

A Review of the Health and Safety Executive as a Non-departmental Public Body: Call for evidence

IOSH submission to the Department for Work and Pensions triennial review of the HSE



Submission

26.07.13



Introduction

As part of the Government's commitment to reform the public sector, all non-departmental public bodies are subject to regular reviews. The Health and Safety Executive (HSE) is an executive non-departmental public body (NDPB) with Crown status, responsible for regulating work-related health and safety in Great Britain in partnership with local authorities (LAs). Its mission is 'the prevention of death, injury and ill health to those at work and those affected by work activities'. Ministerial responsibility for HSE rests with the Department for Work and Pensions (DWP). HSE also has two agencies: the Health and Safety Laboratory (HSL) and the Office for Nuclear Regulation (ONR). Legislation is currently before Parliament to establish the ONR as a separate public corporation.

This triennial review will assess whether there is a continuing need for HSE's functions, as well as whether it is complying with the principles of good governance. In particular:

- The **first stage** will identify and explore the key functions of HSE. The review will assess how the functions contribute to the core business of HSE and DWP, and whether they are still needed.
- If the functions are deemed needed, the review will then examine whether HSE as currently constituted remains the best way to perform them, or if another delivery method might be more appropriate. For a body to remain a NDPB it must satisfy at least one of the Government's 3 tests:
 - Does it perform a technical function which needs external expertise?
 - Do its activities require political impartiality?
 - Does it need to act independently to establish facts?
- The **second stage** (if the conclusion is that HSE functions should still be delivered by an arm's length body) will examine whether control and governance arrangements ensure good governance

There will also be an independent 'Challenge Group' to oversee the review and challenge its findings.¹

In this IOSH submission, we provide evidence and comment under the following headings:

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IOSH summary position

1. IOSH strongly believes that HSE functions do remain necessary, that the requirement is growing and that HSE is the right organisation to deliver them.
2. We believe other delivery models are unsuitable and that the NDPB delivery model functions well (transparent, accountable and independent) and should continue; but, needs more resources.
3. In our view, HSE does meet the 3 Government criteria for NDPBs i.e. it performs a technical function requiring external expertise; its activities require political impartiality; and it needs to act independently to establish facts.
4. We would like to see HSE better resourced, in particular, to provide support and assistance to SMEs and to regulate occupational health, road risk and emerging technologies.
5. We believe it is important that health and safety professionals are represented on the HSE Board.
6. We advocate a single enforcement agency (rather than co-regulation with LAs), to help improve quality, consistency and efficient use of resources.
7. We are concerned at the speed and scale of Löfstedt implementation and at some specific proposals, including exempting certain self-employed from health and safety law and loss of important approved codes of practice.
8. We would like the Government to do more to promote the many benefits of good health and safety regulation and to recognise the positive regard in which HSE is held both in the UK and abroad.

IOSH response to call for evidence questions

1. Do the functions that HSE perform remain necessary and if so, do they need to be done by HSE?

IOSH strongly believes that the functions HSE perform do remain necessary. We note that the DWP / HSE Framework Document² specifies the purpose and main statutory duties of HSE as follows:

“1.1 Under the Health and Safety at Work etc. Act 1974 (as amended) (HSWA) HSE has been set up in order to support the Government’s strategic aims and current targets for health and safety at work. Its main aim is to secure the health, safety and welfare of people at work and protect others from risks to health and safety from work activity.

1.2 Its main statutory duties are to:

- *propose and set necessary standards for health and safety performance;*
- *secure compliance with those standards;*

- *carry out research and publish the results and provide an information and advisory service;*
- *provide a Minister of the Crown on request with information and expert advice.”*

Further to HSE’s need to fulfil its statutory duties, research has concluded that enforcement and fear of it are key drivers to compliance.^{3,4} IOSH therefore believes it is essential that the regulatory function is adequately resourced. We are concerned that the 35% budget cut is having a detrimental effect and note that in his evidence to the Scottish Parliament’s Health and Sports Committee, Dr David Snowball, Director of HSE Scotland, said:

“...it would be silly to defend a 35 per cent cut as something that any organisation could willingly absorb. We do not have a lot of fat to cut; to pretend otherwise would be wrong.”⁵

We were also concerned to see that Robert Francis QC report⁶ into the terrible failings in Mid Staffordshire NHS Foundation Trust, he graphically highlighted the consequences of inadequate regulator resources, concluding:

“In other words, the more deaths that were alleged to have arisen from a failure to comply with statutory health and safety requirements, the more difficult it was to decide whether or not to investigate because of the resources required.”

In the initial Government response to the Francis report, the need for sufficient regulator resources is specifically highlighted. In future, the HSE is to be adequately resourced by the Department of Health to consider bringing prosecutions in cases of serious health and safety breaches referred to it by the Care Quality Commission.⁷ Adequate enforcement capacity is clearly an essential element in the overall system of deterring bad practice and delivering public protection. We look forward to further detail about the new system and also about the interface between the new Chief Inspector of Hospitals and the HSE.

In order to ensure efficacy and efficient use of limited resources, it is important that an evidence-based approach is taken to health and safety risk management and regulation. The commissioning and dissemination of relevant research remains an ongoing requirement, highlighted by the development of emerging energy and ‘green’ technologies (e.g. wind, tidal, coal gasification, shale gas, carbon capture and storage) and nano- and bio-technologies, the health and safety implications of which need to be fully researched and properly managed. The need for stringent safety standards in our hazardous industries is emphasised in the Government’s new Oil and Gas Strategy.⁸

In addition, Government policy related to health and safety needs to be as well-informed as possible and the HSE provide invaluable input to this process. In preparing proposals for Ministers, HSE uses the

expertise of its own staff, as well as research from the HSL and external sources. It also seeks information from experts through a network of advisory committees and through public consultations. HSE provides health and safety information, guides, tools, statistics and research reports, which are freely available to stakeholders from its website, and it is important that this provision is maintained.

In summary, IOSH believes HSE has an essential role in helping to protect life and limb and prevent disasters; in ensuring a 'level playing field' and a consistent and fair regulatory environment for business operation; and in supporting safe, healthy and sustainable working environments. The competent discharge of these functions is an ongoing and growing national requirement. We also believe that HSE's extensive expertise and its control and governance arrangements, together with the positive reviews of its performance over the years, indicate that it is the right body to fulfil this important national role (also see section IV below).

II. *Would another delivery model offer a more efficient and effective way of delivering HSE's functions?*

IOSH does not believe another delivery model offers a more efficient and effective way of delivering HSE's functions. Those we have considered (public corporation; bring in-house; merger; and new executive agency) are all unsuitable – see below. The only suitable model we have identified is the continued delivery by a NDPB.

Continued delivery by a NDPB – we agree with this option. NDPBs are bodies that have a role in the process of national Government, but are not Government departments, or part of them; and therefore, operate to a greater or lesser extent at arm's length from ministers. There are four types of NDPB and HSE is an 'Executive NDPB' – established in statute and carrying out executive, administrative, regulatory and/or commercial functions.⁹ We believe the HSE passes all three of the Government's tests for a NDPB i.e. it performs a technical function requiring external expertise; its activities require political impartiality; and it needs to act independently to establish facts.

Move out of central Government (public corporation) – we disagree with this option. We believe the nation's safety, health and wellbeing are of vital social and economic importance and are a concern of central Government. Making HSE a public corporation would make it harder to recruit / retain staff (currently attracted by civil service conditions); would reduce the stakeholder involvement in HSE governance and strategy development; could impact the rates for services 'charged for' from industry; and could mean the regulator loses touch with Government departments.

Bring in-house – we disagree with this option. This health and safety regulatory function needs to be delivered at 'arm's length' from Ministers in order to maintain its impartiality, objectivity and perceived fairness.

Merge with another body – we disagree with this option. HSE does not duplicate other areas of central Government and already works collaboratively and successfully with other regulators such as DEFRA.

Delivery by a new Executive Agency – we disagree with this option. This would mean loss of essential independence and separation from Ministerial control, which is critical to HSE's role.

IOSH believes the current delivery model functions very well, but would benefit from improved Government funding and acknowledgement. We do not believe the current level of funding allows the HSE to provide sufficient proactive advice and assistance to organisations, particularly SMEs, or to tackle occupational health issues and occupational road risk.

The delivery model needs to deliver a system that is transparent, accountable and independent. We believe key elements of the existing model include:

- It has an independent Board (with stakeholder group representation, including from professional bodies)
- It has a mix of public funding and industry funding (via permissioning regimes and fees for intervention)
- It operates independently of Government, but is closely attuned to developments within relevant Government departments such as DWP, Department of Health and Business Innovation and Skills (BIS).
- It has nearly 40 years history, during which it has developed its expertise, evidence-base and experience.

In order to ensure high-quality, consistent enforcement and efficient deployment of resources, IOSH advocates a single, unified enforcement authority, rather than the current co-regulation system with LAs. As a minimum, we have recommended the 'ring-fencing' of grant money to LAs for occupational safety and health (OSH) regulation, to protect it from competing local demands. We have also called for a dedicated Health and Safety Minister.¹⁰ In terms of improving consistency and quality; we support in principle the new national LA enforcement code and the focus on improved inspector training and peer-review. However, we have emphasised that the new code and guidance should avoid being overly prescriptive or inhibiting sound professional regulator judgement, while ensuring minimum standards.¹¹

III. Does HSE meet the Government's three criteria for non-departmental public bodies?

Yes, IOSH believes the HSE does meet the Government's three criteria for NDPBs, which we outline below.

- ***Does HSE perform a technical function which needs external expertise?***

Yes, IOSH believes HSE does perform a technical function that requires external expertise. Setting standards and providing regulation and advice on health and safety risk management and legal compliance across all employment areas requires a wide range of technical expertise and experience. HSE's staff includes health and safety inspectors, policy and legal advisers, economists, technologists and scientific and medical experts.

While the enforcement and technical advisory functions of the HSE are delivered by its direct employees; operational and policy decisions are informed and supported by a significant amount of external input. This includes, for example:

- the stakeholder membership of the HSE Board
- the many industry advisory committees, boards and councils that HSE maintain¹²
- the consultation process on regulations and guidance
- the numerous guides and tools provided by trade and professional bodies, trade unions, etc
- the research outputs from a wide-range of external researchers
- the vital research, scientific and forensic services provided by the Health and Safety Laboratory, an agency of HSE.

- ***Do HSE's activities require political impartiality?***

Yes, IOSH believes HSE's activities do require political impartiality. It is of the utmost importance that the health and safety regulator is as independent as possible of all external influences, including political bias.

For fairness and consistency, regulatory decisions need to be made on the basis of evidence and public interest; and no other criteria. It is essential for public trust and confidence in the system that regulation and enforcement are based on the facts and circumstances of individual cases and are seen to be so. Regulators must have no conflicts of interest when discharging their responsibility to ensure compliance with health and safety law.

- ***Does HSE need to act independently to establish facts?***

Yes, IOSH believes HSE does need to act independently to establish facts, so that it can make well-informed, balanced decisions. HSE must be unbiased in discovering the circumstances of each case and when taking appropriate action against those breaking the law. It must also be able to provide

independent advice to Government on the health and safety risks related to public policy in a particular area.

Impartial and evidence-based policy making and regulation is essential for the credibility and efficacy of the system. Appropriate use of regulatory powers is important in order to help prevent work-related accidents, injury, ill health and death. Competent inspection, investigation and enforcement must be carried out whenever and wherever they are required and 'without fear or favour'.

We believe HSE's work to establish facts needs to remain independent of other influences. We have raised concerns about the recent proposal by BIS for '*Non-economic Regulators: Duty to Have Regard to Growth*'.¹³ While fully supporting safe and sustainable growth, we believe this proposed new duty is unnecessary and potentially detrimental to HSE's primary responsibility:

"...to secure the health, safety and welfare of people at work and protect others from risks to health and safety from work activity."²

We are concerned that this proposal is now part of the draft Deregulation Bill and believe health and safety regulation should not be included.¹⁴

Good health and safety regulation helps drive compliance, which in turn supports better workplace standards and reduces individual, business and economic losses. The HSE estimate that the cost to Britain of workplace accidents and work-related ill health in 2010-11 was £13.4 billion, with a sum of similar magnitude for occupational cancer and property damage.¹⁵ The IOSH 'Li£e Savings' campaign promotes the strong business case that complements the legal and moral imperatives for good health and safety, providing free online resources.¹⁶ IOSH also helped to produce a 'policy paper' outlining the business case for engineering in health and safety, giving further examples.¹⁷ Research has shown that positive feelings about work have been linked with higher productivity, profitability and customer and worker loyalty.¹⁸

IV. *Is there satisfaction with HSE services?*

Yes, we believe there is stakeholder satisfaction with the services provided by HSE and would cite the following examples:

In 2004, a Work and Pensions (W&P) Select Committee Inquiry into the work of the Health and Safety Commission and Executive, concluded that:

"Overall, evidence to the Committee showed the Health and Safety Commission (HSC) and Health and Safety Executive (HSE) have strong support from a wide range of stakeholders. There are concerns about the

practical implementation of the system, but many of these are attributed to inadequate resources.”¹⁹

In 2008, the W&P Select Committee Inquiry looking at the role of the HSC and HSE in regulating workplace health and safety, specifically commended HSE for its work in tackling misconceptions; reducing administrative burdens; setting up the ‘construction forum’; and introducing the stress management standards. It also praised the work of the Health and Safety Laboratory. However, it reported similar concerns to the 2004 Inquiry about under-resourcing:

“Many who submitted evidence to our inquiry believed that HSE does not have sufficient resources to fulfil its remit.” And that “We believe that an under resourced health and safety inspectorate has an impact upon employer compliance and accident rates.”²⁰

In our recent response to BIS (April 2013),¹³ IOSH also emphasise the good levels of duty holder satisfaction with HSE’s regulatory performance and enforcement management model (EMM), including from CBI and those regulated under COMAH and BIS.

For example, on behalf of the business community, a CBI ‘memorandum’ to the Select Committee on Work and Pensions in 2004 on this topic,²¹ stated that:

“Business regards fair enforcement as the principal focus of the HSE and is generally satisfied with the quality of service provided by the HSE...” (CBI)

Subsequently, a 2006 HSE evaluation²² concluded that:

“The findings from the survey of inspectors and duty holders indicates that, with a few exceptions, the EMM has helped achieve the principles of proportionality, transparency/accountability and consistency, especially amongst LAs – with most enforcement perceived as proportionate and fair by duty holders.”

In addition, a recent survey²³ on the COMAH charging regime found that businesses were generally pleased with the level of expert advice they received, concluding the following:

- *“the need for the Regulations is clearly understood and accepted;*
- *the quality of inspectors is usually high and is valued;*
- *in general there has been a good relationship between the sector and the regulators;”*

And in a recent enforcement review of 'volunteer events',²⁴ BIS concluded that:

"Our experience in this review has been that local authorities share this commitment to encouraging volunteering. Where poor practice has been reported, it seems usually to flow from misapplication of this approach rather than from a lack of commitment to the principle."

Further stating that:

"While the review found little evidence - that could be substantiated - of incorrect enforcement practice by local authorities, there is a clear and pressing need for both central and local government to improve the guidance, forms, and procedures in use."

IOSH also highlights that, in recognition of HSE's effective risk-based approach and regulatory competence, it has been assigned additional areas to regulate, including adventure activity licensing; gangmaster licensing; and animal pathogens.

Finally, we flag-up HSE's high performance in producing impact assessments that the Regulatory Policy Committee consider to be 'fit for purpose'. Once again, HSE are good performers in this area, as reported by the Regulatory Policy Committee (RPC), in their recent report on 'assessing regulation' for the first eight months of 2012.²⁵

"The performance of the HSE has remained at a high level in 2012, with the proportions of IAs considered as 'fit for purpose' very similar to the number reported for 2011. In addition, the proportion of IAs that received a 'Green' rating saw a large increase, from 38% to 62%."

In terms of dealing with satisfaction and complaints, HSE has introduced 'Challenge Panels'^{26,27} to give duty holders and the public a route for redress if they feel that poor decisions have been taken in the name of health and safety. However, the Independent Regulatory Challenge Panel (set up in January 2012) has only had one case referred to it, showing just how rare and unusual these cases actually are. We also note HSE are introducing a Central Concerns and Advisory Team to provide a single call-handling process for health and safety concerns.²⁸

While the HSE has generally had a good reputation and relationship with businesses, the recent introduction of the 'Fees for Intervention' (FFI) scheme²⁹ has presented challenges. The drive towards cost recovery for enforcer-action taken following material breaches has, we understand, proved difficult for some Inspectors. While supporting the principle of transferring the enforcement cost from the tax payer to the transgressor and creating a level playing field; IOSH has stressed the importance of maintaining the enforcer / duty holder relationship. We would be concerned if there was evidence that

FBI was creating a barrier to good relationships and putting businesses off contacting HSE for advice due to fear of incurring charges.³⁰

IOSH believes it is vital that Government recognises and publicises the enormous public and economic good that the country derives from effective health and safety regulation and that it provides adequate resources for this to be delivered.¹³

V. IOSH response to ‘guided questions’ – stage one of the review (Question A)

The following IOSH answers should be read in the context of the information we have provided above.

Q1. Do HSE’s business aims and objectives as set out in Annex D do the right things to deliver its statutory functions? Has it got the right balance?

IOSH believes the aims and objectives are broadly right, but insufficient for the comprehensive delivery of HSE’s statutory functions. HSE should be adequately resourced, so that it can be more active in the following areas:

- Promoting health and wellbeing, occupational disease prevention, the management of occupational road risk and the health and safety implications of new industries and technologies.
- Promoting and enforcing the importance of competence, particularly access to competent health and safety assistance.
- Provision of inspector advice via visits and more support for duty holders, especially SMEs, including restoration of the online Infoline and accident reporting line.

IOSH has concerns that the HSE’s programme for delivery of Löfstedt’s recommendations has been inappropriately prioritised and that the scale and speed of change are unnecessary and unwise. We also have concerns about specific measures, including the withdrawal of important approved codes of practice (ACoPs) and the proposed exemption of certain self-employed from health and safety law.³¹

Q2. How well do you think the HSE fulfils each of its functions at present?

IOSH believes HSE fulfils its functions well, given its resource constraints, but that it could and should make far more impact (particularly in the areas outlined in our answer to Q1 above) through the provision of sufficient resources and Government support.

Q3. Is there a need for a body to carry out each of these areas of work? If so is HSE the right body to do this work, in the light of what it is doing now?

Yes, IOSH strongly believes there is a need for such a body, which is growing, and also that HSE is the right body to do this work. Please also see detailed answer in section I above.

Q4. HSE's functions include policy development, including negotiating on behalf of the UK Government on European Legislation – are they the right people to do this?

Yes, IOSH believes HSE are the right people to do this. However, as the Chartered body for health and safety professionals, we would welcome greater opportunities to contribute to this process.

Q5. HSE also carries out research, technical development, provides advice, carries out investigations and enforces health and safety legislation. Are any of these functions no longer required?

IOSH believes that all of these functions are vital for evidence-based health and safety policy and practice and for the effective regulation, needed to support compliance. We also believe these functions will continue to be vital in the future.

Q6. Are there parts of HSE's work that could be better done elsewhere in the public, private or not-for-profit sectors?

No, IOSH does not believe any parts of HSE's work could be better delivered elsewhere. HSE has built up significant expertise, experience and competence over many years and its world-wide reputation is testimony to its excellence in these functions.

For example, an expert from HSE led a fact-finding mission to Japan on behalf of the International Atomic Energy Agency and ONR was heavily involved in proposing and defining stress test criteria for all European nuclear plants, post the Fukushima nuclear disaster in 2011. And the HSE expert also visited Jordan to advise the country's Prime Minister on nuclear safety.³² Additionally, HSE's work to help establish a nationally recognised register of health and safety consultants (OSHCR) and its provision of risk assessment templates for SMEs was cited as good practice in the recent European Commission report on the evaluation of the EU Safety and Health at Work Strategy 2007-12.³³

We do not believe that others could perform these functions to the same required high standard. Please also see our section IV above on 'Is there satisfaction with HSE services?'

Q7. HSE currently regulates health and safety jointly with Local Authorities – is this division of responsibilities between the HSE and Local Authorities correct?

Yes, IOSH believes the division of responsibilities is broadly correct for this type of co-regulatory arrangement. However, we do not believe having a co-regulator is the most efficient or effective system. For many years there have been concerns about the inconsistency of enforcement between HSE and LA inspectors and also between LA inspectors across the country.

There is considerable time and effort required from HSE in seeking to coordinate health and safety enforcement across around 400 local authorities.³⁴ A single enforcement agency would obviate the need for this by providing an integrated service, centrally coordinated, with all inspectors undergoing the same standard of training and working to the same processes. We believe this would help achieve quality, consistency and more efficient use of resources.

Q8. Are there functions carried out by other bodies that you consider would be better done by HSE?

IOSH would like to see a single enforcement agency, instead of co-regulation by HSE and LAs. We also advocate that work-related road traffic accidents are reportable under RIDDOR and that health and safety law is used more effectively for enforcement in this area.³⁵

Regrettably, most work-related road traffic accidents are not reportable under RIDDOR, regardless of their seriousness, and so appropriate investigation and enforcement action may not be triggered. Currently, though the police investigate fatal road accidents, they are not experts in occupational issues and may not establish whether they are work-related. We believe reporting under RIDDOR would help to move management of this risk area higher up the corporate agenda and help prevent road accidents related to work.

Q9. Are there any lessons to be learnt from other countries about how best to deliver the work that HSE does and how similar bodies in those countries manage their work? Are there any constraints on applying such models in Great Britain?

IOSH is not aware of a system that would suit the UK better than the one we have. Indeed, we are repeatedly asked to host delegations to the UK from across the world, with other countries seeking to learn from and emulate the regulatory system that we have here.

Q10. Would another delivery model offer a more efficient and effective way of delivering HSE's functions? Some alternative delivery options are outlined at Annex C (p.11), but you do not need to restrict your suggestions to the options listed.

No, IOSH does not believe another delivery model would offer a more efficient and effective way of delivering HSE's functions and that continued delivery by HSE as a NDPB is the best option. Please see section II above for full answer.

VI. IOSH response on the 'control and governance of HSE' – stage two of the review (Question B)

IOSH believes that a NDPB is the right way to deliver HSE's functions and that the current control and governance arrangements, as outlined in DWP / HSE Framework Document,² are the right ones. We would highlight the following aspects:

- The HSE has been independently reviewed several times over the last decade and problems with control and governance have not been identified. Please also see our section IV above on 'Is there satisfaction with HSE services?'
- IOSH welcomed professional body representation on the HSE Board in 2005. We believe this is a very positive feature, allowing the health and safety profession (and other professionals) to contribute expertise and independence to the important work of the Board. We strongly urge the continuation and possible expansion of this arrangement.
- In 2007, IOSH supported the merger of the Health and Safety Commission and the Health and Safety Executive and believe this has worked well and as envisaged.³⁶
- We believe that having HSE Board papers publicly available on the HSE website (including the meeting minutes) and allowing the public to attend / observe meetings are all positives that must be retained.

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Founded in 1945, the Institution of Occupational Safety and Health (IOSH) is the largest body for health and safety professionals in the world, with around 43,000 members in over 100 countries, including over 13,000 Chartered Safety and Health Practitioners. Incorporated by Royal Charter, IOSH is a registered charity, and an ILO international NGO and CIS collaborating centre. The IOSH vision is:

“A world of work which is safe, healthy and sustainable”

The Institution steers the profession, providing impartial, authoritative, free guidance. Regularly consulted by Government and other bodies, IOSH is the founding member to UK, European and International professional body networks. IOSH has an active [research and development](#) fund and programme, helping develop the evidence-base for health and safety policy and practice. Summary and full reports are freely accessible from our website. IOSH publishes an international peer-reviewed journal of academic papers twice a year titled *Policy and practice in health and safety*. We have also developed a unique UK resource providing free access to a health and safety research database, as well other free on-line tools and guides, including websites for business start-ups and young people; an occupational health toolkit; and a risk management tool for small firms.

IOSH has 33 Branches worldwide, including the Caribbean, Hong Kong, Isle of Man, Middle East, Oman, Qatar, the Republic of Ireland and Singapore, 17 special interest groups covering aviation and aerospace; communications and media; construction; consultancy; education; environment; fire risk management; food and drink; hazardous industries; healthcare; international; offshore; public services; railways; retail and distribution; rural industries; and sports grounds and events. IOSH members work at both strategic and operational levels across all employment sectors. IOSH accredited trainers deliver health and safety awareness training to all levels of the workforce from shop floor to managers and directors, through a professional training network of more than 1,600 organisations. We issue around 100,000 certificates per year.

For more about IOSH, our members and our work please visit our website at www.iosh.co.uk.

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