Draft Order laid before Parliament under section 14(1) of the Legislative and Regulatory Reform Act 2006 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No. ***

REGULATORY REFORM

HEALTH AND SAFETY

The Legislative Reform (Health and Safety Executive) Order 2008

Made - - - -	***
Coming into force - -	****2008*

The Secretary of State for Work and Pensions ("the Secretary of State") makes this Order in exercise of the powers conferred by section 2 of the Legislative and Regulatory Reform Act 2006(**1**) ("the 2006 Act").

For the purposes of section 3(1) and (3) of the 2006 Act, the Secretary of State considers that, where relevant, the conditions under sections 3(2) and (4) are satisfied.

The Secretary of State has consulted in accordance with section 13(1) and (2) of the 2006 Act.

The Secretary of State has laid a draft of this Order and an explanatory document before Parliament in accordance with section 14(1) of the 2006 Act.

As provided for in section 15 of the 2006 Act, the affirmative resolution procedure, (within the meaning of Part 1 of the 2006 Act) applies in relation to the making of the Order.

Pursuant to section 17(2) of the 2006 Act, the draft has been approved by resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision

Citation and Commencement

1. This Order may be cited as the Legislative Reform (Health and Safety Executive) Order 2008 and shall come into force on the day after it is made.

(**1**) 2006 c.51 as amended by article 3, and paragraph 146 of Schedule 1, to the Government of Wales (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388); see section 32 for the definitions of "Minister of the Crown" and "regulatory function".

Abolition of the Health and Safety Commission and Executive

2. The Health and Safety Commission and the Health and Safety Executive, as established under section 10 of the Health and Safety at Work etc. Act 1974(**2**), are abolished.

Establishment of the new Health and Safety Executive

3. The Health and Safety at Work etc Act 1974 shall be amended as specified in articles 4 to 20 of this Order.

4. For section 10 substitute ——

"**10. Establishment of the Executive**

(1) There shall be a body corporate to be known as the Health and Safety Executive (in this Act referred to as "the Executive").

(2) The provisions of Schedule 2 shall have effect with respect to the Executive.

(3) The functions of the Executive and of its officers and servants shall be performed on behalf of the Crown.

(4) For the purpose of any civil proceedings arising out of those functions—

(a) in England and Wales and Northern Ireland the Crown Proceedings Act 1947 shall apply to the Executive as if it were a government department within the meaning of that Act, and

(b) in Scotland, the Crown Suits (Scotland) Act 1857 shall apply to the Executive as if it were a public department within the meaning of that Act."

5. For sections 11 to 13 substitute—

"**11. Functions of the Executive**

(1) It shall be the general duty of the Executive to do such things and make such arrangements as it considers appropriate for the general purposes of this Part.

(2) In connection with the general purposes of this Part, the Executive shall—

(a) assist and encourage persons concerned with matters relevant to those purposes to further those purposes;

(b) make arrangements as it considers appropriate for the carrying out of research and the publication of the results of research and the provision of training and information, and encourage research and the provision of training and information by others;

(c) make arrangements as it considers appropriate to secure that the following persons are provided with an information and advisory service on matters relevant to those purposes and are kept informed of and are adequately advised on such matters—

(i) government departments,

(ii) local authorities,

(iii) employers,

(iv) employees,

(**2**) 1974 c.37. Sections 16(1), 18(5), 43(3), 50(1) are amended by the Employment Protection Act 1975 (c.71) sections 116 and 125, Schedule 5, paragraphs 3 to 5, 7 and 8; Schedule 15, paragraphs 12 and 16, and Schedule 18. Sections 27(2) and (3) and 55(1) are amended by the Employment Act 1989 (c.38) section 29, Schedule 6, paragraph 10 and 11 and Schedule 7, part 1. Sections 28(3)(a) and 28(4) are amended by the Environment Act 1995 (c.25) section 120, Schedule 22 paragraph 30. Section 28(5) is amended by S.I.2005/3363 article 5. Sections 16(2) and 50(3) are amended by the Health Protection Agency Act 2004 (c.17) section 11(1) and Schedule 3, paragraph 5. Sections 14(1), 16(1) and 18(5) are amended by the Railways Act 2005 (c.14), section 2, Schedule 3, paragraphs 3, 4, 9 and 10 and Schedule 13, part 1.

(v) organisations representing employers or employees, and

(vi) other persons concerned with matters relevant to the general purposes of this Part.

(3) The Executive shall submit from time to time to the Secretary of State such proposals as the Executive considers appropriate for the making of regulations under any of the relevant statutory provisions.

(4) In subsections (1) to (3) above—

(a) references to the general purposes of this Part do not include references to the railway safety purposes; and

(b) the reference to a power to make regulations under the relevant statutory provisions does not include a reference so far as it is exercisable for the railway safety purposes.

(5) It shall be the duty of the Executive—

(a) to submit to the Secretary of State from time to time particulars of what it proposes to do for the purpose of performing of its functions;

(b) to ensure that its activities are in accordance with proposals approved by the Secretary of State; and

(c) to give effect to any directions given to it by the Secretary of State.

(6) The Executive shall provide a Minister of the Crown on request—

(a) with information about its activities in connection with any matter with which the Minister is concerned; and

(b) with advice on any matter with which he is concerned, where relevant expert advice is obtainable from any of the officers or servants of the Executive, but which is not relevant to the general purposes of this Part.

12. Control of the Executive by the Secretary of State

(1) The Secretary of State may approve any proposals submitted to him under section 11(5)(a) with or without modifications.

(2) The Secretary of State may at any time give to the Executive—

(a) such directions as he thinks fit with respect to its functions, or

(b) such directions which appear to him requisite or expedient to give in the interests of the safety of the State.

(3) The Secretary of State may not under subsection (2) give any directions with regard to the enforcement of the relevant statutory provisions in any particular case.

(4) The reference to directions in subsection (2)(a)—

(a) includes directions modifying the Executive's functions, but

(b) does not include directions conferring functions on the Executive other than any functions of which it was deprived by previous directions given under subsection (2)(a).

Powers of the Executive

13.—(1) Subject to subsection (2), the Executive shall have power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions, including a function conferred on it under this subsection.

(2) The power in subsection (1) shall not include the power to borrow money.

(3) The Executive may make agreements with a government department or other person for that department or person to perform any of its functions, with or without payment.

(4) Subject to subsections (5) and (6), the Executive may make agreements with a Minister of the Crown, with a government department or with a public authority to perform functions exercisable by that Minister, department or authority, with or without payment.

(5) The functions referred to in subsection (4)—

(a) in the case of a Minister of the Crown, include functions not conferred by an enactment;

(b) shall be functions which the Secretary of State considers can be appropriately performed by the Executive; and

(c) do not include any power to make regulations or other instruments of a legislative character.

(6) The Executive may provide services or facilities, with or without payment, otherwise than for the general purposes of this Part, to a government department or public authority in connection with the exercise of that department's or authority's functions.

(7) The Executive may appoint persons or committees of persons to provide it with advice in connection with any of its functions and, without prejudice to subsection (8), it may remunerate these persons.

(8) The Executive may, in connection with the performance of its functions, pay to any person—

(a) travelling and subsistence allowances, and

(b) compensation for loss of remunerative time.

(9) Any amounts paid under subsections (7) and (8) shall be such as may be determined by the Secretary of State, with the approval of the Minister for the Civil Service.

(10) The Executive may—

(a) carry out, arrange for, or make payments for the carrying out of, research into any matter connected with its functions, and

(b) disseminate or arrange for or make payments for the dissemination of information derived from this research.

(11) The Executive may include, in any arrangements made for the provision of services or facilities under subsection (6), provision for the making of payments to the Executive, or any person acting on its behalf, by other parties to the arrangements and by persons using those services or facilities. "

6.—(1) Section 14 is amended as follows.

(2) In section 14(1), for "the Commission" substitute "the Executive".

(3) For subsection (2), substitute—

"(2) The Executive may at any time—

(a) investigate and make a special report on any matter to which this section applies; or

(b) authorise another person to investigate and make a special report into any such matter.

(2A) The Executive may at any time, with the consent of the Secretary of State, direct an inquiry to be held into any matter to which this section applies."

(4) In subsection (3), for "subsection (2)(b)" substitute "subsection (2A)".

(5) For subsection (5) substitute—

"(5) In the case of a special report made by virtue of subsection (2), or a report made by the person holding an inquiry by virtue of subsection (2A), the Executive may cause the report, or so much of it as the Executive feels fit, to be made public at such time and in such manner as it thinks fit."

(6) In subsection (6)—

(a) for "the Commission" substitute "the Executive";

(b) in paragraph (a), for "subsection (2)(a)" substitute "subsection (2)"; and

(c) in paragraph (b), for "subsection (2)(b)" substitute "subsection (2A)".

(7) In subsection (7), for "subsection (2)(b)" substitute "subsection (2A)".

7. In section 15(4)(a), for "the Commission" substitute "the Executive".

8. In section 16, for each reference to "the Commission" substitute "the Executive".

9. In section 17(3)(a), for "the Commission" substitute "the Executive".

10.—(1) Section 18 is amended as follows.

(2) In subsection (4)(b), for "the Commission" substitute "the Executive".

(3) After subsection (4) insert—

"(4A) Before the Executive gives guidance under subsection (4)(b) it shall consult the local authorities.

(4B) It shall be the duty of the Executive and the local authorities—

(a) to work together to establish best practice and consistency in the enforcement of the relevant statutory provisions;

(b) to enter into arrangements with each other for securing cooperation and the exchange of information in connection with the carrying out of their functions with regard to the relevant statutory provisions; and

(c) from time to time review those arrangements and to revise them when they consider it appropriate to do so.".

(4) In subsection (5)(b), for "the Commission" substitute "the Executive".

(5) In subsection (7)—

(a) for "paragraph (a) of section 13(1)" substitute "subsection (3) of section 13",

(b) for "that paragraph" substitute "that subsection", and

(c) each time it appears, omit "the Commission or".

11.—(1) Section 27 is amended as follows.

(2) In subsection (1), for each reference to "the Commission" substitute "the Executive".

(3) In subsection (2), after "Minister of the Crown to the", omit "the Commission or ".

(4) For subsection (3), substitute—

"(3) In the preceding subsection any reference to a Minister of the Crown or the Executive includes respectively a reference to an officer of that person or of that body and also, in the case of a reference to the Executive, includes a reference to—

(a) a person performing any functions of the Executive on its behalf by virtue of section 13(3);

(b) an officer of a body which is so performing such functions; and