

Independent review of health and safety legislation – call for evidence

Police Federation response

The Police Federation of England and Wales is the staff association which represents 140,000 police officers from Constable through to Chief Inspector on issues relating to pay, conditions and efficiency of the service.

Before responding to the specific questions in the call for evidence, it may be helpful for the Independent Review panel if we were to describe the background to the application of health and safety legislation to the police service and the level of risk that police officers face.

The application of health and safety law to the police service

The European Framework Directive (89/391/EEC) was intended to apply to police officers, but the Management of Health and Safety at Work Regulations 1992, which implemented the Directive, did not include officers within its scope since they were not employees. For the same reason, they had been excluded from the protection of the Health and Safety at Work etc Act 1974 (HSWA), although civilian support staff had been included from the commencement of the Act.

The Police (Health and Safety) Act 1997 was subsequently introduced in order to correct the anomalous position of police officers by treating them as employees of their chief officer for the purposes of health and safety legislation, including HSWA and subordinate legislation. The Home Office, which was the lead Department for the 1997 Act, was able to establish that the qualification “so far as is reasonably practicable” in HSWA would allow chief officers to take the special risks of policing into account when deciding what health and safety measures they needed to put into place.

The Police (Health and Safety) Regulations 1999 were introduced in order to apply the pre-existing regulations to the police service, with amendments to those regulations covering the provision and use of personal protective equipment and equipment for use at work, such as batons and handcuffs.

In January 2007, there was an important judgement from the European Court of Justice (Case 132/04 Commission of the European Communities v Kingdom of Spain) confirming that the police fall within the scope of the European Framework Directive.

More recently, the Health and Safety Executive consulted with the Association of Chief Police Officers (ACPO) and others to develop a better understanding of how the police service could balance operational needs with compliance with health and safety law, and in October 2009 they launched a policy statement *Striking the balance between operational and health and safety duties in the police service*. This was formally endorsed by ACPO, ACPO(S), the Police Superintendents' Association, the Association of Police Authorities and the Police Federation of England and Wales.

In June 2011 HSE followed this up by publishing an explanatory note which supported the policy statement by providing an explanation of its principles. It included case studies illustrating how effective and efficient policing can be delivered without compromising the health and safety of police officers, staff and the public.

In his 2010 report *Common Sense, Common Safety*, Lord Young of Graffham recommended that police officers should not be at risk of prosecution under health and safety legislation if they have put themselves at risk as a result of committing a heroic act. Accordingly, in March 2011 the Crown Prosecution Service published Legal Guidance entitled *Heroic Acts by Police Officers and Firefighters*. In the Guidance, the CPS recognised that, in performing a heroic act, police officers may breach section 7 of the Health and Safety at Work Act 1974 in that they failed to take reasonable care of their own safety. It stated that "In those circumstances, and where the safety of others is not put at risk, public interest would not be served by taking forward a prosecution under section 7 of the 1974 Act."

The accident and ill health picture

Policing is a high risk occupation. Over 2900 accidents in forces in England and Wales were reported to HSE under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) during 2008/09, 27% of which resulted in major injuries to officers. Across the 51 police forces in Great Britain, total accidents, at around 3,200, have not fallen since 1999/2000, rising to almost 3800 in 2006/07. The real picture may well be much worse since there is probably significant under-reporting. HSE's Statistics Report for 2009/10 states that the estimated level of reporting by all employers was 57% compared with the Labour Force Survey, a national survey of over 50 000 households each quarter which provides information on the UK labour market.

Another major cause of lost time in the police service is work-related stress. Although this is not reportable under RIDDOR, a Freedom of Information request in 2007 showed that more than 300,000 working days were lost in 2006 directly due to the effects of stress on officers, accounting for around a

quarter of all police sickness in England and Wales.

Enforcement of health and safety legislation

The enforcing body for health and safety legislation in the police service is the Health and Safety Executive, whose inspectors can use the full range of their normal enforcement powers against police forces. Since 1998/99, HSE has produced summary reports of their planned inspections so that other police forces would, in theory, be able to learn those lessons before they were visited by the inspectors. The last series of planned inspections of 8 police forces was carried out in 2007/08, although there have been follow-up visits to those forces since then, together with reactive visits where necessary.

With this in mind, the Police Federation has its concerns about HSE's future inspection of the police service. The 2011 DWP report *Good Health and Safety, Good for Everyone* lists on page 9 its proposals for targeting and reducing inspections. It identified three categorisations of non-major hazard industries and went on to explain that, based on current analysis; this would result in just one industry grouping where proactive inspection would be retained. "The major areas for inclusion are currently considered to be construction, waste and recycling, and areas of manufacturing which are high risk, e.g. molten and base metal manufacture." This seems to exclude the police and, if so, would consign the service to one of the other groupings in which proactive inspection is longer proposed.

List of specific questions

Question 1: *Are there any particular health and safety regulations (or ACoPs) that have significantly improved health and safety and should not be changed?*

This question would be better phrased "Are there any particular health and safety regulations that have *not* significantly improved health and safety?" Police operations give rise to a wide range of occupational risks, and the relevant specific regulations range from asbestos to work in confined spaces, and from personal protective equipment to substances hazardous to health (COSHH). Since the regulations did not apply to police officers prior to the Police (Health and Safety) Regulations 1999, we have no "before and after" statistics for accidents and ill health to quantify the improvement in health and safety. However, in qualitative terms, the beneficial effect of health and safety compliance has been particularly evident in such areas as the personal protective equipment issued to all officers and the adoption of the elements of health and safety management such as policy, organisation and planning by Britain's police forces under the Management of Health and Safety at Work Regulations 1999.

Another notable example is the Safety Representatives and Safety Committees Regulations 1977. The regulations were amended to provide for the Police Federation of England and Wales to be treated as a recognised trade union, and as a result, Federation safety representatives were able to make a valuable contribution to their forces' management of health and safety.

Question 2: *Are there any particular health and safety regulations (or ACoPs) which need to be simplified?*

No, but there are some ACOPs and Guidance which could usefully be amended in order to clarify certain issues of concern to the police service. For example, the term "dynamic risk assessment" is widely used in the service, and the National Policing Improvement Agency has used it in its guidance on managing operational risks. However, there is no reference to the term in the ACOP to the Management of Health and Safety at Work Regulations, where one would most expect to find it. We would be glad to see a detailed section on this issue in the ACOP and associated Guidance.

As another example, the current Guidance to RIDDOR makes no mention of police-related issues such as the reportability of accidents to members of the public resulting from police action.

Question 3: *Are there any particular health and safety regulations (or ACoPs) which it would be helpful to merge together and why?*

No, we are not aware of any regulations which it would be logical to merge with others.

Question 4: *Are there any particular health and safety regulations (or ACoPs) that could be abolished without any negative effect on the health and safety of individuals?*

No. There is a common misconception – widely held in the media – that there are hundreds of health and safety regulations, many of which are outdated and require culling. In fact, there is often a failure to distinguish between health and safety law and fire safety, food hygiene and the other legislation that governs business in this country. It is often forgotten that Michael Heseltine carried out a wide ranging review of health and safety regulation in the early 1990's aimed at identifying outdated law that could be repealed, so this is not in fact a new issue.

Question 5: *Are there any particular health and safety regulations that have created significant additional burdens on business but that have had limited impact on health or safety?*

No, we are not aware of any such regulations. In recent years, when HSE has proposed new regulations in a Consultation Document, such as the recent amendment to RIDDOR reporting, it has always included an Impact Assessment which compares the benefits with the costs of compliance, which should preclude regulations which entail a disproportionate cost.

Question 6: *To what extent does the concept of 'reasonably practicable' help manage the burden of health and safety regulation?*

When the Police (Health and Safety) Act 1997 was drafted by the Home Office, they were given legal advice that the qualification "so far as is reasonably practicable" would enable chief officers to take the special risks of policing into account when deciding what health and safety measures they needed to put into place. So, in addition to balancing the degree of risk in a particular task against the cost and difficulty of taking preventive measures, the necessity of policing can be introduced into the equation.

As the HSE's policy statement *Striking the balance between operational and health and safety duties in the police service* says, "These health and safety duties are not absolute and each is qualified by the test of what is reasonably practicable. HSWA therefore, does not require all risks to be eliminated, and HSE recognises that, even when all reasonably practicable precautions have been taken to deal with foreseeable risks, injuries and deaths could still occur; and it may be necessary to take some risks to secure a wider benefit to public safety."

It is worth bearing in mind that, in 2007, the United Kingdom's use of "so far as is reasonably practicable" in the Health and Safety at Work Act 1974 was challenged by the European Commission, alleging that it did not comply with the requirements of the Framework Directive (European Court of Justice, Case C-127/05). The Court dismissed the Commission's action, confirming the legitimacy of the Government's approach.

Question 7: *Are there any examples where health and safety regulations have led to unreasonable outcomes, or to inappropriate litigation and compensation?*

The Review Panel will be well aware of the misconceptions about police work that are published periodically in the media. There have been several cases where police officers were alleged to have failed in their duty to the public

because of health and safety regulations, although these are usually vaguely referred to as “health and safety rules”.

In his report *Common Sense, Common Safety*, Lord Young featured one incident featured in the media in which accusations had been made that the police officers involved had stood by and watched a boy drown because health and safety rules forbade them from entering the water to save him. Having heard evidence from senior members of the Police Federation, he was able to point out that this was not in fact the case. Indeed, he went on to support the practical approach embodied in the HSE high level statement *Striking the balance between operational and health and safety duties in the Police service*, referred to earlier in this document.

Question 8: *Are there any lessons that can be learned from the way other EU countries have approached the regulation of health and safety, in terms of (a) their overall approach and (b) regulating for particular risks or hazards?*

EU health and safety directives were intended to provide a consistent approach between member states, and we understand that many EU countries employ a “read-across” approach, which reproduces the original Directive verbatim. A similar approach was used for the UK’s Working Time Regulations 1998, which were the responsibility of the Department of Trade and Industry.

However, HSE has a different approach to implementing EU Directives, taking the opportunity to update and replace existing regulations, ensuring that they are compatible with existing legislation. A good example of this was the “Six Pack” regulations which implemented the Framework Directive and its Daughter Directives. In particular, the Workplace (Health, Safety and Welfare) Regulations 1992 and its ACOP updated the long standing requirements in previous legislation such as the Factories Act 1961, repealing some of those older requirements in the process.

Question 9: *Can you provide evidence that the requirements of EU Directives have or have not been unnecessarily enhanced (‘gold-plated’) when incorporated into UK health and safety regulation?*

Since the “Six Pack” regulations were introduced in 1992, HSE has implemented many EU directives in such a way as to fit sensibly alongside existing UK regulations or to update them where necessary. We cannot provide evidence that any such regulations have been unnecessarily gold-plated, although there may well be a suspicion in some quarters that this process has in some way disadvantaged UK industry compared with their European competitors who may employ a more simplistic approach to the process.

Question 10: *Does health and safety law suitably place responsibility in an appropriate way on those that create risk? If not what changes would be required?*

In the police context, the duty holder under the Police (Health and Safety) Act 1997 is the Chief Constable (the Commissioner in the Metropolitan Police and the City of London), and this is wholly appropriate since, under the Police Act 1996, the Chief Constable has direction and control over the police force.

When the 1997 Act was first implemented, the chief constable was responsible as an individual, but this was amended by means of the Serious Organised Crime and Police Act 2005 so that the duty holder became the office of chief constable, rather than the individual, the legal concept known as a "corporation sole". The effect of this was to avoid the possibility of a chief constable gaining a criminal record.