

Non-economic Regulators: Duty to have regard to growth

IOSH response to the Better Regulation Delivery Office consultation
(Department for Business Innovation and Skills)



Submission

19.04.13



Introduction

IOSH welcomes this opportunity to respond to this important consultation from the Better Regulation Delivery Office (BRDO), Department for Business, Innovation and Skills (BIS), on introducing a statutory duty for non-economic regulators to 'have regard to growth'.

In the response that follows, we briefly outline the background to this consultation and provide a summary position; general comments; conclusion; references and information about IOSH.

Background

The Government's Autumn Statement announced that it would consult on requiring regulators to 'have regard to growth' and to take account of the economic consequences of their actions through a primary legislative duty.

The consultation document '*Non-economic Regulators: Duty to Have Regard to Growth*'¹ outlines that there are more than fifty non-economic regulators with a combined budget of approximately £4 billion and 55,000 employees. The BRDO believes that this combined resource should be better used to promote growth.

BRDO states there is evidence to suggest that non-economic regulators are not consistently achieving both protection and prosperity in the way they operate. BRDO believes that this means that they are not always seeing businesses as entities that they need to work with in a sustained manner and therefore not always having due regard to economic concerns in the course of regulating.

BRDO believes that the introduction of a **statutory 'growth duty'** would support the UK as a location for investment, while ensuring proportionate regulation to protect consumers and businesses. The consultation sets out how BRDO envisages such a duty might be applied, and seeks views on how it could work. There is also a parallel consultation on a new Regulators' Code.

Summary

IOSH believes that the proposal to compel health and safety regulators to “have regard to growth”, fundamentally misunderstands that good workplace health and safety regulation already supports growth. It not only saves lives; it also supports business and sustains the economy.

Health and safety regulators take a proportionate and risk-based approach and there is a well-established appeals process for any duty holders who have concerns that an incorrect decision has been taken.

Effective regulation can help ensure good health and safety standards and working conditions, which in turn have been shown to be linked with higher productivity, profitability and customer and worker loyalty.

IOSH therefore does not agree that primary legislation should be used to compel health and safety regulators to “have regard to growth”, as this is completely unnecessary and potentially detrimental to their primary and essential duty of regulating legal compliance; protecting life and limb and preventing disasters.

We think 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. The new Fees for Intervention scheme should be monitored and evaluated to check it is working as intended and is not deterring people from seeking health and safety advice from the regulator.

IOSH believes BIS should act as an exemplar in terms of the quality of its own ‘impact assessments’, particularly given the large number of regulations that BIS introduces. It should also promote the free IOSH Li£e Savings resources which help duty holders to better appreciate the economic benefits that accrue from good health and safety management and regulation.

IOSH general comments

IOSH does not agree that primary legislation should be used to compel health and safety regulators to “have regard to growth”, as this is completely unnecessary and potentially detrimental to their primary and essential duty of regulating legal compliance; protecting life and limb and preventing disasters.

In support of our position, we would draw BRDO attention to the following relevant points:

- Effective regulation can help ensure good health and safety standards and working conditions, which in turn have been shown to be linked with higher productivity, profitability and customer and worker loyalty.² Good workplace health and safety regulation already supports growth – it saves lives, supports business and sustains the economy. We urge the Government to do more to promote understanding in this area.
- IOSH is currently running a ‘Li£e Savings’ campaign highlighting the business case and economic arguments for good health and safety that complement the already strong legal and moral imperatives. It would be beneficial if BIS could promote our useful free case studies and tools for business.³
- Health and Safety Executive (HSE) and Local Authority (LA) enforcers take a risk-based and proportionate approach to workplace health and safety regulation and enforcement. HSE outlines its enforcement policy statement (EPS) and enforcement management model (EMM) on its website.^{4,5}
- Duty holders report good satisfaction levels regarding health and safety regulatory activity. On behalf of the business community, a CBI ‘memorandum’ to the Select Committee on Work and Pensions in 2004 on this topic,⁶ 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 evaluation⁷ 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 survey⁸ 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’,⁹ 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.”

Also 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.”

- In recognition of HSE’s effective risk-based approach and regulatory competence, it has been assigned additional areas to regulate, for example, following the Hampton Review:¹⁰ gangmaster licensing and adventure activity licensing; and following the Pirbright ‘foot and mouth’ outbreak, animal pathogens.^{11,12} And indeed, this consultation paper itself cites HSE’s new online tool for small- and medium-sized enterprises *Health and safety made simple* as a good example of regulator-produced guidance.¹³
- Following a recent HSE consultation, a new National LA Enforcement Code is to be introduced by HSE to help drive greater consistency of health and safety enforcement by all LAs. IOSH supports the trialling of this LA enforcement code and the focus on improved inspector training and peer review.^{14,15} We note that this BRDO consultation document makes clear that the proposed duty to “have regard to growth” would not apply to LAs (as BIS believes the Legislative and Regulatory Reform Act and Localism Act 2011 are sufficient). However, that where regulators have enforcement activities carried out by LAs there may be ‘practicalities’ to work through.
- HSE has introduced ‘Challenge Panels’^{16,17} 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.
- Given the considerable benefit that duty holders derive from good regulatory advice (echoed in this consultation paper in paragraph 1.10), we are concerned that levels of proactive regulator inspections have been cut.¹⁸ We believe this to be a backward step and that businesses in a recession need more support with compliance and not less.

- IOSH provides many free on-line resources to help businesses fulfil their health and safety responsibilities, including 'safestartup' occupation-specific guides, a 'risk assessment routefinder' and an occupational health toolkit.¹⁹ We are actively involved in supporting our Better Business for All pilot initiative in Leicester. This project aims to bring together local businesses, regulatory services, local authorities, universities and other partners to help support safe, sustainable growth.
- It is absolutely essential that the regulator is adequately resourced for the vital advisory and enforcement role it undertakes. The dangers of failing to do so have been central to the Government's (post-Francis) recommendation that HSE is supported by the Department of Health in its enforcement of health and safety in hospitals, following the Mid Staffordshire NHS Foundation Trust Public Inquiry.²⁰ It is also emphasised in the Government's new 'UK Oil and Gas Strategy', which stresses the need to ensure stringent safety standards in our hazardous industries.²¹
- While the HSE has generally had a good reputation and relationship with businesses, the recent introduction of the 'Fees for Intervention' (FFI) scheme²² 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 FFI was creating a barrier to good relationships and putting businesses off contacting HSE for advice due to fear of incurring charges.²³
- The consultation document refers to the burden of new and existing regulations (paragraphs 3.3 and 3.4); but fails to highlight the increase in perceived burden created by large deregulatory exercises like the one currently being undertaken. Nor does it report the conclusion that business perceptions of increased regulatory burden may well be due to 'squeezed margins' and not to any actual increase.²⁴
- IOSH is concerned that this BRDO consultation makes insufficient reference to the need for high quality, well-researched 'impact assessments'. The potential impact on business of new regulation should be considered before implementation and an appropriate 'impact assessment' of anticipated costs and benefits should accompany proposed legislation, guidance or policy. Following implementation, this should then be evaluated by means of a post-legislative review. 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%."

We note that the Committee also assessed some BIS 'impact assessments', as follows:

"It is encouraging that BIS was able to achieve an increase in the percentage of IAs rated as 'fit for purpose' in the context of such a large increase in the number of IAs produced. We are, however, disappointed by the reduction in the proportion of IAs awarded a 'Green' rating from 40% in 2011 to 27% for this period in 2012."

"The majority of BIS IAs that were given 'not fit for purpose' ratings had either incorrectly analysed the costs and benefits to business and civil society organisations, or had not substantiated the analysis with a robust evidence base. For departments such as BIS that work on policies with large and wide ranging impacts on the private sector, it is important that they develop a strong evidence base, so that the policy decision can be effectively informed."

The RPC also highlight 'speed' as one of the risks and found that almost one in five impact assessments were 'not fit for purpose', giving them a 'red opinion'.

IOSH recommends that BIS should seek to become an exemplar for high-quality 'impact assessments', especially given the large number of regulations that it introduces. We note that in the decade 1999-2009, BIS introduced 447 regulations, which was the highest number among Government departments. HSE only introduced 55 during this same period.²⁶

Conclusion

IOSH does not agree that primary legislation should be used to compel health and safety regulators to have regard to growth, because health and safety regulators already take a proportionate, risk-based approach that saves lives and supports business.

IOSH would like to see Government, Employer Bodies, Trade Associations and businesses promoting the business case for good health and safety management and regulation. This should include more public discourse highlighting the many economic and social benefits that effective regulation brings.

The vital advisory and enforcement role of HSE needs to be adequately resourced and supported, particularly where increased industry activity is anticipated and also where HSE is taking on new areas of responsibility.

References

1. Better Regulation Delivery Office. *Consultation Paper. Non-economic Regulators: Duty to Have Regard to Growth*. London: BRDO, 2013.
www.bis.gov.uk/assets/brdo/docs/publications-2013/13-684-growth-consultation.pdf
2. Harter J K, Schmidt F L and Keyes C L M. *Well-being in the workplace and its relationship to business outcomes: a review of the Gallup studies*. 2002.
<http://media.gallup.com/DOCUMENTS/whitePaper--Well-BeingInTheWorkplace.pdf>
3. IOSH. LiFe Savings campaign web pages www.iosh.co.uk/lifesavings
4. Health and Safety Executive. *Enforcement policy statement*. Available on HSE's website www.hse.gov.uk/pubns/hse41.pdf
5. Health and Safety Executive. *Enforcement management model*. Available on HSE's website www.hse.gov.uk/enforce/emm.pdf
6. Work and Pensions Select Committee. *Memorandum submitted by Confederation of British Industry (CBI) – written evidence*. Parliament website (Work and Pensions web pages). www.publications.parliament.uk/pa/cm200304/cmselect/cmworpen/456/456we42.htm
7. Health and Safety Executive. *Evaluation of EPS and enforcement action: Main report (RR519)*. Sudbury: HSE Books, 2006. www.hse.gov.uk/research/rrpdf/rr519.pdf
8. Department for Business, Innovation and Skills. *Focus on Enforcement Regulatory Reviews: Review of Enforcement in the Chemicals Industry (COMAH)*. London: BIS, 2013.
www.gov.uk/government/uploads/system/uploads/attachment_data/file/77153/bis-13-557-review-of-enforcement-in-chemicals-industry-comah.pdf
9. Department for Business, Innovation and Skills. *Focus on Enforcement Regulatory Reviews: Review of Enforcement – Volunteer Events Review*. London: BIS, 2013.
www.gov.uk/government/uploads/system/uploads/attachment_data/file/158013/bis-13-610-focus-on-enforcement-regulatory-reviews-volunteer-events-review.pdf
10. Hampton P. *Reducing administrative burdens: effective inspection and enforcement*. London: HM Treasury, 2005.
https://whitehall-frontend-production.s3.amazonaws.com/system/uploads/attachment_data/file/695/file22988_Hampton.pdf
11. Callaghan B. *A review of the regulatory framework for handling animal pathogens*. London: DEFRA, 2007.
<http://archive.defra.gov.uk/foodfarm/farmanimal/diseases/atoz/fmd/documents/callaghan-reviewreport071213.pdf>
12. Health and Safety Executive. *Work involving human and animal pathogens* web pages <http://www.hse.gov.uk/biosafety/callaghan.htm> [accessed March 2013]
13. Health and Safety Executive. *Health and Safety Made Simple*. HSE website at www.hse.gov.uk/simple-health-safety/ [accessed March 2013]
14. Health and Safety Executive. *Consultation on proposals for a national local authority enforcement code – health and safety at work, England, Scotland and Wales (CD247)*. Sudbury: HSE Books, 2013. <http://consultations.hse.gov.uk/gf2.ti/f/17314/464997.1/PDF/-/CD247.pdf>

15. IOSH. *IOSH response to Consultation on proposals for a national local authority enforcement code – health and safety at work, England, Scotland and Wales* (CD247). 2013. www.iosh.co.uk/condocs (see archive section)
16. Health and Safety Executive. *Myth-Buster Challenge Panel*. HSE website at www.hse.gov.uk/contact/myth-busting.htm [accessed March 2013]
17. Health and Safety Executive. *Independent Regulatory Challenge Panel*. HSE website at www.hse.gov.uk/contact/challenge-panel.htm [accessed March 2013]
18. Department for Work and Pensions. *Good health and safety, good for everyone*. London: DWP. 2011. www.dwp.gov.uk/docs/good-health-and-safety.pdf
19. IOSH information and resources at www.iosh.co.uk/guidance
20. Health and Safety Executive. *Fees for Intervention* web pages. HSE website at www.hse.gov.uk/fee-for-intervention/ [accessed March 2013]
21. IOSH. *IOSH response HSE proposal for extending cost recovery* (CD235). 2011. www.iosh.co.uk/condocs (see archive section)
22. Peck F, Mulvey G, Jackson K and Jackson J. *Business perceptions of regulatory burden*. Carlisle: Centre for Regional Economic Development, University of Cumbria, 2012. www.bis.gov.uk/assets/biscore/better-regulation/docs/b/12-913-business-perceptions-of-regulatory-burden
23. Regulatory Policy Committee. *Assessing Regulation – An independent report on the evidence and analysis supporting regulatory proposals, January-August 2012*. London: RPC, 2012. <http://regulatorypolicycommittee.independent.gov.uk/wp-content/uploads/2012/12/RPC-Report-November-2012-Final.pdf>.
24. Ambler T, Chittenden F and Miccini A. *Is regulation really good for us?* London: British Chambers of Commerce, 2010. www.britishchambers.org.uk/assets/downloads/policy_reports_2010/is_regulation_really_good_for_us.pdf

About IOSH

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.

Please direct enquiries about this response to:

Richard Jones, Head of Policy and Public Affairs

Alka Joshi, Administrator

The Grange, Highfield Drive

Wigston

Leicestershire

LE18 1NN

Tel: 0116 257 3100

Email: consultations@iosh.co.uk