying service to developers and businesses in the chemical sector for early land use planning advice. I also support the proposal to move this advice work into HSL, as part of the above recommendation for HSL to increase its commercial activity. I recommend that it publishes its intention on how it will progress this proposal by April 2014.

#### **C - Charging for visits to organisations with mature health and safety management systems**

I recommend that HSE investigates the provision of a fully chargeable inspection service for organisations with mature health and safety management systems who wish to engage the assistance of the regulator in maintaining and improving their health and safety performance.

## **HSE Commercial Options**

The Government welcomes Martin Temple's recommendations on the commercialisation of HSE but intends to go further. It is committed, in the next 12 months, to taking forward changes to allow HSE to become more commercial in outlook and in delivery. Where legislative changes are necessary, the Government will take these forward, subject to Parliamentary timetables.

There is international interest in learning from and adopting Britain's health and safety regulatory system. Realising HSE's potential as a world leader in providing health and safety advice will create a new income stream for Government as well as benefiting UK businesses who already work within this regulatory framework. In the long term the Government would like to see HSE meeting a much larger proportion of its costs from commercial activities.

HSE has appointed a Commercial Director to drive this work forward and has set up a high-level Steering Group to oversee the work. The Steering Group is chaired by Judith Hackitt, HSE Chair, and its members are:

- Dame Sue Ion - HSL Board Non-Executive member
- Paul Kenny - HSE Board member
- John Morgan - HSE Board member
- Martin Temple, Lead of the Triennial Review of HSE
- Alison Fryatt, Head of the Health and Safety Sponsorship Team, Health and Wellbeing Directorate, DWP.

The Steering Group will be responsible for considering and advising the HSE Board and the Minister on the options for commercialising HSE, setting the pace and direction for the delivery of change and providing challenge to this work and to those who will be responsible for its delivery.

The first phase of wider commercialisation will include building on work already underway:

### **A - HSL**

The majority of HSE's current commercial work takes place through HSL. This work will continue. Martin Temple's recommendations for further review of HSL will be delivered through the Steering Group's wider considerations of the appropriate delivery model for

## **HSE Commercial Options**

the organisation as a whole. However, the only solutions that will be acceptable will be those that retain the experience, expertise and unique combination of specialist scientific disciplines of HSL, as a Public Sector Research Establishment, as well as the value of its brand.

### **B - Land Use Planning Advice**

The Government welcomes Martin Temple's support for HSE's proposal for providing this advice service. HSE's unique knowledge and expertise makes it an important advisor to the planning process and HSL is able to combine access to expertise with ability to market services in a commercial environment. By providing an enhanced level of service at the pre-application stage to developers and industry, and providing more support to Local Authorities (LAs) so that they better understand risk issues, HSE and HSL can help bring about a planning process which is more responsive to the broad needs of society to balance development, growth and public risk.

HSE will shortly publish its proposals for providing an advice service that will support a more efficient planning system. These proposals have been developed in line with Government statements and guidance on the role of statutory consultees in the planning process – and specifically to recognise the importance of early and positive engagement. This also includes maintaining the performance standards expected of statutory consultees such as HSE.

The Minister for Disabled People has asked HSE to launch the full service by March 2015.

### **C - Charging for visits**

The Minister for Disabled People has asked HSE to explore a range of services, including ways to meet requests from businesses to provide advice on a commercial basis, and to report back with proposals by autumn 2014.

## HSE interaction with Other Government Departments and Regulatory Bodies

### HSE Interaction with Other Government Departments and Regulatory Bodies

#### Health and Wellbeing (pages 84 – 85)

Those who promote wellbeing in the workplace should not allow it to be confused with health and safety requirements. I recommend that HSE should ensure its own guidance sets out clearly what employers must do to control work-related health risks and be prepared to challenge others if they inadvertently misrepresent what the law requires to promote the wider wellbeing agenda.

The Government accepts this recommendation. HSE provides guidance for employers and workers on control and management of work-related health risks on its website. HSE will review this to check the clarity of the advice provided and ensure its specific application to workplace risks is clear.

HSE also takes an active role in a number of wellbeing initiatives including DWP's cross-Government Health, Work and Wellbeing Board and the Department of Health's Public Health Responsibility Deal Health at Work Network, as well as the Scottish Government's Scottish Centre for Healthy Working Lives. The Government has asked HSE to use these and other forums to encourage others to recognise the distinction between occupational ill-health conditions and more general public health issues.

## HSE interaction with Other Government Departments and Regulatory Bodies

### Interface with Other Regulators (pages 86 – 87)

I recommend that opportunities for further convergence between regulators should be taken up where this makes operational sense and would reduce the burden to business. To this end, future Triennial Reviews of HSE should be aligned with reviews of similar regulatory bodies and should actively consider the opportunities for greater convergence.

I recommend that HSE continues to work with other regulators to ensure that the procedures for dealing with the interfaces between them and the associated Memoranda of Understanding (MOU) are up to date, reflect best practice, and are user tested by external stakeholders.

The Government remains committed to reform of public bodies, to increase transparency and accountability, to cut out duplication of activity, and to discontinue activities which are simply no longer needed. Martin Temple's recommendation for further convergence between regulators, where this makes operational sense and would reduce the burden to business, supports this aim. Cabinet Office officials will oversee the timetable for future Triennial Reviews and will support, challenge and advise departments. In particular, they will broker clustered reviews across departments.

In parallel, the Better Regulation Executive's (BRE) *Business Focus on Enforcement*<sup>7</sup> has invited applications from Trade Associations and other representative business groups to carry out short reviews into the impact on their area or sector of the way in which regulations are enforced by national regulators and Local Authorities. These reviews will, where relevant, include the remit of the regulatory authorities / agencies (including HSE) that operate in the suggested sector, area or industry and the impact of any overlaps or conflicting requirements and the co-ordination (or the lack of it) between regulators of visits. These may reveal examples of opportunities for HSE and other regulators to work better together.

The Minister for Disabled People has asked HSE, in light of Martin Temple's recommendations, to review its interfaces with other regulators by end-2015. This

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<sup>7</sup> Details of BRE's Focus on Enforcement reviews is available at:  
<http://discuss.bis.gov.uk/focusonenforcement/>

## **HSE interaction with Other Government Departments and Regulatory Bodies**

includes, where necessary, publishing revised or updated Memoranda of Understanding that have been tested for clarity of understanding with stakeholders.

## HSE interaction with Other Government Departments and Regulatory Bodies

### Environment Agency (pages 87 – 88)

I recommend that HSE and the Environment Agency should continue to deliver the action programme identified by the Focus on Enforcement Review of the Chemical Industry. I believe this action programme contains some arrangements to address a single approach that could be useful in HSE's relationships with other regulators and therefore any lessons learned should be shared.

The Government continues to monitor implementation by HSE and the Environment Agency of the Focus on Enforcement Review of the Chemical Industry (FoE)<sup>8</sup>. A recent update welcomed the excellent progress that has been made, the continued collaboration with industry, and the changes that are now taking effect to improve the business experience of regulation in the chemicals sector.

The Better Regulation Executive (BRE) has moved on to the *Business* Focus on Enforcement, intended to give trade associations and representative business groups, instead of civil servants, the dominant role in identifying enforcement issues and driving reform to benefit their industries. HSE is supporting BRE's work, and business individuals involved in the Chemicals Industry FoE have made themselves available to act as Champions or provide some support to future reviews of other sectors.

HSE will seek to apply the generic lessons learned from its involvement in the Chemicals Industry FoE to its regulation of other sectors, where relevant, for example, the need to listen and respond to the concerns of the relevant businesses.

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<sup>8</sup>Details of the Focus On Enforcement Reviews are available at:  
<http://discuss.bis.gov.uk/focusonenforcement/>

## HSE interaction with Other Government Departments and Regulatory Bodies

### DECC Offshore Oil and Gas Environment Unit (OGEU) (pages 91 – 94)

I recommend that in implementing the EU Directive 2013/30/EU requirement for a Competent Authority by 2015 that HSE and DECC should consider moving into HSE, where appropriate, environmental protection inspection functions currently carried out by DECC's Offshore Oil and Gas Environment Unit.

I recommend that in any case the DECC approach to regulating offshore environmental pollution risks needs to be brought significantly closer to HSE's preventative approach. I believe the structural change of bringing them within HSE would facilitate the necessary operational changes to address the concerns about consistency of approach raised by businesses in the sector.

The Government is committed to both the health and safety of the offshore oil and gas workforce and to protecting and improving the marine environment for all users. The current system of regulation administered by HSE and DECC has, and continues to provide, reassurance to the public that both health and safety and environmental concerns are taken into account appropriately in determining how oil and gas operations are carried out.

DWP and DECC have considered the full range of the relevant regulatory responsibilities in more depth than Martin Temple's time allowed. They noted that his review recommends merging some, but not all, of DECC's offshore environmental regulatory responsibilities with HSE.

They fully agree with Martin Temple's conclusion that HSE and DECC should continue to work more closely together. They welcome the very considerable progress already made in this regard by the establishment of a joint Memorandum of Understanding following the Maitland Review (which reported in December 2012 in the light of the Macondo disaster in the Gulf of Mexico in 2010).

They found that the new Competent Authority, required by the Offshore Safety Directive to be in place by July 2015, is capable of being established without any of the risk, upheaval or cost that would be associated with a formal organisational change. Indeed considerable progress has already been made to this end. They also noted that the offshore oil and gas industry is, given the recent recommendations of the Wood Review with regard to

## **HSE interaction with Other Government Departments and Regulatory Bodies**

economic regulation and stewardship, already facing a substantial amount of regulatory change which will also deliver the separation required by the Directive between the new offshore Competent Authority and the economic regulator.

In the light of these considerations, the Government is not minded to move OGEU's environmental protection inspection functions into HSE. However, it will ensure that the creation of the new Competent Authority affords the opportunity to further integrate the work of the two organisations for the benefit of industry and other stakeholders.

The new Competent Authority will be overseen by senior officials in DECC and HSE and underpinned by a revised and enhanced MoU. As required by the Offshore Safety Directive, its operations will be kept under review and, if appropriate, changes made to ensure its on-going effectiveness. This includes applying any relevant lessons learned from the onshore COMAH Competent Authority's response to the Chemicals Industry FoE. See also the Environment Agency section on page 21.

## **HSE interaction with Other Government Departments and Regulatory Bodies**

### **Office of Rail Regulation (ORR) (page 88)**

I recommend, to help avoid instances of uncertainty, particularly on large-scale rail infrastructure projects (e.g. High Speed 2), that HSE and ORR review their Memorandum of Understanding (MoU) to ensure the arrangements are fit for purpose for early involvement of ORR in design issues and handover for such projects.

HSE and ORR are currently reviewing their MoU and will be considering their operational liaison arrangements on infrastructure projects as part of that review. The revised MoU will be published by December 2014.

### **Care Quality Commission (CQC) (pages 94 – 96)**

I recommend that any additional work to be undertaken by HSE arising from the implementation of the Francis report must be properly resourced, so that there are not any negative impacts on HSE's existing commitments.

I recommend that the revision of the Liaison Agreement between HSE and CQC should include input from those who are regulated and those who represent patients to ensure it is clear to them how the interfaces between the regulators will work.

I recommend that HSE must also work with the various other parties involved in regulating social care to see how equivalent arrangements for improved co-ordination might be extended to that sector, including Local Authorities.

The Government accepts these recommendations which are consistent with its response to the Francis Report and will be taken forward as part of the work already underway to implement that response.

The Government's response to the Francis Report confirmed the Department of Health will work with DWP and HSE to ensure that HSE has the necessary capacity to support the CQC as it develops its role in investigating and prosecuting providers in cases of unacceptable care. HSE, the Department of Health and CQC are currently in discussions about the level of support that HSE may be required to provide.

The Liaison Agreement between HSE and CQC will be changed to align with the forthcoming revised CQC registration requirements, which are due to come into force in October 2014 (subject to Parliamentary approval), and reflect the criteria for matters which the HSE will investigate, and the mechanism for referral. Representatives of patient

## **HSE interaction with Other Government Departments and Regulatory Bodies**

groups and regulated providers are being consulted on proposed new registration requirements and the Liaison Agreement will be revised in light of this. Any additional changes will also involve input and engagement with these groups.

HSE has begun work with other bodies regulating social care in England, Scotland and Wales to extend equivalent arrangements for improved coordination between regulators in this sector. This is being taken forward through the Social Care Partners Forum, which was established by HSE in October 2013 to bring together regulators, regulated parties and various representative bodies in the social care sector.

### **Gangmasters' Licensing Authority (GLA) (page 96)**

I recommend that HSE and GLA review and refresh their Memorandum of Understanding.

The Report of the Triennial Review of the GLA was published in April 2014. The Report concluded that the functions of GLA are still necessary and should continue. The GLA became part of the Home Office on 9 April 2014

HSE and GLA have begun revising their MoU and as part of this process are considering how best it could be improved. The revised MoU will be published by July 2014.

## HSE interaction with Other Government Departments and Regulatory Bodies

### Local Authorities (pages 88 – 91)

I recommend that HSE should actively review Local Authorities (LA) annual returns on their inspection and advisory activities. Where there is evidence of significant deviations from the norm they should explore the reasons with the outliers. HSE should draw the attention of the appropriate political leader of those LAs where its performance is significantly out of step of the potential risk this may pose.

I recommend that the National Local Authority Enforcement Code is reviewed in 2014 in the light of experience to identify areas for change and amendment.

I recommend that HSE's LA Liaison Groups should be strengthened and maintained and that HSE's role in those Groups should be to provide expert professional guidance, constructive challenge and leadership.

I recommend and value LAs working together and in partnership with HSE to ensure value for money. Ideally, there should be a senior champion and a single point of contact and single regulatory organisation in each LA or grouping of LAs. But what works well locally and local political accountability is just as important.

The Government recognises that variability in enforcement approaches between some LAs continue to generate concerns and fully supports the conclusion that these are best addressed through improving the existing framework of co-regulation by HSE and LAs. Previous reforms introduced by the Government this way have already been successful in reducing proactive LA health and safety inspections by nearly 90% (from 118,000 in 09/10 to 14,400 in 12/13).

Within this co-regulator framework, HSE provides essential support to LAs by promoting and monitoring the consistency, proportionality and targeting of their enforcement activities. LA liaison groups, meanwhile, provide a powerful mechanism for supporting those authorities whose data suggests either inappropriate targeting of lower risk premises or that no proactive inspections are taking place.

HSE will continue to analyse annual visit data to identify those LAs in need of further support when targeting their health and safety interventions, and will work with them to bring about improvements. Where appropriate, HSE will seek to involve local political leaders in those interventions. A senior champion or single point of contact within an LA,

## **HSE interaction with Other Government Departments and Regulatory Bodies**

with a senior officer signing off LA health and safety performance, will provide for increased accountability within LAs and will assist HSE and LAs to work together in partnership to deliver the intentions behind the National Code.

A review of the National Local Authority Enforcement Code following its first year in effect will be undertaken by end-2014. The review will involve public consultation to solicit views from business and LAs as well as an analysis of LA annual visit data. The nature and timing of any subsequent changes to the Code will be dependant on the outcome of the review.

The level of support HSE currently provides to regional liaison groups will be reviewed in discussion with HSE's national LA forums and steps taken by autumn 2014 to standardise coverage across the country.

## HSE Corporate Governance

### HSE Corporate Governance

#### DWP Sponsorship of HSE (pages 98 – 99)

I recommend that HSE and DWP urgently review and revise as necessary the existing Framework Document to ensure that it reflects the current working arrangements and updated procedures and that it is fit for purpose as HSE moves forward.

The Government accepts the recommendation.

HSE and DWP have identified aspects of the DWP/HSE Framework Document that require revision and update. The majority of these relate to procedural changes or changes to central government guidance since the Framework Document was last updated in 2009. However, there are some potential consequences of commercialising aspects of HSE's work that will also need to be incorporated. Therefore, DWP intends to publish the revised Framework in autumn 2014 when there is a clearer understanding of the impact of commercialisation.

#### HSE Board (pages 99 – 103)

I recommend that in light of the other changes recommended in this report that the remit of the HSE Board should be reviewed and refreshed.

I recommend that a matrix of desirable skills/competencies and required experience/background for HSE Board members is drawn up by DWP to reflect the remit for HSE. I suggest the current Board is engaged in this process. Appointments on the basis of the new matrix should begin as soon as possible.

I recommend that if it is not possible to achieve the appropriate balance of skills/competences and required experience/background of HSE Board members and retain the current statutorily specified number of Board members (appointed after the Minister has consulted with specific representative groups) that the number of specified Board members should be reduced.

## **HSE Corporate Governance**

The Government accepts the first two of these recommendations.

### *Board remit*

DWP and the HSE Board carried out a light-touch appraisal of the Board's remit. They concluded that the formal remit of the Board, as recorded in the Framework Document and other governance documents, was broadly appropriate. However, they recognised that the move to commercialisation of HSE will require a shift in the focus of the Board to deliver this. This shift in focus will be reflected in the revised Framework Document.

As set out on page 16, the HSE Board has now set up a Steering Group to oversee its Commercial Development work. This will report to and be held to account by the HSE Board.

### *Skills/competencies of the HSE Board*

DWP and the HSE Board agreed a matrix of desirable skills/competencies and required experience/background for the HSE Board. The key skills identified fell into seven broad areas:

- Contributing effectively at Board level and acting collectively
- Understanding of public policy environment
- Improving organisational effectiveness and overseeing performance management
- Commercial acumen
- Communications (External and Internal)
- Connectivity to relevant stakeholder groups
- Corporate governance, including audit and financial oversight

There was no expectation that any individual Board member would be fully experienced and skilled up in each area. DWP used this matrix to appraise the current overall range and depth of skills across the Board as a whole. This identified the current strengths and relative skills gaps. As a result of this exercise, in May DWP used a revised person specification to advertise for two HSE Board posts that become vacant in October 2014.

The advert targeted individuals who have the essential generic skills to make effective Board members, but who will also be able to strengthen the Board where it currently has less relevant or up-to-date expertise, e.g. commercial acumen and digital communication strategy.

## **HSE Corporate Governance**

In light of the whole Triennial Review and the above work, the Board is considering how it will operate in the future. This change will build on the existing strengths of the Board, whilst giving it a new focus and enhancing its ability to work in a more commercial way.

The Government concludes that it is possible to achieve the appropriate balance of skills/competencies and required experience/background of HSE Board members. At this time, therefore, there is no need to pursue Martin Temple's recommendation to change the current statutory number of Board members appointed after consultation with specific representational groups.

## **Next steps**

### **Next Steps**

DWP is committed to ensuring delivery of the actions identified by this response to the Triennial Review of HSE. Some key milestones are:

#### **In the next few months**

- HSE will begin testing with possible customers the market demand for a fully chargeable inspection service for organisations with mature health and safety management systems

#### **In the summer/autumn of 2014**

- In July 2014 – HSE’s FFI review will report to the HSE Board, who will provide advice to the Minister on the future options for FFI.
- DWP intends to publish the revised HSE/DWP framework.
- HSE’s new asbestos behaviour change campaign will have been launched
- By September 2014 - HSE will have fully implemented a new performance framework.

#### **By the end of 2014**

- HSE’s updated sector strategies will have been published.
- Work to deliver the recommendations in Professor Löfstedt’s report will have been completed.
- A review of the National Local Authority Enforcement Code following its first year in effect will have been undertaken.

#### **Early 2015**

- HSE’s early advice service on land use planning applications will be available.

#### **By end of 2015**

- HSE and DECC will have established the joint Competent Authority for the Offshore Safety Directive, taking into account the lessons learned from Focus on Enforcement reviews.
- HSE will have reviewed its interfaces with other regulators and published revised Memoranda of Understanding.