

Building Effective Markets
The Role of an Integrated Legal System

Compliance in Health & Safety

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30 January 2013

Health and Safety - setting the scene

- 2,600,682 accidents leading to 3+ days' work absence (2009)
- 3,806 deaths (2009)
- 8.6% suffer from work-related health issues



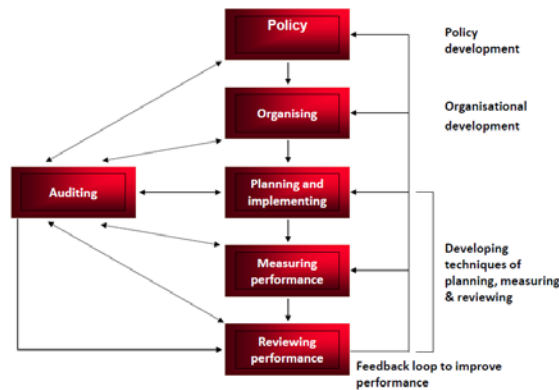
Enforcement paradigms

*“The principal objective of a **compliance** law enforcement system is to secure conformity with the law by means of insuring compliance or by taking action to prevent potential law violations without the necessity to detect process and penalize violators.*

*The principal objective of **deterrence** law enforcement systems is to secure conformity with law by detecting violations of law, determining who is responsible for their violation and penalizing violators to deter violations in the future...”*

Reiss A, 1984, “Selecting strategies of social control over organisational life”, In Hawkins J and Thomas J (Ed), Enforcing Regulation, Kluwer-Nijhoff, London.

The regulatory model



Regulation for management systems

EU Framework Directive 89/391/EEC

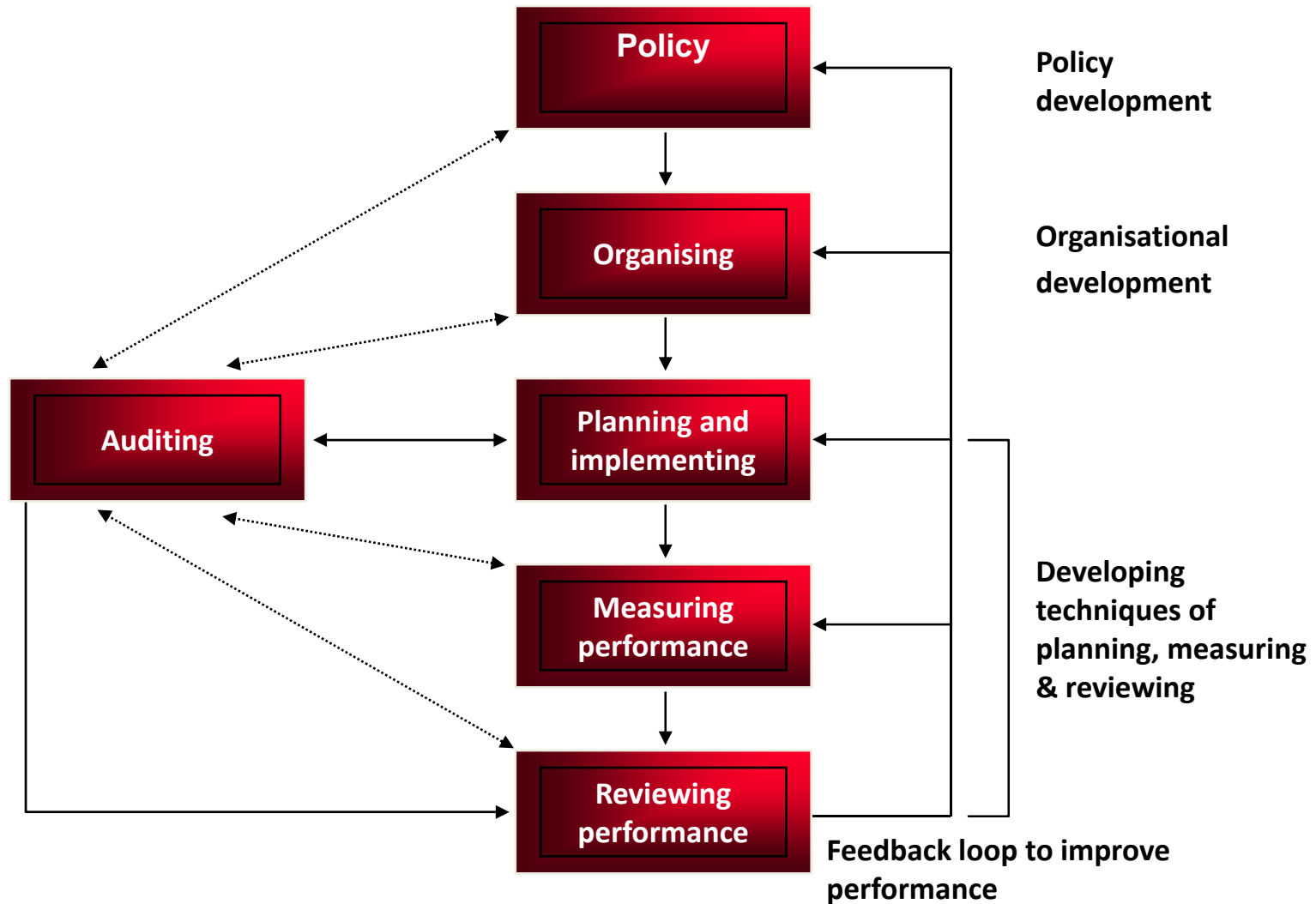
‘Principles of Prevention’

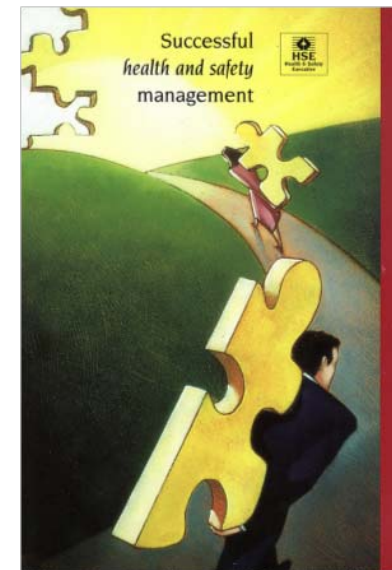
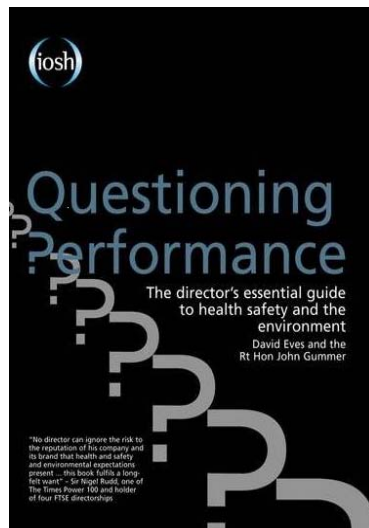
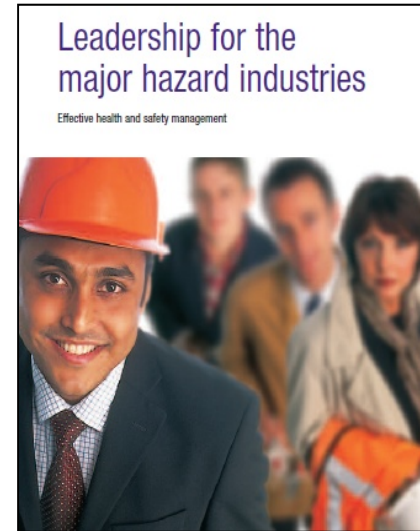
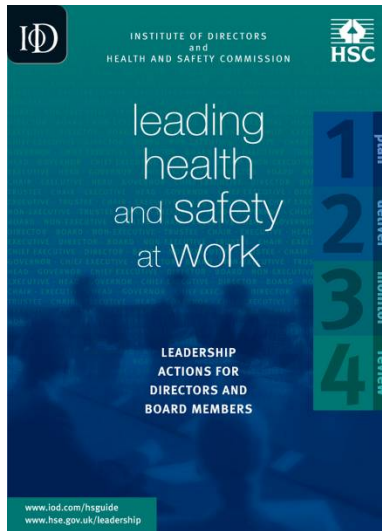
- ✓ avoiding risks
- ✓ evaluating the risks
- ✓ combating the risks at source
- ✓ developing a coherent overall prevention policy
- ✓ giving appropriate instructions and training to staff
- ✓ appointing designated staff or external advisors for compliance



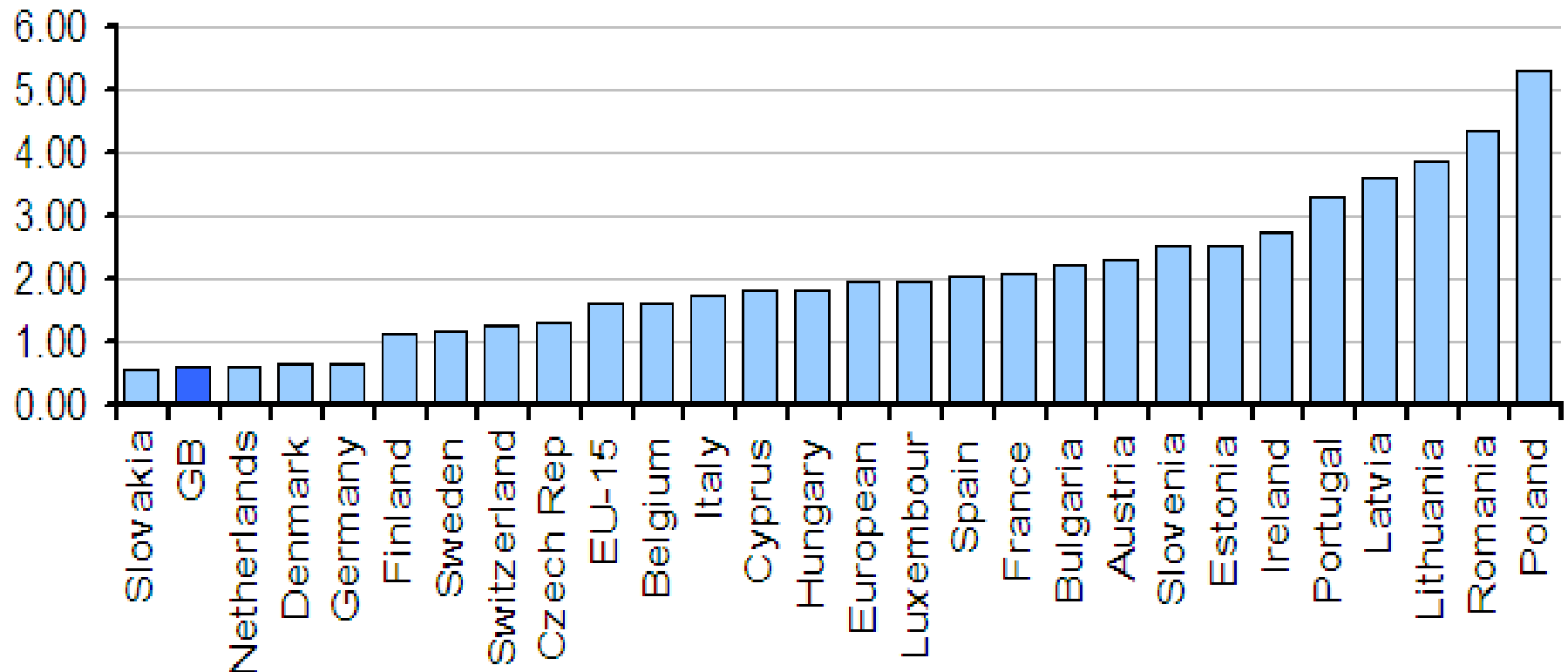
Translates into UK law as ‘Every employer shall make and give effect to such [written] arrangements as are appropriate, having regard to the nature of his activities and the size of his undertaking, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures’

Successful health and safety management





EU countries – fatal accident incidence rate per 100,000 workers (2009)



Deterrence and SME's

A study of food safety compliance in 2005 found, in line with many other studies, that prosecution did not have a deterrent effect on any other business (general deterrence).

Formal enforcement action impacted on the *individual* business targeted (albeit for a limited time period).

This was due to the overwhelming belief of the SMEs involved that they fully complied with food safety requirements unless and until told otherwise.

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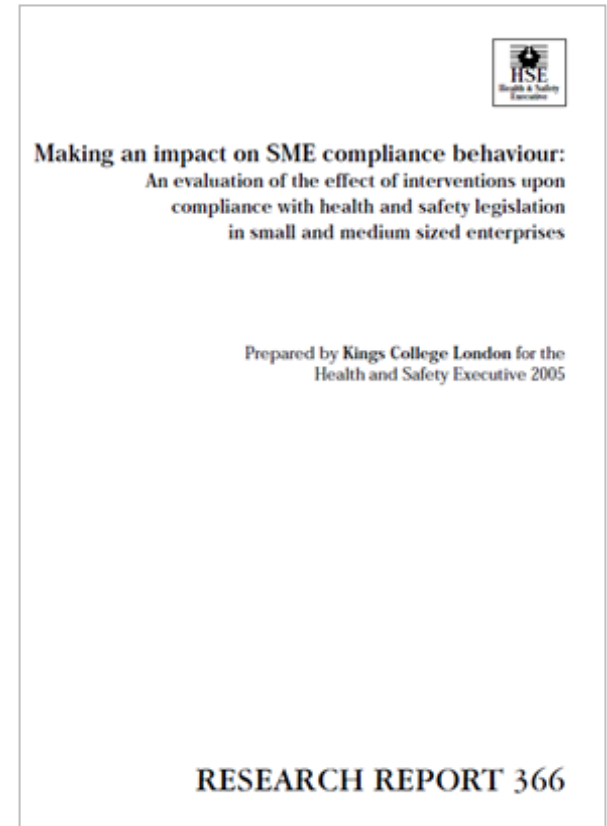
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Deterrence and SME's

A wider (2005) HSE study reported a real lack of any empirical evidence for deterrence theory in relation to SME's.

Instead, the main motivators for these businesses were:

- Fear of loss of credibility with customers and stakeholders
- A perceived 'duty to comply'
- SMEs often have a generalised fear of regulators enforcement activities but need to be aware that enforcement officers are actively carrying out formal enforcement, understand the reasons for these actions and relate these to their own business.



Deterrence and larger organisations

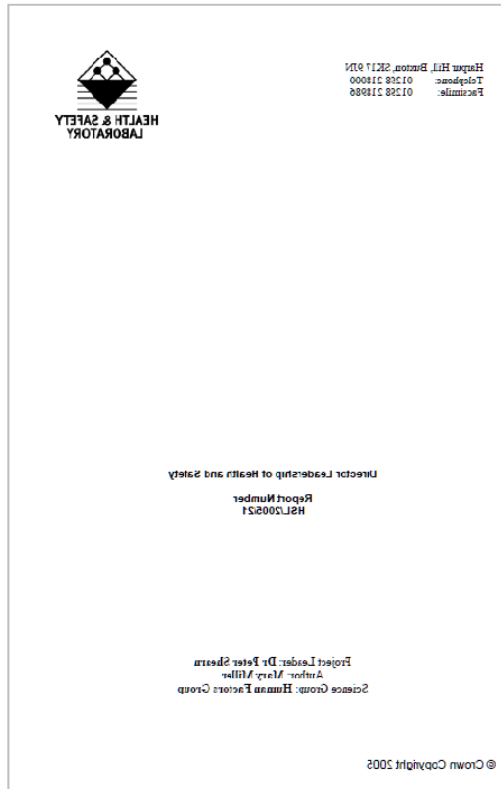
The evidence for general deterrence is weak:
Some conclusions that have been reached in reports on health and safety enforcement:

‘Enforcement does not work by a simple deterrence effect; neither do organisations apply a simple profit oriented or economic optimisation approach to compliance’.

‘Prosecution and resultant fines can be argued as an incentive for improving safety, but significant fines are rare, and the deterrents to prosecution tend to be reputational (the shame of appearing in court, the concern to avoid moral condemnation, the fear of bad publicity) rather than financial’.

Some studies suggest ‘showcase’ actions - which are very focussed and well-publicised - may have some targeted deterrent effect.

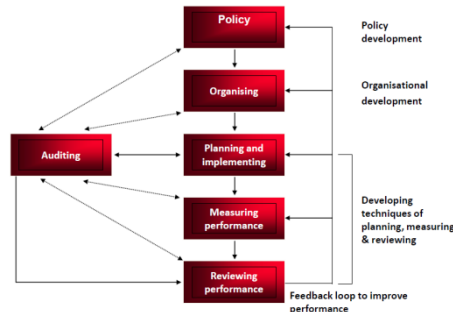
Factors motivating compliance



- Compliance as a behavioural norm
- Protection of reputation
- The 'good employer'
- Supply chain pressure
- Financial savings
- Moral responsibility

Conclusions

A regulatory model can impose management systems requirements on organisations which are flexible and proportionate, and which can be aligned with motivations for socially responsible behaviour.



Conclusions

The evidence for deterrence as an enforcement tool is weak – not just in the health and safety arena but more generally in criminal law and organisational theory.

“The possibility of fines, sanctions, and inspections acts less as a deterrent threat than as a way to focus management attention on institutionalised expectations that may affect the legitimacy and operation of their enterprises.”

*(OECD (2000) Reducing the risk of policy failure:
Challenges for regulatory compliance)*

Conclusions

A lesson for policy makers is – like in the UK directors' duties debate and turnover-based fines – to thoroughly explore empirical evidence and assess impacts before adopting theoretical models.

Conclusions

There are real problems in generating empirical evidence to support enforcement policies.

The law reform debate would be better informed by literature in areas such as criminology, public sector management, business law and organisational theories of how senior and middle managers actually respond to regulation.

And this would help the goal of a more holistic balanced legal system

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