

**THE LEGISLATIVE REFORM (HEALTH AND SAFETY  
EXECUTIVE) ORDER 2008 (S.I. 2008/960)**

**EXPLANATORY DOCUMENT BY THE DEPARTMENT FOR  
WORK AND PENSIONS**

**Contents**

Contents .....	1
Introduction .....	2
The Duties of the Minister .....	2
The Health and Safety at Work etc Act 1974 .....	2
Reasons for the Proposal .....	4
The 2006 Act – Purpose, Provision and Preconditions .....	5
Costs and Benefits.....	7
Impact Assessment .....	7
Consultation with Welsh and Scottish Ministers.....	8
Parliamentary Resolution Procedure .....	8
Preconditions - Analysis of Responses to Consultation.....	8
The Proposal Which Forms the Draft Order.....	11
Transitional Arrangements.....	18
Changes to the Draft Order After Consultation .....	20
Related Consultations.....	20
Compatibility with the European Convention on Human Rights.....	21
Compatibility with Obligations Arising From Membership of the European Union .....	21
 Annex A: List of stakeholders who were sent copies of the Ministerial consultation.....	 22
 Annex B: List of respondents to the Ministerial consultation .....	 25
 Annex C: Results of the Ministerial consultation including comments received from respondents and the Department’s response to them .....	 26
Analysis of the Ministerial Consultation .....	26
Key Comments .....	26
Responses to Questions.....	30

## **Introduction**

1. This explanatory document is laid before Parliament in accordance with section 14(1) of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) together with the draft of the Legislative Reform (Health and Safety Executive Order 2008 (“the draft Order”) which the Minister proposes to make under section 2 of that Act. The purpose of the draft Order is to amend the Health and Safety at Work etc. Act 1974.

## **The Duties of the Minister**

2. With regard to the duties imposed on the Minister in relation to public consultations by section 13 of the 2006 Act, the Secretary of State for Work and Pensions and the Parliamentary Under Secretary (Lords) considered and approved all of the consultation documents before publication. The Ministerial consultation document made it clear that the consultation was being conducted by the Department for Work and Pensions on behalf of the Minister. After the period of consultation, the Minister considered in the light of the responses that the proposals should proceed with four amendments as outlined in paragraphs 70 - 73. Accordingly the Minister is laying before Parliament the documents required by section 14(1) of the 2006 Act. The Minister is satisfied that, the Order serves the purposes set out in section 2(2) of the 2006 Act and meets the conditions imposed by section 3(2) and 3(4) of that Act.

## **The Health and Safety at Work etc Act 1974**

3. There have been no significant amendments made to the Health and Safety at Work etc. Act 1974 (HSW Act) since it was passed in 1974. The HSW Act (which covers health and safety in Great Britain<sup>1</sup>) sets out the general health and safety duties of employers and others. It is supported by ‘relevant statutory provisions’<sup>2</sup> which impose particular duties in specific circumstances and sectors, and also health and safety regulations made under the Act. The HSW Act includes provision for the enforcement of the relevant statutory provisions, including the prosecution of health and safety offences.
4. The Health and Safety Commission<sup>3</sup> (the Commission) and the Health and Safety Executive<sup>4</sup> (the Executive) are two separate Non Departmental Public Bodies (NDPBs) established as part of the HSW Act. The HSW Act sets out the two NDPBs’ governance structure

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<sup>1</sup> The HSW Act can be found at: <http://www.hse.gov.uk/legislation/hswa.htm>

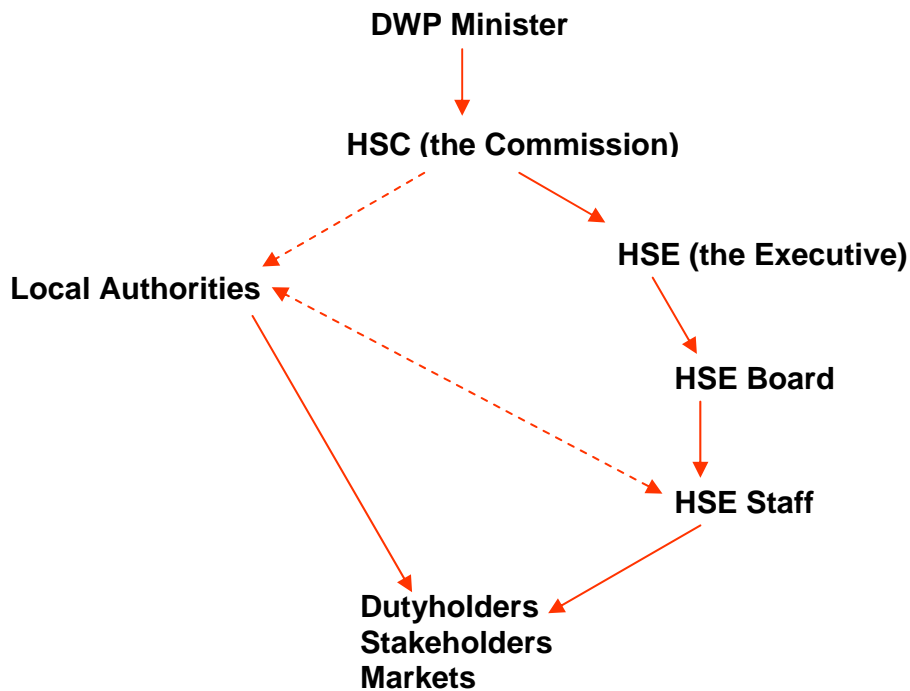
<sup>2</sup> Such as the Factories Legislation.

<sup>3</sup> Information on the Commission is available at: <http://www.hse.gov.uk/aboutus/hsc/index.htm>

<sup>4</sup> Information on the Executive is available at: <http://www.hse.gov.uk/aboutus/hse/index.htm>

including their composition, functions, powers and duties. The sponsoring department for the Commission and the Executive is the Department for Work and Pensions (DWP / the Department). The existing governance structure is shown below.

Existing Model



5. The Commission comprises a Chair plus 9 members and is the principal body in relation to the regulation of health and safety at work in Great Britain. It ensures that the necessary arrangements are in place, so that the health and safety of people at work and members of the public are protected. The Executive is constitutionally a three person body who along with the staff of the Executive act as the operating arm of the Commission. It advises and assists the Commission in its functions and has specific responsibility, shared with local authorities, for enforcing health and safety law. The Commission cannot direct the Executive nor local authorities in individual enforcement decisions, including prosecution (HSW Act section 11(4)).
6. The main areas within the HSW Act which set out the governance structure are:
  - section 10 - this states the establishment of the Commission and the Executive and includes the number of members within each body and their terms of appointment;
  - section 11- this states the general functions of the Commission and the Executive;
  - section 12 –this states the control of the Commission by the Secretary of State;

- section 18 – this states the authorities responsible for enforcement of the relevant statutory provisions; and
- schedule 2 – this states the additional provisions relating to constitution etc of the Commission and the Executive.

## Reasons for the Proposal

7. As business practices have changed and enhanced governance structures have developed within public sector bodies, the Commission and the Executive have endeavoured to update the current governance structure and improve the two NDPBs' working arrangements without making legislative changes. However, the current structure is outdated and is not as effective as it needs to be particularly with regards to managing the financial and performance monitoring aspects of the two NDPBs.
8. The existing delegated powers and working practices of the Commission were established to distance the Commission from the day to day running of the Executive and to restrict the Commission's oversight in such areas as finance and performance management. These arrangements are now completely at odds with the current corporate governance approach where a governing body carries the overarching responsibility and accountability, and provides the shared ethos and consistency. Indeed the status quo is thought to be unsustainable and external appointments would be needed to the Executive's managing board, where the decision making lies for finance, resource distribution and performance management.
9. The Commission and the Executive believe that in order fully to realise the advantages of improving overall governance the two bodies should be merged to form one unitary body. Therefore the HSW Act needs to be amended to effect the merging of the two bodies, the transfer of existing powers and functions to the new unitary body and the modification of existing provisions in line with the new governance structure.
10. An 'in principle' consultation which discussed the proposal for merging the Commission and the Executive was carried out by the Commission between December 2006 and March 2007. The consultative document<sup>5</sup> discussed the idea of merging the Commission and the Executive into a new unitary body and bringing together their powers and functions. The document also suggested models for the composition of the Board of the unitary body, and how key activities such as enforcement should be maintained under the new structure. It was on this basis that the Commission and subsequently DWP and

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<sup>5</sup> HSC's 'A stronger Voice for Health and Safety' Consultative Document is available at: <http://consultations.hse.gov.uk/inovem/gf2.tiff/3938/118373.1/PDF/-/CD210.pdf>

Government accepted that a non-executive model for the new unitary body would be the more productive option. Overall the document received a positive reception with 162 responses. The Commission then formally agreed to proceed with the merger and considered the 2006 Act<sup>6</sup> as the preferred route legally to implement the merger. The Chair of the Commission then invited the Minister to proceed with the merger by way of the 2006 Act.

11. A Ministerial consultation<sup>7</sup> was published in August 2007 to conform with section 13 of the 2006 Act. The consultation ran for 12 weeks and copies were distributed to stakeholders, Ministers, the devolved administrations, the Parliamentary Committees and those who had responded to the previous Commission consultation. The consultation received 26 responses. During the consultation period a copy of the draft Order was submitted to Parliamentary Counsel for comment. Therefore a copy of the draft Order was not included within the Ministerial document.
12. The draft Order merges the Commission and the Executive into one unitary body. In legal terms this new body corporate will be known as the Health and Safety Executive ('the Executive'). On transition, current Commissioners will be automatically appointed as members of the new Executive (under the new Schedule 2 of the HSW Act). They will be supported by the Senior Management Team (SMT) of the Executive's staff. In this Explanatory Document, given the potential for confusion between the existing (three person) Executive and the new Executive, we have described the new body corporate as the 'Board of the Executive', though this is not the actual legal term used in the draft Order.

## **The 2006 Act – Purpose, Provision and Preconditions**

13. The Commission and the Executive adopted the principles of better regulation many years ago. We consider that the current merger proposal meets the purpose of Section 2(2) of the 2006 Act by further promoting these principles, as set out in Section 2(3), particularly in relation to transparency and accountability.
14. The distinction between the respective powers and functions of the Commission and Executive has been a source of confusion which repeated efforts and the passing of time have done nothing to resolve. Merging the two bodies should produce greater external transparency through focusing on a single national regulatory body, responsible for promoting the cause of better health and safety at work.

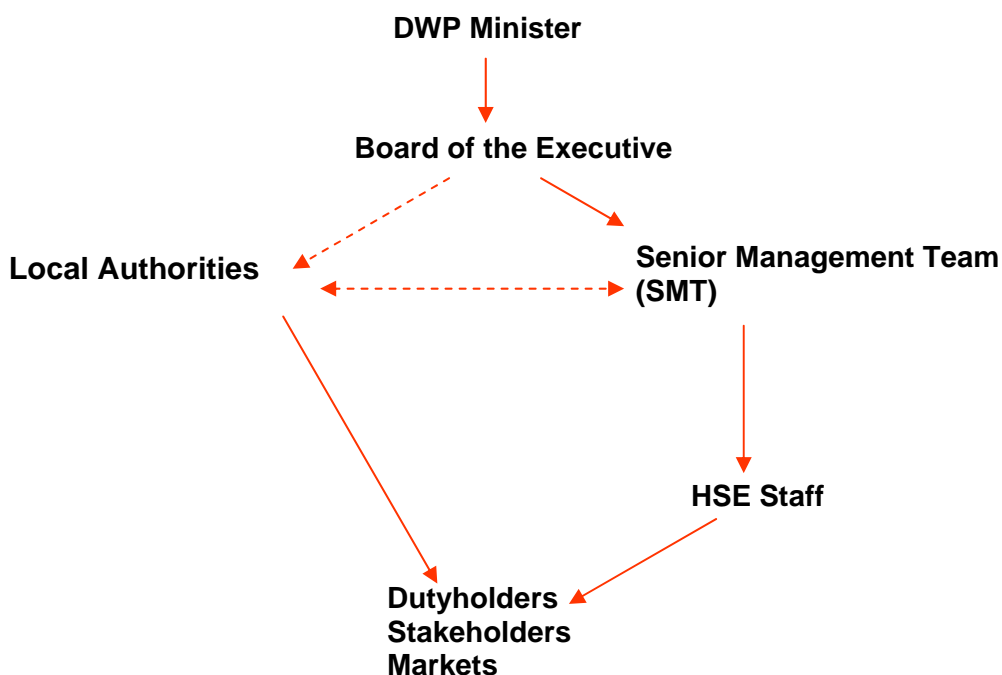
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<sup>6</sup> The Legislative and Regulatory Reform Act is available at: <http://bre.berr.gov.uk/regulation/reform/bill/>

<sup>7</sup> The Ministerial consultation 'The merger of the Health and Safety Commission and the Health and Safety Executive: Changes to legislation governing health and safety in Great Britain is available at: <http://www.dwp.gov.uk/publications/dwp/2007/hsmerger/>

15. We also consider that the merger proposal will lead to a modern governance structure (as shown below). Along with the associated development of roles and responsibilities it should achieve improved accountability, in particular through:
- better strategic oversight of the full range of managerial and regulatory functions by the Board of the Executive;
  - a more effective challenge function to the new Executive's SMT; and
  - an improved basis for the partnership with local authorities and other key stakeholders.

The New Model



16. The provisions to the draft Order will result in the abolition of two existing bodies (Article 2 to the Order), and the creation of a new body (Article 4 and Schedule 1 to the Order). The functions (including regulatory functions) and powers of the abolished bodies are transferred to the new body (Article 5 to the Order). According to sections 2(4) and 2(5) to the 2006 Act, these are appropriate provisions that a Minister of the Crown can make. All other provisions of the Order are consequential, incidental or transitional, as permitted by Section 2(7) of the 2006 Act.

17. For the purposes of the Ministerial consultation the proposal was broken down into 8 component Parts A-H. Part A covers the abolition of the existing two bodies and the creation of a new unitary body; Part B the transfer of functions and powers; and Part D the procedure for appointment of the Chair and members of the Board of the new body. Part H explains that the opportunity has been taken to modernise the

legal wording in those areas of the HSW Act which are to be amended in any case to make the law more easily understood in accordance with Section 3(4) of the 2006 Act. The other Parts cover consequential or incidental issues.

18. Paragraphs 35 - 68 of this document analyses the proposal Part by Part summarising the consultation response, identifying the legal mechanism and drawing conclusions. Paragraphs 25 - 34 of this document provide a summary analysis of the consultation responses against the preconditions that need to be satisfied in relation to Section 3(2) of the 2006 Act. A fuller analysis appears in Annex C.

## **Costs and Benefits**

19. We consider that there will be no negative impact for business or the public as a result of the merger. This conclusion is supported by the results of both the Commission and Ministerial consultations<sup>8</sup>. With regards to costs, the draft Order does not impose a charge on public revenues nor contain provisions requiring payment to be made to the exchequer, any government Department or to local or public authorities.
20. Internally the benefits of the merger will be felt primarily in the way the organisation operates and transacts its daily business. External benefits will arise through partnerships and interactions with stakeholders. The new governance structure will widen the Board of the Executive's knowledge of the organisation and improve transparency, accountability and decision making.

## **Impact Assessment**

21. It is envisaged that the merger will provide savings in the longer term. Such transitional costs as do arise will fall far below the £5 million threshold which imposes the requirement for an impact assessment of the policy objective. The Ministerial consultation has provided a succinct examination of the key amendments to the HSW Act and their impact on the organisation, its staff and stakeholders. Therefore in light of the minor cost implications, the results of the Ministerial consultation and the expectation that the benefits of the merger will be mainly intangible, an impact assessment has not been prepared.

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<sup>8</sup> See footnotes 5 & 7.

## **Consultation with Welsh and Scottish Ministers**

22. The draft Order proposes that the HSW Act should be amended to allow the Secretary of State, if he so wishes, to appoint members of the Board of the Executive after consultation with the Welsh and Scottish Ministers. As this proposal does not confer an obligation on the Welsh Ministers to respond to the consultation, then no function has been conferred on the Welsh Ministers and so their consent to this proposal under section 11 to the 2006 Act is not needed. With regards to matters related to Scotland, the draft Order does contain some minor consequential provisions which are not constitutionally significant but do entail amendments to other enactments such as the Scotland Act 1998. These amendments are within the scope of section 2 to the 2006 Act by virtue of sections 2(1) and 2(7). As a matter of course we have consulted with Welsh and Scottish officials on our proposal, and both parties are content. The HSW Act, except for the few minor provisions set out in section 84(1), does not extend to Northern Ireland.

## **Parliamentary Resolution Procedure**

23. The Minister considers the 2006 Act an appropriate vehicle for the proposed changes to the HSW Act and this is supported by the Commission and the Executive. The Minister has laid this draft Order under section 2 of the 2006 Act. Section 2 allows Ministers to amend the constitution of a body exercising regulatory functions, provide for the transfer of regulatory functions and abolish a body whose regulatory functions are to be transferred to another body.

24. As the draft Order is not complex, is not controversial and will have no great impact on the general public, the Minister has recommended that the explanatory document and draft Order be laid in Parliament under the affirmative resolution procedure for which provision is made by section 17 of the 2006 Act. A copy of the draft Order accompanies this explanatory document.

## **Preconditions - Analysis of Responses to Consultation**

25. As highlighted in paragraph 11, a Ministerial consultation was published in August 2007. The Ministerial consultation was distributed to various organisations that are interested in the Commission and/or the Executive. Lists of both those who received a copy of the consultation and those who responded can be found in Annexes A and B. Annex C provides an analysis of the results of the consultation and a list of general comments received from respondents including the Department's response to them. In total 26 responses were received.



26. The low number of responses to the Ministerial consultation can be attributed to the previous Commission consultation which was published just eight months before. The latter received 162 responses of which 129 answered the questions posed within the document, and provided the background to the basis of the proposals within the Ministerial consultation. The main results of the Commission consultation were:

- 80% of those who responded to question 1 agreed that the HSC and HSE should merge to form one unitary body. Those against were concerned about the possibility of conflict between policy and delivery elements, or whether key partnerships would be affected;
- 80% of those who responded to question 2 agreed with the overarching governance principles set out in the document. Those not agreeing either felt the principles were already in place or that there was not enough detail to comment;
- 69% of those who responded to question 3 agreed that the governing body should consist entirely of non-executive directors. Those against favoured a mixed Board made up of executive and non-executive members which they considered would lead to more collective and better informed decision making;
- 83% of those who responded to question 4 agreed that the Governing Body should have the scope to increase in size to 11 non-executive members. Those against either thought that the current tripartite structure of 3 employer, 3 employee and 3 other members should be retained or that an increase in members would make decision making and consensus difficult.
- Question 5 was more open in asking for views on how to improve relations with stakeholders;
- 96% of those who responded to question 6 agreed that individual prosecution and enforcement decisions should continue to be taken by officials; and
- 82% of those who responded to question 7 agreed that the merged body should be known as the Health and Safety Executive. Those not agreeing questioned the appropriateness of the title because the word 'Executive' has previously referred to the subordinate organisation and does not carry the right connotation.

27. The 2006 Act specifies that any Order must abide by certain preconditions. These preconditions are whether the draft Order has a non-legislative solution, is proportional, provides a fair balance, maintains necessary protections, does not affect rights and freedoms and is not constitutionally significant. A legal analysis of the results of the Ministerial consultation with regards to these preconditions is set out below.

#### Non-Legislative Solutions

28. As outlined within the Ministerial consultation a non-legislative solution to achieve the policy objective (merging the two NDPBs and updating

their governance structure) was attempted but was judged insufficient. The majority of those who responded to the consultation agreed that no non-legislative means could satisfy the needs of the proposal.

#### Proportionality

29. The proposed provisions are limited to giving effect to the merging of the two bodies and re-expression of the existing powers and functions as a unitary body. There is no change in health and safety requirements, how they are enforced or how stakeholders relate to the health and safety regulator. The majority of respondents agreed that the proposal was proportionate to the policy objective. Those who felt that the proposal was not proportionate wanted assurances that the internal and external working arrangements for the new Executive would explain in more detail how the overarching proposal would work in practice. For example; how the Board of the Executive would challenge the SMT, and how the exchanging of information between local authorities and the new Executive would be different as a consequence of the merger. It is our intention that the internal and external working practices will be developed in direct consultation with the relevant parties (see paragraph 44).

#### Fair Balance

30. There will be a fair balance between the public interest and any person adversely affected by it. Respondents felt that the proposal would allow the new Executive to operate more effectively. Increased consultation with key stakeholders when populating the Board of the Executive, and the proposed restriction on the Secretary of State and the Board of the Executive in relation to enforcement decisions, were deemed as a positive step towards the public interest.

#### Necessary protection

31. No health and safety protections will be removed by the proposal. The amendments to the HSW Act do not affect the statutory provisions for the protection of health and safety, nor health and safety regulations currently under the Act, and it is not our intention to amend these provisions in any way.

#### Rights and Freedoms

32. The changes proposed will not prevent anyone from exercising an existing right or freedom.

#### Constitutional Significance

33. The proposal does not change any fundamental functions, duties and powers under the HSW Act. Most respondents agreed that the proposal was not constitutionally significant although there were some general concerns that the re-drafted sections within the HSW Act should not have their primary functions weakened.

## Conclusion

34. Overall most felt that the consultation and the overarching proposal to merge abided by the preconditions set out within the 2006 Act. There were a number of generic themes and general comments on the proposals within the Ministerial consultation document. These issues as well as the Department's response to them can be found in Annex C.

## **The Proposal Which Forms the Draft Order**

35. The proposal to merge the Commission and the Executive is made up of eight Parts. The detail of each of the Parts is listed below with any comments received during Ministerial consultation, and the terms for which the element will be defined within the draft Order and HSW Act.

### **A. Abolishing the current Health and Safety Commission (the Commission) and three person Health and Safety Executive (the Executive) and creating a new unitary body to be called the Health and Safety Executive.**

#### 36. Proposal

- The Commission and the Executive be merged to form a new unitary body.
- All references to the Commission in the HSW Act would be deleted and the term 'Executive' would refer to the new unitary body.
- Current staff appointed to the Executive would automatically become staff of the newly constituted Executive, retaining their status as civil servants, employed by the Crown.
- The new unitary body, like its predecessors, would exercise its functions on behalf of the Crown.

#### 37. Consultation Response

The majority of respondents to the Ministerial consultation were content with this proposal; therefore it has not been amended.

#### 38. Legal Mechanism

Section 10 of (and Schedule 2 to) the HSW Act establishes the Commission and the Executive as two separate entities. It is proposed that these provisions are replaced with new section 10 and Schedule 2 which establish the new unitary body, to be called the Health and Safety Executive.

#### 39. Conclusion

We conclude that Part A of our proposal is appropriate and is given effect by Articles 2 and 4 of and Schedule 1 to the draft Order.

**B. Transferring the functions and powers of the current Health and Safety Commission and Health and Safety Executive to the new Executive, including.**

- **the powers of the Commission to establish inquiries (with the consent of the Secretary of State) and investigations; and**
- **the restriction on the Commission that prevents it from giving directions in relation to individual enforcement decisions.**

40. Proposal

- The current functions and powers of the Commission and the Executive will be transferred to the new Executive.
- None of the statutory functions of the Commission and the Executive will be removed.
- Consultation with the Secretary of State will take place before making or revising the new Executive's rules and procedures for dealing with conflicts of interests.
- The new Executive must publish from time to time a summary of its rules and procedures.
- The Commission's powers in section 14 of the HSW Act to direct investigations and inquiries will be adapted as a consequence of the new unitary structure, to enable the new Executive to investigate and make a special report, or authorise another person to investigate and make a special report.
- The new Executive (with the consent of the Secretary of State) can direct an inquiry to be held.
- The new Executive will have the power to authorise its individual members, committees and staff to exercise its functions. Particular provision will ensure that only authorised staff can take individual enforcement decisions, consistent with current public law and administrative principles. This requirement will also be reinforced within the new Executive's enforcement policy statement.

41. Consultation Response

The majority of respondents to the Ministerial consultation were content with this proposal. Those who did comment stressed that the functions should not differ from those of the current Commission as a point of principle.

42. As part of the Ministerial consultation we had proposed that a formal statement specifying the precise terms in which the Board of the Executive will delegate its powers on enforcement issues to officials be published in advance of the new arrangements coming into effect. We had asked for views on whether such a statement should be a legislative requirement. The respondents agreed that such a statement should be produced and that there should be a legislative requirement. Please see paragraphs 38 - 40 of Annex C.

43. We have included in the draft Order a requirement to publish the authorisations for the exercise of the new Executive's functions. Paragraph 9 of new Schedule 2 to the HSW Act (Schedule 1 to the draft Order) sets out legislatively the circumstances in which the Board of the Executive may authorise its individual members and staff to exercise its powers and functions. These authorisations together with the published enforcement policy statement will provide the explicit terms of the delegated powers in relation to enforcement issues.
44. The Commission and the Executive intend to draft authorisations and review the enforcement policy statement as part of the development of the key principles and working practices of the new Executive. The working practices document will set out the decision making processes throughout the management chain and describe the new Executive's relationship and interaction with stakeholders. During this process we intend to consult directly with key stakeholders, and make these documents public by the time the merger comes into effect.
45. Legal Mechanism  
Sections 11 and 13 of the HSW Act set out the functions and powers of the Commission and the Executive. These provisions would be replaced by new sections 11 and 13, together with paragraph 9 of new Schedule 2, setting out the powers and functions of the new Executive. In particular paragraph 9 of new Schedule 2 sets out the circumstances in which the Board of the Executive is able to authorise the performance of its functions by others. It also includes the legislative requirement to publish any authorisations.
46. Section 14 of the HSW Act (power of the Commission to direct investigations and inquiries) would be amended to incorporate the essential features of the current arrangements into the new governance structure.
47. Conclusion  
We conclude that Part B of our proposal is appropriate, but with two modifications. There is now a requirement to publish any document by which the Board of the Executive authorises exercise of its powers by any other person. Also the Board of the Executive is explicitly prevented from authorising any person to legislate by subordinate instrument (such as an Approved Code of Practice), in accordance with section 4 of the 2006 Act. This proposal is given effect by Articles 5 and 6, and Schedule 1 to the draft Order.

**C. Extending to the Secretary of State the restriction on intervening in individual enforcement decisions and also not permitting him to withhold publication of investigative and inquiry reports.**

**48. Proposal**

- The Secretary of State will not be permitted to give any direction as to the enforcement of the relevant statutory provisions in any particular case.
- The Secretary of State cannot withhold all or parts of reports produced in relation to investigations or inquiries.

**49. Consultation Response**

Those respondents to the Ministerial consultation who commented were in favour of the first element of this proposal, and it has not been amended. The three respondents who commented on the second element favoured it on public interest grounds. However we have in the light of subsequent consideration and legal advice decided that the second proposal is not necessary. This is first because the Ministerial Consultation Document incorrectly ascribed the current provision to the Secretary of State rather than the Commission. Second, we originally advocated removing the power to withhold part of a report on the basis that such a power was inconsistent with the Freedom of Information Act 2000 (Fol Act). However we have recently received legal advice that the removal of all or part of the existing provision neither assists nor hinders our obligations under the Fol Act, and that while the presumption is in favour of disclosure, Fol Act exemptions may, for instance, support withholding parts of a report on grounds of national security. For both these reasons we consider that it is sensible not to proceed with the second element of Part C of our proposal.

**50. Legal Mechanism**

It is proposed that section 12 of the HSW Act (control of the Commission by the Secretary of State) is replaced by a new section 12 which incorporates the restriction on the Secretary of State being able to intervene in any specific enforcement decision.

**51. Conclusion**

We conclude that the first element of Part C of our proposal is appropriate and is given effect by Article 5 to the draft Order. We conclude that the second element of Part C is not appropriate. The current provision will be transferred to the new Executive but otherwise will remain unchanged and, as now, will be subject to the provisions and exemptions of Fol Act. The transfer is given effect by Article 6 to the draft Order.

**D. Appointing the Chair and other members of the new Executive in a similar way to the current Health and Safety Commission except that:**

- **the maximum permitted number of members other than the Chair will increase from nine to eleven;**
- **there will be one member specifically appointed following consultation with organisations representing local authorities; and**
- **the Secretary of State may appoint members following consultation with the Scottish and Welsh Ministers.**

**52. Proposal**

- The size of the Board of the Executive is increased to not more than eleven non-executive members (plus the Chair). Members will continue to be appointed by the Secretary of State.
- The current provision that a Deputy Chair may be appointed with approval from the Secretary of State will be amended to include a requirement for the Chair's approval for the appointment.
- The Board of the Executive will comprise three members appointed by the Secretary of State after consultation with organisations representing employers; and three members after consultation with organisations representing employees. One member must specifically be appointed by the Secretary of State after consulting with organisations representing local authorities.
- The remaining members of the Board of the Executive (up to four other members) can be appointed by the Secretary of State after consulting with the Welsh and Scottish Ministers, or other appropriate organisations including professional bodies.

**53. Consultation Response**

Some respondents felt that the membership of the Board of the Executive should not be increased, and therefore not differ from the current tripartite structure. Others felt that the increase was not large enough and would not facilitate the introduction of those groups who were currently underrepresented within the current Commission structure. The proposal has not been amended because we are satisfied that the increase in size will match the requirements of the new Executive. More detail of our reasoning is set out in paragraphs 6-9 of Annex C.

**54. Legal Mechanism**

It is proposed that section 10 of the HSW Act is replaced with new section 10 and new Schedule 2 to increase the minimum membership of the Board of the Executive from six to seven and the maximum membership from nine to eleven (plus the chair), and to provide for the new consultation requirements and the change in process when appointing a Deputy Chair.

55. Conclusion

We conclude that Part D of our proposal is appropriate and is given effect by Article 4 of and Schedule 1 to the draft Order.

E. **Setting down the means of appointment and key responsibilities of the Chief Executive.**

56. Proposal

- The Chief Executive is appointed by the Board of the Executive (with the approval of the Secretary of State) and is accountable to the Board of the Executive for his or her actions.
- The Chief Executive's terms and conditions will be determined by the Secretary of State.
- The Chief Executive will be authorised to exercise the new Executive's function of appointing staff (including inspectors) of the Executive.
- The Chief Executive will be authorised to exercise the new Executive's function of making adequate arrangements for the enforcement of the relevant statutory provisions as required by section 18(1) of the HSW Act.
- The Chief Executive will be responsible for the financial accounts of the new Executive. There will be specific mention within the HSW Act as to the Chief Executive's reporting duties and responsibilities in relation to the oversight of the financial accounts.
- The Chief Executive may not at the same time be a Member of the new Executive.

57. Consultation Response

The majority of respondents to the Ministerial consultation were in favour of this proposal, as they felt that the responsibilities of the Chief Executive should be set out in law. Therefore the proposal has not been amended.

58. Legal Mechanism

It is proposed that the new Schedule 2 to the HSW Act incorporates the provisions concerning the appointment and financial accountability of the Chief Executive.

59. Conclusion

We conclude that Part E of our proposal is appropriate and is given effect by Schedule 1 to the draft Order.



**F. Adding certain provisions to enhance arrangements to support Local Authority regulatory activity.**

**60. Proposal**

- The inclusion of local authorities in the list of bodies to whom the new Executive should make arrangements to provide an information and advisory service.
- The requirement that the new Executive consults with local authorities before issuing enforcement guidance.
- The inclusion of a requirement on the new Executive and local authorities to put in place defined procedures for exchanging information and working together.

**61. Consultation Response**

The majority of respondents to the Ministerial consultation were content with this proposal, and therefore it has not been amended. One respondent hoped that the merger would be beneficial for the relationship between local authorities and the new Executive, and asked for wide consultation on the detail of these provisions. Others felt that the merger should have specifically incorporated the local authorities into the new structure.

**62. Legal Mechanism**

Section 11 of the HSW Act sets out, as part of the general functions of the Commission and the Executive, those who must be provided with an information advisory service. Section 18 of the HSW Act sets out the role of local authorities in the enforcement of the relevant statutory provisions.

**63. Conclusion**

We conclude that Part F of our proposal is appropriate and is given effect by Articles 5 and 10 of the draft Order.

**G. Imposing a Duty on the new Executive to have regard to the Better Regulation principles in the conduct of its regulatory functions.**

**64. Proposal**

An addition is made to the functions and powers of the new Executive in keeping with the principles of better regulation and current legislative terminology. The new governance structure created by the merger should aim to improve consistency, transparency and accountability.

**65. Conclusion**

The Commission and the Executive adopted the principles of better regulation many years ago, and the proposal was to underwrite this position legally. However, during consultation it came to our attention that the introduction of this proposal may duplicate the introduction of a

general requirement on all regulatory bodies to abide by the Better Regulation principles under the 2006 Act. This is to be brought in by a new Order from the Better Regulation Executive – the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (LRR(RF)O) (S.I. 2007/3544). Therefore the Minister has decided not to include this proposal in our draft Order. Once the (LRR(RF)O) has come into force (on 6<sup>th</sup> April 2008), then the Department and the new Executive will ensure that the Better Regulation principles are incorporated into the working practices of the new Executive.

## **H. Updating and modernising the legal drafting of those parts of the Health and Safety at Work etc. Act which are to be amended in any case.**

### **66. Proposal**

In this process the opportunity will be taken to modernise the wording and layout of the HSW Act in those areas which will be amended in any case. This includes:

- section 27: Obtaining of information by the Commission, the Executive, enforcing authorities etc.
- section 28: Restrictions on disclosure of information.
- section 50: Regulations under the relevant statutory provisions.
- section 55: Functions of, and responsibility for maintaining, employment medical advisory service.

There are also a number of purely consequential amendments.

### **67. Consultation Response**

The majority of respondents to the Ministerial consultation were content with this proposal, therefore it has not been amended. Those who commented stressed that the modernisation should not cross into areas within the HSW Act where modernisation was not required. This would ensure that the fundamentals of the HSW Act are not amended.

### **68. Conclusion**

We conclude that Part H of our proposal is appropriate and is given effect by Articles 7- 9 and 11-19 to the draft Order.

## **Transitional Arrangements**

69. There were no comments received in relation to the transitional provisions as set out within the Ministerial consultation document, and we are content that they are appropriate. They are as follows:

- Transfer of appointments – provision made for the current Commissioners automatically to become members of the Board of the Executive immediately when the merger takes place, for the remainder of their term of office with the relevant responsibilities of the new role. The Chair of the Commission will automatically become the Chair of the Board of the Executive. The appointment of the Commissioners as members of the Board of the Executive will not trigger any requirements under the Nolan Rules regarding the procedure for appointments made to public bodies.
- Transfer of officers – the Chief Executive will cease to be the director of the former Executive and will become the Chief Executive of the new Executive. The two other members of the former Executive will cease to hold these offices but will automatically become staff members of the new Executive with their terms and conditions intact.
- Transfer of staff – staff members currently in the service of the existing Health and Safety Executive will automatically transfer to the new Executive. This transfer will not affect any employment rights due to the fact that staff of the new Executive are employed by the Crown and will remain so post merger.
- Accounts and reports – the Commission's operations in the period of time between its last annual report under Schedule 2 of the HSW Act and the merger taking place will be incorporated in to the first annual report issued under new Schedule 2 by the new Executive. The same will happen regarding the Commission and the existing Executives' statements of accounts. On the merger, all rights and liabilities of the old bodies transfer to the new body.
- Investigations and Special Reports – power for the Board of the Executive to take over the authorisation by the Commission of a person to investigate and make a special report under section 14(2) of HSW Act. This includes the power to authorise the abandonment or continuation of any such investigation. The Board of the Executive will also honour any agreements made by the Commission regarding remuneration of that person or for any expenses relating to the cost of the investigation/compiling the report.
- Inquiries – power for the Board of the Executive to take over the direction given by the Commission for an inquiry to be held. The Board of the Executive will also honour any agreements made by the Commission regarding remuneration or for any expenses relating to the cost of the inquiry.
- Agreements entered into with other public bodies – a provision to the effect that the Board of the Executive replaces the Commission as party to any agreement made between the Commission and other government Departments, or any Minister of the Crown, or other public authority to perform their functions; or for that body to perform the Commission's functions.
- Approval of Codes of Practice – a provision to preserve in effect existing Approved Codes of Practice.
- General transfer –

- I. All assets, rights and liabilities of the Commission and of the former Executive, existing immediately before the appointed day, are transferred to the new Executive.
- II. Anything (including any legal proceedings) relating to the things transferred, and in the process of being carried out by or in relation to the Commission or the former Executive, may be continued on and after the appointed day by or in relation to the new Executive.
- III. Anything done by, or on behalf of or in relation to the Commission or the former Executive is – so far as necessary for continuing its effect after the merger, to be treated as having been done by, or behalf of or in relation to the new Executive.

## **Changes to the Draft Order After Consultation**

70. Four amendments have been made to our proposal in light of the Ministerial consultation exercise and the clearance of the draft Order. Firstly we have incorporated a legislative requirement to publish the document by which the Board of the Executive authorises the exercise of its powers by individual members, committees and staff (see paragraphs 40-47).
71. Secondly we have specifically excluded, from the Executive's power to authorise the exercise of its powers by other persons, the possibility of authorising any person to legislate by subordinate instrument. This change is in order to ensure that the Order complies with Section 4 of the 2006 Act (also see paragraphs 40-47).
72. Thirdly, we are not proceeding with the removal of a provision relating to withholding all or parts of reports produced in relation to investigations or inquiries. This is because reports are already subject to the FoI Act and removal of the current provision could create inconsistency (see paragraphs 48-51).
73. Finally, the better regulation principles have not been included in the draft Order, as highlighted in paragraphs 64-65. We will incorporate these principles into the working practices of the organisation, and will abide by the Better Regulation principles under the 2006 Act as required to do so under the LRR(RF)O when it comes into force.

## **Related Consultations**

74. A merger of the Gangmasters Licensing Authority and the Executive is under consideration within Government, but there is as yet no firm proposal on which to consult.

## **Compatibility with the European Convention on Human Rights**

75. The Minister is satisfied that the draft Order is compatible with the European Convention on Human Rights. There are no Human rights issues concerned with this draft Order.

## **Compatibility with Obligations Arising From Membership of the European Union**

76. The draft Order is compatible with obligations arising from membership of the European Union.

## **Annex A: List of stakeholders who were sent copies of the Ministerial consultation**

ACAS  
Amicus, the union  
AOHNP (UK), an association not employer  
Association for consultancy and Engineering  
Association of British Insurers  
Association of British Theatre Technicians  
Association of Chief Police Officers  
Association of Train Operating Companies  
Astley Chemical+safety  
BAE Barrow in Furness  
Balfour Beatty plc  
BBC  
Birmingham City Council - Public Protection Committee  
Brighton and Hove City Council  
British Chambers of Commerce  
British Energy  
British Industrial Truck Association  
British Occupational Hygiene Society  
British Safety Industry Federation  
British Safety Council  
Brown Safety Eng  
Cabinet Office  
Centre for Corporate Accountability  
Chartered Institute of Environmental Health  
Chemical Business Association  
Chemical Industries Association  
CO Gas Safety  
Communication Workers Union  
Confederation of British Industry  
Confederation of British Industry (Wales)  
Confederation of Passenger Transport UK  
Construction Clients' Group  
Construction Health and Safety Group  
Construction Industry Council  
Corus Group  
Costain Limited  
Convention of Scottish Local Authorities  
Council of Civil Service Unions  
Cyril Sweett Ltd  
Department for Environment, Food and Rural Affairs  
Department for Enterprise, Trade and Investment – Northern Ireland  
Department for Transport  
Department of Health  
Department for Business, Enterprise and Regulatory Reform  
Derwent safety group

Doctrine and Bond  
E.ON UK plc  
EEF - the manufacturers' organisation  
Engineering Construction Industry Association  
Environment Agency  
Environmental Services Association  
Federation of Small Businesses  
First Division Association  
Forum of Private Business  
GMB  
Greater Manchester Police Federation  
Hazards  
Health and Safety Executive Northern Ireland  
Health and Safety Lawyers' Association  
Health Protection Agency  
Highways Agency  
Home Office  
Hurlock & Daughters Training Ltd  
IKEA  
Institute of Directors  
Institute of Occupational Medicine  
Institution of Occupational Safety and Health  
Jackson Civil Engineering Ltd  
LACORS  
Lancashire Health and Safety Officer Group  
Lancashire Occupational Health And Safety Group  
Law Commission  
Liftec Solutions Ltd  
Local Government Association  
London School of Hygiene and Tropical Medicine  
Moneamus Ltd  
National Association of Schoolmasters Union of Women Teachers  
National Assembly for Wales  
National Grid  
National Pest Technicians Associations  
National Union of Mineworkers  
Northern Ireland Law Commission  
Nuclear Decommissioning Authority  
National Union of Teachers  
Office of Government Commerce  
Office of Rail Regulation  
Picon  
Police Federation of England and Wales  
Professional Contractors Group Ltd  
Professional Health and Safety Services  
Prospect  
Public and Commercial Services Union  
Rail Safety and Standards Board  
Richard Altoft and Associates Ltd  
RMT

Royal College of Nursing  
Royal Environmental Health Institute of Scotland  
RPS  
Rune Associates Limited  
Scotia Gas Networks Plc  
Scottish Environment Protection Agency  
Scottish Executive  
Scottish Hazards Campaign Group  
Scottish Law Commission  
Scottish Trade Union Congress  
Serco  
Severn Trent Water  
Sheffield City Council Environment and Regulatory Services  
Society of Chief Officers of Environmental Health in Scotland  
Society of Local Authority Chief Executives  
St Paul's Community Development Trust  
Tarmac Limited  
The Chartered Institute of Wastes Management  
The Chinese Takeaway Association  
The Ergonomics Society  
The Institution of Engineering and Technology  
The International Marine Contractors Association  
The Law Society  
The Office of the First Minister  
The Royal Society for the Prevention of Accidents  
The Scotch Whisky Association  
The Society & Faculty of Occupational Medicine  
The Stroke Association  
Thompsons Solicitors  
Trade Union Congress  
Unite (Transport and General Workers' Union)  
Union of Construction Allied Trades and Technicians  
UK National Workstress Network  
Unison  
United Kingdom Petroleum Industry Association Limited  
VT Group services  
Welsh Assembly Government  
Welsh Local Government Association  
Yorkshire and the Humber TUC



## **Annex B: List of respondents to the Ministerial consultation**

Confederation of British Industry (CBI)  
Community Transport Association  
Construction Health and Safety Group  
Corus Group  
Doctrine & Bond  
EEF, the manufacturers Organisation (Joint response submitted with IoD)  
Engineering Construction Industry Association (ECIA)  
Faculty of Occupational Medicine  
Forum of Private Business  
GMB  
Health Protection Agency  
Highways Agency  
Institute of Directors (IoD) (Joint response submitted with EEF)  
Jeyes Ltd  
Local Authorities Coordinators of Regulatory Services (LACORS)  
National Association of Schoolmasters Union of Women Teachers (NASUWT)  
Office of Rail Regulation (ORR)  
Professional Contractors Group  
Rail Safety and Standards Board  
Royal college of Nursing  
Royal Haskoning  
Royal Institute of Chartered Surveyors  
Trade Union Congress (TUC)

### **Public**

C. Atwell  
J. Clark  
C. Gifford  
F. Wright

## **Annex C: Results of the Ministerial consultation including comments received from respondents and the Department's response to them**

### **Analysis of the Ministerial Consultation**

1. The consultation was available electronically via the Department's website and hard copies were distributed to 134 stakeholders. Overall 26 responses were received of which 5 were from companies, 4 from individuals, 4 from professional bodies, 5 from employers organisations, 3 from trade unions, 2 from other regulators and 3 from independent bodies.
2. In our view this Ministerial consultation received a low response, almost certainly because the Commission had first conducted an 'in principle' consultation which showed wide support for the proposals. We therefore believe that many stakeholders chose not to respond to what they saw as a closely related consultation.
3. The analysis below firstly looks at key themes arising from the more general comments and these include a response on behalf of the Department. There is then an analysis of the responses to each individual question asked within the consultation.

### **Key Comments**

4. 11 respondents took the opportunity to comment on some of the key principles of the proposed merger which were first aired in the Commission consultation. Results of that consultation are summarised in paragraph 26 of the main text. Some of these respondents did not specifically answer the questions posed within the document.
5. Respondents particularly noted Parts B, (the transfer of current functions and powers to the new Executive) C, (which proposed extending the restrictions placed on the Secretary of State) E (which sets out the appointment and key responsibilities of the Chief Executive), and F (adding certain provisions to enhance arrangements to support local authority regulatory activity). Out of these comments stemmed several issues. The key themes within the comments received or those that required clarification are laid out below and include a response on behalf of the Department.

### Composition of the new Executive

6. The main areas of concern were:
  - the increase in the maximum number of members of the Board of the Executive from 9 to 11 (excluding the Chair);
  - the professional bodies and stakeholder groups who will be consulted on appointments to the Board of the Executive; and
  - whether the Board of the Executive should consist entirely of non-executive members.
7. Some questioned whether the maximum number of members would actually represent the diversity of industry. Other respondents believed that the consultation process would not provide for the self-employed/small businesses or those who did not fall into the employer and employee categories who would normally be consulted. One respondent felt that voluntary organisations should be included in the process. Two respondents believed that the number of members should not be increased, and the current basis for appointing members be maintained.
8. Some respondents felt that a mixed Board of the Executive with both executive and non-executive members remained the best option, and highlighted the benefits of including local authorities in the new structure. One respondent drew on their experience that a mixed Board worked more effectively than an entirely non-executive Board. Some stated that those who run the organisation should take collective responsibility for the key functions of the organisation and therefore be on the Board. It was felt that this factor would be key, in order to meet the objective of the proposal.
9. *Department's Response:*
  - *Two thirds of those responding to the original Commission consultation supported a fully non-executive Board, and the opposing views offered to the Ministerial consultation were also presented then.*
  - *It is our view that a Board which consists of non-executive and executive members would not provide independence and freedom from influence which enforcement officials should have as a point of principle in order to conduct their duties, and is a key prerequisite for merging the two NDPBs. The need for separation between enforcement officials and the Commission was a key point for the government at the time that Robens<sup>9</sup> recommendations were put in place, and they saw the necessity for having a non-executive Board because of this. We intend to have executive members present at meetings of the Board of the Executive.*
  - *As regards the size of the Board, we agree the need to reflect a wider range of stakeholder views. This, though, has to be balanced against impairing the effectiveness of the Board's functioning from having too many members. We have proposed to increase the maximum number*

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<sup>9</sup> Lord Robens' Safety and Health at work (cmdn 5034 1972) was used as the basis for the Health and Safety at Work etc. Act 1974 and the creation of the Commission and the Executive.

*of members by 2 to be carried out when there is a specific requirement to do so. This allows some wider injection of views and skills, while broadly maintaining the current employment focus of the Board's membership. This proposal was supported by 83% of respondents to the Commission's consultation.*

- *We have therefore decided to retain the format of a fully non-executive Board, which will be populated with a maximum of 11 members (excluding the Chair).*

#### Relationships with local authorities

10. Two respondents would have liked the proposal extended to address the current differences they see in enforcement activity between the Executive and local authorities. The use of service level agreements to direct local authorities was also suggested.
11. One respondent stated that there should be a minimum of 2 local authority members on the Board of the Executive. This would provide for consistency between the enforcement practices of the Executive and local authorities. Ensuring this consistency was currently deemed difficult because of the various communities and sectors which local authorities cover, and the general opinion that the Executive had sought to distance itself from public safety. Therefore the proposed submission of local government papers directly to the Board of the Executive and the provisions which would improve exchanging information and working together with local authorities, needed clarification as to how they would work in practice.
12. The same respondent also had reservations over the new Executive being both a partner and 'statutory master', and feared that the merger would unbalance a good regulatory system. They questioned how the Board of the Executive would remain impartial with regards to determining between Executive and local authority enforcement priorities. Surely Executive policies would receive a greater support?
13. *Department's Response:*
  - *In recent years much energy and effort has been devoted to improving the relationship between the Executive and local authorities, as enforcement partners. The objective has been to make best use of our collective resources and it is universally recognised that considerable progress has been made. The commitment to this objective is undiminished.*
  - *The proposed merger in no way undermines this objective and should achieve some modest further improvements (see paragraphs 58-61, in the body of the main text). However, the key to continuing the development of this relationship lies not in constitutional matters but in working practices and effective communications in the field at local, regional and national level.*
  - *We have incorporated into the draft order a legislative requirement to publish the authorisations for exercising the Board of the Executive's*

*powers and functions. This will go some way in defining the duties of the Board and officials, and reinforcing the Board's impartiality with regards to enforcement issues.*

#### Amendments to the Act

14. Two respondents wanted assurances that the fundamentals of the HSW Act would not be amended. Another did not want to see the principles of the HSW Act put at risk merely to update it.
15. Another respondent wanted the full detail of any proposed changes to the functions and powers of the new Executive to be disclosed and properly consulted upon before any decision is made.
16. *Department's Response:*
  - *The purpose of these proposals has only ever been to improve the governance structure while leaving all the fundamentals of the HSW Act untouched.*
  - *The requirements and protections built into the 2006 Act guarantees that any proposals are fully scrutinised, are not controversial and have the support of stakeholders.*

#### Other Issues

17. A few respondents had concerns that the merger would bring about a reduction in the new Executive's budget or the number of inspectors. They also wanted assurances that any cost savings would be used to re-define the Executive's resource allocation towards the current enforcement requirements for specific industries and sectors. One respondent said that any cost savings should be put back into the Executive's resources particularly with regards to enforcement.
18. Other comments saw the new working arrangements as an opportunity to address more specific concerns. One respondent wished to see the reinstatement of a permanently constituted forum for discussion of health and safety issues relating to schools, and another questioned the future plans for the Employment Medical Advisory Service system.
19. One respondent said that 'this proposed change should be examined with a view to seeking to take all work related to health, safety and welfare legislation under the umbrella of enforcement by the new Executive. Areas for consideration should include Gang Master Licensing and the Working Time Directive (at present covered by other government departments)'. The current situation was confusing for employers, employees, safety reps and some enforcers.
20. One respondent asked how and when the efficiency of the new system would be reviewed. What would happen if the new structure was deemed unsuccessful?

21. *Department's Response:*

- *The merger is not financially driven and has no implications for staffing or resources. It is the direct result of the wish of the Minister, Commission and the Executive to update the current governance structure in order to provide an organisation which is fit for purpose. The financial consequences are expected to be minimal.*
- *The idea of merging the Gangmasters Licensing Authority into the Executive is currently under consideration within Government.*
- *The new Executive intends to develop revised performance management processes for all parts of the organisation as part of the Executive's working practices.*

## **Responses to Questions**

Question a) Do you think that the proposal will secure that regulatory functions will be exercised so that they are transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed as explained in paragraph 1.13?

22. 15 responded to this question of which 10 agreed that the proposal will secure regulatory functions which will be exercised so that they are transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. 2 did not agree, and 3 were not convinced that the consultation had shown this in much detail, or that the proposal would fulfil this requirement on its own.

23. One respondent believed that the regulatory functions would only be achieved if the proposal as set out within the consultation was met. They also showed concern over the legal drafting of the functions and powers of the new Executive and wanted assurances that the current duties which were carried out by other responsible parties such as the local authorities would work well together as part of the new arrangements. Another respondent shared part of the same viewpoint, as they felt that the aim would only be achieved if the partnership between the Executive and local authorities was developed. This could possibly be achieved by the new Executive having a greater impact within the community. Another respondent thought that the proposal would meet these functions as long as the independence of enforcement officials was maintained.

24. One respondent felt that the HSW Act as it now stood was an example of good regulation and did not need amending. Another respondent felt that achieving these aims was based on the behaviour of policy makers and the strategic aim of the new Executive. They and another respondent also stated that the proposal did not specify how it would meet these functions and that the proposal may not by itself achieve this goal.

Question b) Do you have views regarding the expected benefits of the proposal as identified in Chapter 3 of this consultation document?

25. 14 responses to this question were received. Some respondents agreed that there would be benefits to the Commission, the Executive and stakeholders arising from the merger such as clear accountability and financial oversight, but these should not be achieved at the expense of key Commission and Executive principles such as enforcement. One respondent commented that the inclusion of an additional member covering the interests of local authorities showed up-to-date thinking and an appreciation of the changing world of industry.
26. Other respondents felt that an organisation which oversaw and was joint partner in operational issues risked unbalancing the existing structure by a disjointed focus and lack of impartiality. Two respondents felt that the proposal did not address the key failings within the current regulatory framework, such as the current division in work and strategies between the Commission, the Executive and local authorities.

Question c) Is there any empirical evidence that you are aware of that supports the need for this reform?

27. 13 responded to this question of which 2 knew of empirical evidence which supported the need for the reform. Of the remainder 3 knew of anecdotal evidence to support the reform, such as the confusion between the roles of the Commission and the Executive.
28. One respondent knew of empirical evidence which placed health and safety regulations as the second most burdensome area of regulation for smaller businesses, but did not think that this alone was evidence for the need for this proposal. Others felt that modernisation of the structure and the HSW Act supported the need for this reform.

Question d) Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposal intends to address?

29. 13 responded to this question. 11 did not know of non-legislative means which would be sufficient in this case. Suggestions for non-legislative means included increases in funding to improve the organisation. Another respondent suggested that re-structuring the governance structure should be completed by having 'a strategic-policy making body incorporating the policy-making and strategic functions currently located within the Executive, and overseeing a delivery orientated Executive and local authorities health and safety delivery functions'.

Question e) Is the proposal put forward in this consultation document proportionate to the policy objective?

30. 14 responded to this question of which 11 believed that the proposal is proportionate to the policy objective. There were varying responses to this question, some queried the depth of information within the Ministerial consultation. One respondent noted that part of the proposal which related to 'eliminating crossed lines of authority' was proportionate, issues relating to accountability were partially proportionate and creating a challenge function was not clear within the proposal. Another respondent believed that the inclusion of one member on the Board of the Executive who would be appointed after consulting with local authorities and re-defining the working procedures between the two parties was not enough to make the policy objective proportionate.

Question f) Does the proposal put forward in this consultation document taken as a whole, strike a fair balance between the public interest and any person adversely affected by it?

31. 13 responded to the question. 11 believed that the consultation document struck a fair balance between the public interest and any person adversely affected by it.
32. One respondent agreed that maintaining the appointment of members covering employee and employer interests on the Board of the Executive guaranteed a fair balance for public interest. Another agreed that the restriction on the Secretary of State in relation to individual enforcement decisions was in the public interest. Other respondents stated that a balance would only be maintained if the proposal ensured that the regulator would operate more effectively.

Question g) Does the proposal put forward in this consultation prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise, as explained in paragraph 4.6? If so, please provide details.

33. 12 responded to this question of which 11 agreed that the consultation did not prevent any person from continuing to exercise any right or freedom.
34. One respondent felt unable to answer this question and feared that the autonomy of the Commission and the Executive would be affected because of the proposal. Another felt that the exercising of rights and freedoms may be carried out in a different way as a result of the merger.



Question h) Do you consider the provisions of the proposal to be constitutionally significant?

35. 11 responded to the question of which 8 felt that the provisions were not constitutionally significant. One respondent felt that the 2006 Act allowed for 'a more generalised prescriptive need' as opposed to the HSW Act. Another respondent partially agreed as they said that the HSW Act was a modern piece of legislation, and they questioned the need for it to be modernised.

Question i) Does the proposal put forward in the consultation document make the law more accessible and easily understood?

36. 13 responded to this question. 6 believed outright that the proposal made the law more accessible. Others felt that merging the two NDPBs and modernising the wording in some parts would make the law more understandable. However health and safety legislation was still deemed inaccessible.

37. Others felt that the aim would partially be met or could be met in conjunction with the better regulation principles. Several respondents felt that a new unitary body would alleviate internal and external confusion. Two respondents stated that the proposal did not address the main area of confusion which they felt lay within the area of local authority enforcement.

Question k) Do you have views on whether there should be a legislative requirement that the new Executive specify the precise terms in which the new Executive will delegate its powers on enforcement issues to officials (as outlined in paragraph 3.11)?

38. 13 responded to this question of which 7 believed that there should be a legislative requirement that the Board of the Executive specify the precise terms in which they will delegate its powers on enforcement issues to officials. 5 felt that such a statement should be published but that there was no legislative requirement for it. Most felt that the definition of how the powers would be delegated was the most important point.

39. Two respondents agreed that they had no strong views as to a legislative requirement. Another respondent stated that there should be consistency across the enforcing authorities. Three respondents also said that these powers should only be delegated to those who act in accordance with Hampton principles, or show fairness, transparency and independence.

40. One respondent said that they would like to see the existing relationship between the Commission, the Executive and local

authorities replicated on the same terms. Another felt that the move would strengthen the warrants on enforcement held by its officials.

Question I) Do you agree that the proposed Parliamentary resolution procedure (as outlined in paragraph 3.37) should apply to the scrutiny of this proposal?

41.11 responded to this question of which 10 agreed with the parliamentary resolution procedure proposed. Most welcomed the opportunity to debate the merger and the issues surrounding it. One respondent felt that the Super Affirmative Resolution Procedure should apply as Orders were a relatively new procedure which should be suitably scrutinised.

#### Summary

42. To conclude the overall reaction to all of the questions was positive. The respondents supported the proposal and agreed that it was appropriate and would not have a negative impact on stakeholders and health and safety law.