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**THE FOUNDATION FOR SCIENCE AND TECHNOLOGY
“REGULATION AND RISK MANAGEMENT –
HAVE WE GOT THE BALANCE RIGHT?”
26 NOVEMBER 2008**

[The slides are at the end of the speech.]

Introduction: Impact of changing world on health and safety (e.g. industry, society, compensation) and need for common sense approach

Slide 1

- Thank you for inviting me to join you this evening.
- I am grateful for the opportunity to speak on this subject, which is an extremely important one for us at HSE. I am also looking forward to hearing your views and those of the other speakers.
- HSE’s mission is to prevent death, injury and ill health to those at work and those affected by work activities.
- It is a changing workplace in terms of working practices (e.g. flexible hours, home working), different patterns of industry (e.g. more smaller businesses, declining manufacturing and growing service industries), more women in the workplace, new processes and technologies, and different attitudes to risk.
- It is also clear from our mission that our role takes us into areas of public safety where risk to the public is created by work activities.
- In this context, regulators like HSE face a dilemma that is summed up in this evening’s theme – striking the right balance in regulation and risk management.
- The ‘*where there’s blame, there’s a claim*’ culture can tend to drive people down a route of risk elimination in order to avoid any exposure to potential civil litigation in the event of an incident or an accident.

Slide 2

- But on the other hand, society often complains about regulations or restrictions on their lives; the popularity of ‘health and safety gone mad’ media myths which incorrectly blame HSE with banning conkers and requiring trapeze artists to wear hard hats reflects this aversion to ‘nannying’.

- These stories do damage in a number of ways: they devalue real health and safety; increase employers' uncertainty about what action they are required to take; undermine the important principles of common sense and reasonableness and provide a perfect excuse to hide behind for not doing things.
- We have established that many of the myths arise from situations where 'health and safety' is used as a convenient excuse to stop something for other reasons, such as costs or over-cautious insurance policies. It is not really regulation which is the problem but fear of civil litigation.

Slide 3

- Risk is part of life. Well-managed risk is an important part of learning, and we all accept certain levels of risk every day. Innovation and change are founded on taking risks, and the world would be a dull place without it.
- Health and safety regulation is not intended to eliminate risk or to stop things happening. Health and safety needs to be seen as an enabler. When it is done well, it will ensure that risks are managed in a sensible and practical way, which will then allow important innovative activities to proceed, not stifle such creativity.
- Good regulation is an essential prerequisite to create an environment of public confidence where innovation and controlled risk taking can take place. To help set the context for our discussion tonight, I think it is worth reflecting on the history, principles and benefits of the 1974 Health and Safety at Work Act.
- Prior to the 1974 Health and Safety at Work etc Act, ~1000 people a year lost their lives at work, compared to 229 in 2007/08.
- The 1974 Act had an impact. It was a huge turning point.
- Prior to the Act:
 - The system of regulation was disjointed, with multiple sets of regulations calling for different practices and setting different standards in different industry sectors.
 - Numerous sectors and work activities were not covered by regulation.
 - There was no requirement for employee involvement in managing health and safety.

- The health and safety system which has developed in GB under the framework of the Act has been successful in delivering a 70% improvement in performance and has created a model which other countries seek to emulate and learn from.

Slide 4

- The key principles of the Act as written over 30 years ago require that the HSE as regulator:
 - recognises the pace of change in business, technology and society;
 - removes rigid, specific prescriptive solutions; and
 - promotes a more generic goal setting (or outcome-based) approach based on the principle that “Those who create the risk are best placed to manage it”.
- There are many advantages associated with a goal-setting approach:
 - It is non-prescriptive.
 - It sets down instead, non-specific, generic principles that can be applied across all industry sectors, allowing businesses to apply their knowledge of their own business to managing risk and adapting to the needs of new or emerging risks.
 - It ensures that dutyholders think for themselves rather than adopting a ‘tick-box’ approach to compliance.
 - It puts responsibility for risk-management onto employers and their employees, and encourages ownership of risk-management activities.
- In summary, the HSWA calls for dutyholders to take a proportionate, targeted, risk-based approach to managing the health and safety of their employees (and the public when appropriate), built on consultation and engagement with the workforce. It is a framework which allows a balanced approach to tackling risks.

Who decides enough is enough when it comes to taking action to manage risks

- I know that tonight many of you want to discuss who decides when an employer has done enough. The simple, ultimate answer is of course the courts. But, given that the number of incidents which occur are a tiny proportion compared to the millions of things done safely every day and that only a few health and safety cases ever go to the higher courts, the judgement on a day-to-day level rests with the creator of the risk – the employer, not the enforcer.

- And overall it would seem that the vast majority do a very good job in getting the balance right.
- HSE helps employers by outlining the standards that we expect duty holders to achieve. We do so by proposing secondary legislation - "that puts the flesh on the dry bones of the HSWA" where we deem this to be justified. We also publish Approved Codes of Practice and more detailed guidance. HSE also works with industry directly and through industry associations encouraging them to develop and publish their own standards and guidance. The key message contained within such guidance is that employers are expected to reduce risks so far as is reasonably practicable (SFAIRP). A very important principle of proportionality which we have rigorously and successfully defended.

Slide 5

- As well as SFAIRP, you may also have heard of the term ALARP – “as low as is reasonably practicable”. The two terms mean essentially the same thing and at their core is the concept of “reasonable practicability”. This involves weighing a risk against the trouble, time and money needed to control it.
- HSE has always felt that SFAIRP is a reasonable and appropriate way in which to qualify what would otherwise be absolute duties within European Directives, and is glad that the Courts ultimately supported our view.

Consistency of Enforcement

- One key issue is how HSE, and Local Authorities, achieve consistency of enforcement. HSE seeks to achieve consistency of enforcement through:
 - Publishing the enforcement policy statement (EPS) that sets out HSE's general principles of enforcement, which are: proportionality, targeting, transparency, consistency and public accountability; - recently enshrined in the Statutory Regulators' Compliance Code;
 - And by being open and transparent about our priorities.
- Individual Inspectors are also in a position to exercise discretion as the principles of law allow, taking into account individual factors and also whether a particular case is in the "public interest".

Is there a case to relax Health and safety Law?

- There are some who believe there is a case to be made for relaxing health and safety law in some areas. HSE has heard such suggestions in relation to education, local communities and emergency services.

- The obligation to carry out an assessment of risk, is a requirement of EC law.
- HSE's view is that a great deal of flexibility already exists within health and safety legislation, which allows dutyholders to be practical and proportionate when taking action to address health and safety risks. A risk assessment needs to be fit for purpose – no more, no less. It is therefore much more a case of building confidence among dutyholders to do what is good enough and appropriate rather than a question of exemption from or relaxation of the law.

Slide 6

- Some duty holders, particularly small employers, still struggle to understand what is and is not required. HSE has produced 29 example risk assessments to help small employers in this area. Another 5 example risk assessments are due to be published before the end of December. This is a positive effort by HSE, with its partners, to give a steer to small businesses to what "good enough" looks like.
- The example risk assessment page on our website is one of the most visited pages, with >100,000 hits every month and the feedback we have had tells us that they
 - Are a helpful tool
 - Have helped save time to complete a risk assessment
 - Have increased confidence in conducting future risk assessments.
- The point to stress is action: risk assessments are pointless paperwork unless they are put into action. Paperwork does not save lives, any more than it should be used as a barrier to getting the job done.
- For the last two years, we have also been running a Sensible Risk Campaign aimed at regaining the focus on what real health and safety *is* about, rebuilding the health and safety brand and embedding a sensible approach to managing health and safety.

Slides 7 & 8 – Two recent myth cartoons

- HSE recognises that most of this work is about effecting a major change in attitudes, and that this will take time. We are committed to maintaining our approach. In particular we want to cascade some clear principles that highlight what sensible risk management is, and is not, about.

Slide 9

- Sensible risk management is about:
 - Ensuring that workers and the public are properly protected.
 - Doing those things which provided benefit to society, with a focus on reducing real risks.
 - Enabling innovation and learning.
 - Being clear about roles and responsibilities.

Slide 10

- Sensible risk management is NOT about:
 - Creating a totally risk free society.
 - Generating useless paperwork mountains.
 - Exaggerating or publicising trivial risks.
 - Stopping work or leisure activities taking place.
 - Wrapping children in cotton wool.

Slide 11

- I cannot finish this presentation, without saying something about the future.
- Next week, HSE will formally launch its new strategy for health and safety in Great Britain and the HSE's role within it. To achieve its overriding strategic aim to prevent death, injury and ill-health to those at work and those affected by work activity, the strategy will emphasise:
 - Common sense and proportionality (sensible risk management)
 - The importance of leadership
 - Worker involvement and consultation
- We will continue to work with the SME community to help them to understand how to comply with health and safety law in a way that is proportionate to the risks of their business.
- HSE and its partners in Local Authorities will focus on key activities to ensure that duty holders manage health and safety in their workplace. We will do that by
 - Providing advice and guidance on what the law requires.
 - Taking appropriate enforcement action where there have been breaches of the law.
 - Alerting duty holders to new and emerging risks as they are identified.

- We aim to achieve:
 - Widespread recognition of and commitment to what real health and safety is about.
 - To encourage and motivate all those in the health and safety system to be clear about how they will contribute to delivering improved health and safety outcomes and a culture of sensible risk management.
 - To reduce the number of accidents and cases of ill health in the workplace.
 - To ensure that those who breach or ignore health and safety duties are appropriately held to account.

- When the strategy is launched in early December, we will initiate a consultation process that will enable stakeholders to comment. We are keen to engage in dialogue, not only about what HSE should be doing, but also about the active roles we need others to take to deliver the strategy.

- I believe that we will get the right balance in regulation and risk management by having good regulation that supports businesses and innovation, and sensible risk management that ensures that employers focus on real, not trivial, risks. I would be interested in your views on what we need to do.

Slide 12

Questions

- I was asked to suggest some questions for discussion, I suggest:
 - How do we reverse the blame culture and reintroduce the importance of personal responsibility and common sense?
 - Is it time to rewrite the “precautionary principle”?

PLEASE CHECK AGAINST DELIVERY

Regulation and risk management – have we got the balance right?

Judith Hackitt, CBE
Chair,
Health and Safety Executive

‘Health and safety’ headlines

Height of madness – ladder ban on firemen

Health and safety killjoys

Have we become slaves to elf’n’safety?

Army’s bagpipers and drummers must play safe and use earplugs
Going mad about safety? **Too much time on health and safety**

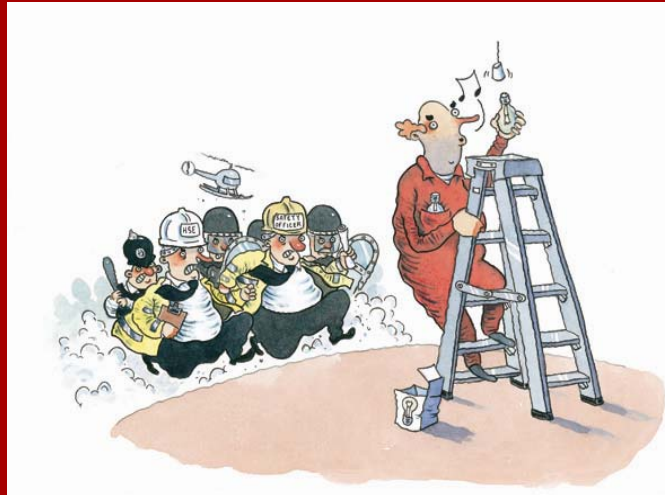
Health and safety: the cancer of a civilized society

Those who walk under trees are at risk from these terrorising inspectors

The Health and Safety Executive is truly Satan’s agent
Safety Nazis ban ‘killer’ shoes

Health and safety stole my country!

Health and safety is not about creating a totally risk free society



Principles Behind HSWA



- Recognises the pace of change in business, technology and society.
- Removes rigid, specific prescriptive solutions.
- Promotes a more generic goal setting (or outcome-based) approach based on the principle that “Those who create the risk are best placed to manage it”.

Reasonable practicability



- So far as is reasonably practicable (SFAIRP)
- As low as reasonably practicable (ALARP)

Sensible risk management



- How much is enough? – example risk assessments
- Assessment leads to
- Sensible Risk Campaign

Myth of the month: 'Kids must wear goggles to play conkers'



**Myth of the month (Nov 2008):
'Children need to be wrapped in cotton wool to keep them safe'**



Sensible risk is about



- Ensuring that workers and the public are protected
- Balancing risks and benefits
- Enabling innovation and learning
- Being clear about roles and responsibilities

Sensible risk is not about



- Creating a totally risk free society
- Generating useless paperwork mountains
- Exaggerating trivial risks
- Stopping work, recreational and learning activities
- Reducing protection of people from risks that cause real harm and suffering
- <http://www.hse.gov.uk/risk/principles.htm>

New strategy for HSE



New strategy launched in early December, will emphasize:

- Common sense and proportionality (sensible risk management)
- The importance of leadership
- Worker involvement and consultation

Questions



How do we reverse the blame culture and reintroduce the importance of personal responsibility and common sense?

Is it time to rewrite the “precautionary principle”?