

This response is on behalf of UNISON nationally, and was produced by UNISON's Health and Safety Unit in consultation with our National Health and Safety Committee. This response may be published in full.

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UNISON is Britain's largest public services trade union with more than 1.3 million members. Our members work in the public sector, for private contractors and voluntary sector organisations providing public services. They include frontline staff and managers working full or part-time in local authorities, the NHS, the police service, colleges and schools, the electricity, gas and water industries, transport and the voluntary sector.

OVERALL

UNISON welcomes the opportunity to give evidence to triennial Review of the Health and Safety Executive. Overall UNISON believes the Health & Safety Executive (HSE) is the body that should continue to regulate and enforce workplace health & safety. However UNISON is concerned that political interference is threatening to undermine its' independence and tripartite structure and is also concerned whether, with the cuts in its funding that it has been subjected to, it has the capacity to carry out all its functions, especially with the extension of its' Section 3 (of the Health & Safety at Work Act) duties as proposed by the government post Francis (report into Mid Staffs).

Question A: In part one of this review the primary question is; do the functions that HSE performs remain necessary and if so do they need to be done by the HSE?

Yes. The primary functions are still required as much as ever. The level of injury and ill-health is still far too high with levels of cancer, stress-related illnesses and MSDs (musculoskeletal disorders) at levels that are completely unacceptable. Research published through the journal Safety & Health Practitioner puts deaths through work as high as 50,000ⁱ. And the underlying causes of these deaths look set to stay with us for many years. For example the HSE predicts that male deaths through mesothelioma will peak in 2016, and female deaths even later than thatⁱⁱ.

In addition 27 million working days are lost through injury and illnessⁱⁱⁱ of which 80% are caused by musculoskeletal disorders, stress, depression or anxiety. The government's cuts and deregulatory agenda, the casualisation of the workforce and the increase in the use of migrant workers who may not have English as a first

language are all factors that could see deaths, injury and illness through work increase, not decrease, in the coming years.

UNISON believes that these functions should continue to stay within the remit of HSE (Health and Safety Executive). The tripartite structure that underpins the HSE means that it has the respect of both employers and workers. It also has a level of independence from government in enforcement issues, whilst on policy, there is a level of expertise and experience that no-one can match. While there is and should continue to be a role for local authorities as co-enforcers, they could not do the functions of the HSE either in general enforcement or policy work. It is true that other regulators, such as the Environment Agency, have a role that overlaps with the HSE. However we believe that where these occur this is easily identified and addressed through joint working.

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?

Broadly the aims and objectives are correct but UNISON has concerns as to how these are being applied and prioritised. In particular UNISON is concerned at the alarming fall in inspection and enforcement activity. The HSE has cut its' proactive inspection by a third and Local Authorities have also reduced their inspections from 70,700 in 2011/12 to a projected 6,400 in 2012/13^{iv}. However this decline in inspection activity is largely driven by budgetary restraint (the HSE has seen its' budget cut by 35% and Local Authorities have been subjected to large and damaging cuts in their budgets, UNISON estimates there is a £2.1 billion shortfall facing local government each year^v). This looks likely to be exasperated by the HSE being expected to spend more time in areas such as public safety, at the expense of its' primary function of regulating and enforcing health and safety in the workplace, particularly in the light of the government's response to the Francis Report^{vi}.

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

Overall UNISON believes that HSE staff perform well in often difficult circumstances. However cuts in its' budget and constant political interference has meant that the HSE sometimes appears distracted from its primary functions. We have referred above to the time the HSE is spending in regulating public safety. In addition since this government came to power the HSE, in addition to this triennial review, has been subjected firstly to Lord Young's Review, "Common Sense, Common Safety"^{vii} and then Professor Lofstedt's "Reclaiming health and safety for all"^{viii}. Both these reports found that the health and safety regulatory framework was fit for purpose, but these reports combined with the government's ironically named "red tape challenge"^{ix} (more waste and bureaucracy is created by the government's constant attacks on public services than any other government activity) means that the HSE seems to be constantly defending its own existence at the expense of focussing on regulating and enforcing workplace safety.

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?

UNISON believes there should continue to be one body whose primary function is the protection of occupational safety health and welfare, and that body with its' tripartite structure should continue to be the HSE. However we are concerned that the government recommendation re Francis that the HSE increase its activity

regarding protecting public safety could, unless the HSE secures a substantial increase in funding, distract it from its' primary function. The government has said it will provide the HSE will additional funding. However UNISON is sceptical that this will be sufficient and that as a result the HSE could be distracted from its primary function. We have expanded on these points in our answer to question 6.

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?

Generally yes, and UNISON in particular welcomed the work of HSE Officers in implementing the European Sharps Directive through the Health and Safety (Sharp Instruments in Healthcare) Regulations 2013. However HSE interventions on occupational health and safety issues at a European level should be more evidence based. Decisions on the need for European regulation should depend on the benefits to workers but the approach taken by the HSE, under instruction from the Government, is often based on whether such regulation would conform to the government's anti-regulatory ideology.

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?

All these functions are more important than ever and of great use in developing understanding for prevention, securing justice and also ensuring that duty-holders have advice on what action they should be taking. Their research and advice is also used a lot by unions and health and safety representatives. UNISON for example in the past welcomed the HSE's proactive work in promoting the stress management standards. This work has since been discontinued and UNISON regrets that the HSE no longer has the resources to carry out this valuable work.

UNISON is also concerned that the HSE has decided it does not have the resources to carry out proactive inspections in what it defines as "low risk" workplaces such as in local government, education, health and social settings. All these work settings without robust health and safety management can pose significant risks to workers' safety and health. In addition the feedback we have had from employers indicates that the advice and support the HSE can give to employers is welcomed from all stakeholders in the workplace.

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

As indicated above the HSE is now being required to take on additional duties in the implementation of Section 3 of the Health & Safety at Work Act. UNISON believes the primary function of the HSE should remain protecting workers' health and safety, and that this function could be diluted especially given current public concern regarding for example patient safety. We recognise the link between workers and public safety and appreciate that measures that improve workers' safety benefits the public and vice-a-versa. However UNISON believes therefore it is imperative that the HSE receives a substantial increase in its funding, and that also it should work closely with organisations such as the CQC (Care Quality Commission) and the new Chief Inspector of Hospitals to avoid duplication and to ensure the best use of the HSE's limited resources.

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

While there may be some minor issues, the current division represents a pragmatic compromise which is in the interests of both parties and provides mutual benefits and delivers some best practice. The lead partnership scheme assists in this. The issue is around the level of control. There is concern that the current relationship means that local authorities do not have sufficient latitude to meet local considerations, or to innovate in their regulatory approach. For example the LA (Local Authority) Code says that local authority inspectors should not be proactively inspecting “low risk” workplaces. UNISON believes this approach to be misguided and sends the wrong message to employers. It should be noted that the recent legionella outbreak occurred in what the HSE then defined as “low risk” work places. UNISON understands HSE concerns that Local Authorities may not have sufficient resources to inspect higher risk workplaces. However, these concerns should be met by ensuring local authorities have sufficient resources rather than cutting back on what are essential functions for protecting the health, safety and welfare of workers and the public.

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

No. We recognise there are occasions where there is an overlap between the duties of the HSE and those of other bodies such as the Environment Agency and Gangmasters’ Authority. However any duplication is easily eliminated and best practice achieved through joint working. In addition we believe that if the HSE were to take on additional functions it could lose its primary focus of improving and maintaining workplace safety.

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?

UNISON believes the basic UK health and safety framework as laid down by both UK and European law, and which focuses on the duty of employers to risk assess and work in partnership with workers’ representatives to minimise risks, is sound. However there are aspects of how health and safety is managed in other countries that we can learn from. For example, many European countries also have a legal requirement to have a safety committee in all workplaces over a certain size. Sweden has a system of Roving Safety representatives which helps small and medium sized employers to manage their health and safety. UNISON has long advocated roving safety reps. Australia has Provisional Improvement Notices which assist the enforcing authority and encourage the resolution of issues at workplace level by allowing workplace representatives to highlight problems.

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, but you do not need to restrict your suggestions to the options listed.

No. UNISON believes the tripartite structure of the HSE gives a sense of ownership and engagement for both sides of industry in the management of health and safety. The separate relationship from Government protects Ministers as well as giving confidence to employers and workers. It is also not a function which could be micromanaged by a Government department with day-to-day political involvement. However, UNISON is concerned that recent developments threaten to undermine the work of the HSE which it will expand upon in its' answers to the second part of this review. The government's recent interference in the appointment of the workers' representatives to the HSE Board is a case in point.

Stage two of the review – the control and governance of HSE Question B: 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?

UNISON is concerned that the HSE's independence and ability to discharge its' primary function of protecting workplace health and safety are both being undermined by unwarranted political interference. Initiatives such as the red-tape challenge, and the Lofstedt and Young reviews all undermine the role of the board of the HSE. We have also seen attempts by the Department of Work and Pensions (DWP) to spin announcements by the HSE to such an extent that it misleads employers as to what advice is being given. For example, recently the HSE released guidance clarifying and reiterating the responsibility of employers to manage the health and safety of students on workplace placements in the same way they would any other younger worker^x. The DWP then issued a press release under the banner "Ministers to end work experience Health and Safety confusion" saying that they were "slashing burdensome rules". This gave the impression that the government was relaxing regulations that govern students on workplace placements when this clearly was not the case.

There are also concerns over governance, with Ministers appointing board members according to their own unspecified criteria, rather than in accordance with the principles of the Health and Safety at Work Act or tripartism. This lack of transparency undermines both the independence of the board and its' accountability. It also means that the links between board members representing workers' interests and employers' interests with their constituency are lost.

ⁱ **Palmer, Hilda**, "The Whole Story", *Safety Health Practitioner*, December 2008, www.shponline.co.uk/article.asp?article_id=8265

ⁱⁱ <http://www.hse.gov.uk/statistics/causdis/mesothelioma/index.htm>

ⁱⁱⁱ <http://www.hse.gov.uk/statistics/causdis/index.htm>

^{iv} <http://www.tuc.org.uk/workplace/tuc-21909-f0.cfm>

^v <http://www.unison.org.uk/news/local-government-in-meltdown>

^{vi} Patients First and Foremost: The Initial Government Response to the Report of Mid Staffordshire NHS Foundation Trust Public Inquiry
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/170701/Patients_First_and_Foremost.pdf

^{vii} Common sense, common safety
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60905/402906_CommonSense_acc.pdf

^{viii} Reclaiming health and safety for all <http://www.official-documents.gov.uk/document/cm82/8219/8219.pdf>

^{ix} <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>

^x <http://www.hse.gov.uk/youngpeople/workexperience/placeprovide.htm>