



**Chartered
Institute of
Environmental
Health**

**Response to the proposed Health
and Safety Commission's
statement on the public safety role
of the Health and Safety Executive**

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Introduction

The Chartered Institute of Environmental Health (CIEH) is the professional voice of the environmental health community. It ensures the highest standards of professional competence in its members, in the belief that through environmental health action people's health can be improved.

CIEH represents over 10,000 members working in the public, private and non-profit sectors.

Comments

CIEH welcomes the opportunity to contribute to the discussion on public safety and believe it is an important area for all health and safety enforcement bodies.

Public safety is an area of both objectivity and subjectivity. Objectively under the relevant enforcement duties of the HSWA'74 both local government and HSE have responsibilities for public safety risks arising from work-related activities. However, in reality those public safety risks may be so negligible that very limited resource is necessary or indeed available to be invested in actions to address them.

Subjectively however, the whole arena of public safety is often skewed by the media and by public perception.

The issue is arguably therefore how can the objective risks to public safety from work-related activity be effectively regulated while ensuring that the system as a whole is not undermined by subjective misperceptions of risk or perceptions of 'gaps' in the regulatory regime.

If the HSC's aim is to promote, and ensure, a coherent approach to public safety then its first action should be to publish a statement as to how the regulatory system as a whole addresses issues of public safety and not simply the role of the HSE. Such singular publications do not demonstrate the role that all regulators within the health and safety regime play to protect public safety, thereby furthering the perception that the system is not 'joined up'.

Following the issuing of such a holistic statement, subsequent documents should then expand on the various individual roles of the HSE and local government.

Principle 1 - HSE will provide public assurance that health and safety risks in the major hazards are properly controlled.

The CIEH supports HSE in this role. Public assurance however is a fickle issue. Confidence in safety systems is based on actual performance but inspired by effective public relations and media management by regulatory organisations and competent performances by officials when in the spotlight. CIEH would urge that HSE media communications management goes beyond the issuing of a statement in the face of public concern over an alleged 'incident'. Such responses do not alone inspire public assurance.

Principle 2- HSE will continue to work with other regulators that have public safety duties, and specific expertise, to promote a coherent overall approach to

public safety. Including greater clarity of responsibilities among the regulatory bodies.

CIEH believes that HSC should take a more proactive role at governmental level to raise the issue of coherence with regards to policy on the management of public safety risk.

The conclusions of the Phillips Enquiry into BSE published in 2000 commented on the difficulties around risk communication by Government, and the lack of a cross-governmental approach to risk. To date, there remains a sense that Government as a whole cannot effectively deal with risks, either when determining priorities for legislative action or when faced with an actual crisis. Strategically this requires as much attention as looking at the operational roles and responsibilities of regulatory agencies

HSE is well placed to provide a focal point for public safety risks arising from work activities, providing clarity and guidance on the roles and responsibilities of all regulators in the health and safety system.

Efforts should be made to achieve as much clarity as is possible between regulators with public safety responsibilities. The benefits of greater clarity being:

- There is always the danger that regulators leave issues to each other resulting in nothing being done;
- A great deal of time and effort appear to be currently expended by regulators in deciding which should take responsibility for a particular issue. If this could be simplified efficiency would be increased.

Gaps in enforcement

CIEH believes that both **actual** and **perceived** gaps in enforcement in public safety provision must be addressed by some means to assure the public.

It is suggested that initially a mapping exercise be undertaken to determine the specific duties, powers and resource demands/priorities of all the bodies involved. This will identify any gaps or areas of overlap in the enforcement regime.

Having identified actual or perceived gaps, the Commission would need to explore with all the relevant regulatory bodies a suitable strategy for addressing them, be that by additional legislative duties; voluntary agreements, memoranda of understanding etc. Such models already exist within the sphere of health and safety, one specific example being the agreement in place with regard to immediate actions in the event of a workplace death.

Enforcer of last resort

Greater clarity in roles and responsibilities for public safety risk will go a long way to mitigate any one enforcement agency being the 'enforcer of last resort' as for every likely circumstance it should be possible to identify the correct enforcement agency. Where actual gaps in provision are identified these must be addressed quickly. Where it is not possible to address legal anomalies, organisational arrangements could be set up to provide a short to medium term solution.

However, confusion can arise in identifying the correct enforcement agency not because of lack of legislative or organisational clarity at a strategic level but as a result of incomplete or out of date information at the point of service.

Actions to improve clarity between regulators are therefore an issue at both strategic and operational level.

Principle 3- HSE will not unnecessarily restrict the liberty of people to engage in certain hazardous activities, should they wish to do so.

This is an immensely complex issue. CIEH would not support the contention that HSE has, in the past, unnecessarily restricted liberty however media coverage has undoubtedly convinced many that it has. Nevertheless the determination of what is 'necessary' in the context of liberty will always be contentious and whatever criteria for making this determination are used by HSE they should always include a 'common sense' test.

This issue is, however not simply about operational arrangements. It appears that an emerging culture of blame, claim and risk aversion is taking hold within the UK population. This is having a detrimental affect on genuine attempts to improve the health and safety of the public and the HSC, with other parts of central government and local government, must do more to counter the negative media image of necessary health and safety issues; clarify the difference between civil and criminal liability in the minds of the public and crucially develop a media strategy that is capable of conveying this message effectively.

It would be potentially revealing to examine the impact on the numbers of civil litigation claims that have arisen since the relaxation of the rules on solicitors advertising and consider who much the 'no win, no fee' culture has influenced the progression of spurious claims that even if not proven have a financial impact on business due to increased insurance liability and promote a risk averse approach, especially in the public sector.

Principle 4- HSE will give particular priority to intervention when the risks to the public from a work activity and the risks to workers from that same work activity are linked.

An inherent component of the decision making process for the determination of any risk is the number and type of people likely to be affected by that risk. Clearly the public represent a more vulnerable population in any hazard situation and so the combination of a work and public safety risk should be prioritised.

However the regulatory system must remain alert to the situation whereby only small numbers of workers may be at risk but large numbers of the public are likely to be affected, with resourcing decisions about public safety issues made on the overall risk profile not purely on the work place risk.

Principle 5- That where possible and appropriate, risks to public safety that arise in a particular locality be dealt with by those within that locality.

Once again, this is the type of issue that should feature within an agreement between enforcement agencies, although CIEH would support the principle overall.

Local authorities have experience of enforcing requirements for public safety as a result of regulating business sectors in which public access is a dominant feature and due to LAs having public safety responsibilities for premises and activities which they themselves own and operate. CIEH believes that current proposals for a more flexible system for determining the relevant enforcing authority determination, being considered by HSC through the HSE's LAU will provide a straightforward mechanism for achieving the aspiration behind this principle.

Principle 6- HSE will, where circumstances demand, apply its unique expertise in controlling and managing risk to pressing issues of public and national concern.

Although the statement that HSE has unique expertise in this area is organisationally rather self-regarding, HSE undoubtedly has a structure and resource profile that lends itself to playing a focal role in pressing issues of public and national concern, but it must be prepared quickly to engage with other parts of the regulatory regime, particularly local government that, even in terms of national public safety issues will be at the forefront at a local level.

The use of the example of the 2002 Foot and Mouth outbreak in the DD is an interesting illustration of this. The lessons learned from this incident demonstrate that such situations are not effectively dealt with by, and in Whitehall alone; the impact is primarily felt at a local level and the fact that local government was kept out of the decision making process until the incident was at crisis level was a gross error that undoubtedly prolonged the search for an effective resolution to the outbreak.

Where such circumstances demand therefore, HSE should deploy its expertise at national level to assist decision makers, and at local level to support the 'frontline'.