

Department for Work and Pensions

**Review of the Health and Safety Executive as a Non-departmental
Public Body**



A response by the Association of Personal Injury Lawyers

July 2013

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has over 4,000 members in the UK and abroad who represent hundreds of thousands of injured people a year.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- to promote full and just compensation for all types of personal injury;
- to promote and develop expertise in the practice of personal injury law;
- to promote wider redress for personal injury in the legal system;
- to campaign for improvements in personal injury law;
- to promote safety and alert the public to hazards wherever they arise; and
- to provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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Introduction

APIL welcomes the opportunity to comment on the Department for Work and Pensions (DWP) review of the HSE as a Non-departmental Public Body. We firmly believe that the functions of the Health and Safety Executive remain necessary as a means of protecting employees and those at work. The HSE's aim, as stated on the website as "reducing work-related death, injury and ill health", is still relevant and extremely worthwhile. We also believe that the HSE's functions must continue to be carried out by the HSE itself, as it is the most capable body to do so, for reasons set out below.

Do the functions that the HSE performs remain necessary?

The HSE's main aim is to reduce work-related death, injury and ill-health. The HSE's functions include raising awareness of health and safety regulations; training employers and employees; monitoring workplace practices and accidents; and inspecting workplaces, bringing prosecutions for breaches of health and safety. These functions remain necessary, as it will always be important to reduce work-related accidents as far as possible. Any watering down of the functions will put workers at risk. The HSE remains a necessary threat to employers, as surprise inspections and the threat of prosecution will ensure that standards are kept high and dangerous practices are not carried out. Reporting of accidents to the HSE also ensures that monitoring of workplace practices can take place, and dangerous trends can be identified and halted.

Following the Lofstedt review and the Government's subsequent attempts to reduce "unnecessary and burdensome" health and safety requirements in the workplace, it is more important than ever that the HSE remains a presence in the field of workplace health and safety, ensuring that employers and employees have the correct information and workplaces are adequately monitored and inspected. Over recent months, a number of proposed changes have eroded the HSE's ability to carry out its functions. APIL has responded to numerous consultations on these changes. For example, the requirements to report injuries at work have been narrowed and are due to become even narrower in October 2013, meaning that the monitoring function of the HSE will be limited and dangerous practices in the workplace could continue, unchecked. The changed requirements mean that being rendered unconscious by an electric shock or as a result of exposure to chemicals or biological agents will no longer be reportable to the HSE under amendments to RIDDOR 1995. If someone is rendered temporarily blind, this will also no longer be reportable. An injury to a member of the public will not be reportable unless the accident results in immediate hospitalization. A further change is that under the newly published National Local Authority Enforcement Code, local authorities are now prevented from pro-actively

inspecting lower risk businesses, and what is classed as a “high risk” work environment is also unsatisfactorily narrow.

In addition, the impact of s 69 of the Enterprise and Regulatory Reform Act 2013 will mean that there will no longer be strict liability for certain workplace accidents and a worker must establish that the employer was negligent in order to claim compensation for his injuries. He will no longer be able to rely upon the statutory breaches of his employer. There is a risk that employers will become lackadaisical in their compliance with health and safety regulations now that employees no longer have the benefit of reliance upon strict liability. It is necessary that the threat of inspections and prosecutions for breaches by the HSE remains present to ensure that workplace safety standards remain high. In addition, the HSE must continue to provide training and guidance on compliance with health and safety law so that, in the face of diminishing protection, employees and employers continue to be aware of their rights and obligations.

Page 18 of the consultation document refers to how much the HSE costs to run. Expected expenditure for 2013/2014 is £276.3 million. We suggest that if the HSE were to be abolished, the costs incurred would just be shifted elsewhere and so very little, if any, savings would be made. More accidents would occur, and this would result in more time off work for people and more money paid out in statutory sick pay and more money lost by firms as people take sick days. Accountancy firm PwC has recently carried out research which indicates that sick days are costing UK employers approximately £29 billion a year. This expenditure would be even greater if the HSE were not able to prevent dangerous working practices. The NHS would also incur more costs in having to treat people as a result of workplace accidents. The HSE’s role in keeping workplace accidents down is therefore invaluable, and the HSE is itself a necessary expenditure. In addition, if a different department carried out the functions of the HSE, the running costs would not necessarily reduce, and this different department would not carry out the functions with the same expertise.

If so, do they need to be done by the HSE?

We believe that the functions stated above must remain with the HSE. Evidence suggests that the HSE is relatively effective in fulfilling its role in ensuring that workplaces remain as safe as possible. For example, Annex F on page 26 states that in 2009, Great Britain had the second lowest fatality rate in Western Europe compared with Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal,

Spain and Sweden. If the HSE was abolished, then workplace accidents and fatalities would, in our view, inevitably increase.

Issues would arise if the functions of the HSE were taken on instead by a voluntary organisation or local authorities. Allowing local authorities or voluntary organisations to take on the HSE's functions would mean that the approach to the functions (such as guidance, training and the monitoring of workplaces) would be disjointed, with standards varying from authority to authority.

In addition, local authorities lack the recognised reputation, knowledge or expertise of the HSE. HSE has worked hard to make its system of guidance user friendly and accessible through the website and has raised awareness of itself as a place where employers and employees alike can obtain the information that they require as easily as possible. For example, the vast majority of employees are aware of "toolbox talks" as a training method through the website and HSE road shows. This widespread awareness and reputation will be lost if each local authority is responsible for the functions of the HSE in its area. Because the HSE is one centralised body, the employee or employer knows that all the information required on health and safety can be accessed through the HSE website. It is likely that local authorities would not be as successful if they undertook this function, as they would not have a national presence required.

For the above reasons, voluntary organisations would also struggle to operate with the same effectiveness as the HSE.

Therefore APIL believes that the HSE is successful in maintaining safety standards in the workplace and this cannot easily be replicated by local authorities or voluntary organisations.

If you consider that an NDPB is the right way to deliver HSE's functions, are the current control and governance arrangements the right ones?

We do feel that this is the correct way to deliver the functions because the HSE has the correct expertise and authority to obtain the most effective results. For the reasons stated in question A, local authorities and voluntary organisations would not be able to carry out the functions of the HSE to the same standard as they are carried out currently. With the current threats to health and safety regulation, it is more important than ever that employees and employers are able to access information about their rights and responsibilities, and that the presence of the HSE is seen as a threat to those who may attempt to breach health and safety law.

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