

12 July 2011

Health and Safety Review Team
Department for Work and Pensions
Level 2B
Caxton House
Tothill Street
London SW1H 9NA

AG/HSW-1

Dear Sirs

The Lofstedt Review - Call for evidence

The Scotch Whisky Association is the trade association for the Scotch Whisky industry. Our members account for more than 95% of production and sales of Scotch Whisky. Approximately 9,221 people are employed in the Scotch Whisky industry, many in economically deprived areas. Scotch Whisky is exported to 200 different markets all over the world and is one of the UK's top five export earners.

Accident statistics have been collected by the SWA since 1995 in order that the industry can monitor closely trends in health and safety, identify particular strengths and weaknesses and focus on areas for improvement. At the 2009 SWA Members Day, Paul Stollard (Head of HSE Operations Scotland) challenged the Scotch Whisky industry to reduce its AIR to below 1,000. Within a year, companies met this target and this downward trend continues. Injuries incurring more than three days absence from work are steadily falling and the industry AIR is better than the food and drink average.

We welcome the opportunity to contribute to the Lofstedt Review and support the Government's intention to reduce the burden of health and safety legislation on business.

The health and safety regulations that have created significant additional burdens on companies are the COMAH Regulations. In the Scotch Whisky sector, approximately 47 lower tier and 19 top tier sites come within the scope of the Seveso Directive due to the flammable properties of Scotch.

Risk and Regulation

We have consistently argued that the guiding principles of legislation should be that it is necessary, appropriate and proportionate. We understand the need to reduce risk to both people and the environment and fully support the HSE's key goals of preventing major accidents, limiting the consequences of major accident hazards and improving the health and safety of people. But, we firmly believe that regulation and regulatory intervention should be proportionate to the level of risk that an operator poses. It is important that regulation is based upon risk and not just installation hazard. By law, Scotch Whisky must be matured in oak casks for a minimum of 3 years. The industry matures its spirit in warehouses and as stocks are flammable, warehousing, depending on its storage volume,

might be considered to be 'top tier COMAH'. Our members are increasingly finding that whisky warehouses are being expected to comply with very stringent COMAH rules by the Competent Authority, consistent with high-hazard installations with little attention being paid to good operator performance and actual levels of risk. For example, operators frequently are challenged to offer full bunding of whole sites at enormous cost, regardless of risk. Our industry continues to challenge this and we are hopeful that this Loftstedt Review will assist put the breaks on this type of costly regulatory creep.

We agree in principle with the aims of the Seveso Directive and we do not wish to argue for its abolition. However, we have concerns that procedures for compliance are becoming increasingly complex and this trend looks set to continue.

'Regulatory creep' has been evident in relation to COMAH since it commenced in 1999. Our Members report that whilst it initially appeared to be straightforward to comply with COMAH, HSE's expectations are often unclear, leading to significant amounts of time being spent writing and re-writing Safety Reports. The HSE frequently reverts to the operator asking for more detail in a number of areas particularly in relation to ALARP ('as low as reasonably practicable') and this additional detail often leads to many hours of work for the regulated company or the use of external consultants to provide further information (often to prove a negative). These 'hidden' costs of health and safety regulation are usually the most and frequently regulated businesses can incur disproportionate costs proving that their operations do not, in fact, pose a risk.

The application of the HSE's current assessment method, which uses a system of sensitivity criteria, addresses the risks which an existing COMAH establishment would present to potential developments within the vicinity of that establishment. It therefore determines whether the HSE advises against the development or not when notified by the Local Planning Authority at the planning application stage. This assessment procedure considers the vulnerability of people who will live in / use the proposed developments, which could be exposed to a major incident originating within the adjacent COMAH establishment.

The Association understands that what the HSE assessment method does not do, however, is take into account the risks which a proposed development would present to the existing COMAH establishment. The assessment therefore appears to address only one aspect of risk and consequently does not give the HSE the opportunity to advise against an inappropriate development in the vicinity of the COMAH establishment which could, through a domino effect, increase the probability of a major accident hazard actually occurring. Such inappropriate developments could include, for example, enterprises which involve the storage or manufacture of significant quantities of combustible materials, particularly if the process includes potential sources of ignition.

Our members have highlighted concerns regarding the Competent Authority's enforcement of the Regulations and, in particular, inconsistency and disproportionality of approach taken at some sites. The Competent Authority should speak with one voice, but in our experience this rarely happens.

'Major Accident' should also be interpreted as it was originally defined and intended. Charges associated with COMAH from the HSE are high for COMAH operators in the UK and apply to site report discussions with the Competent Authority, inspections, report writing and a contribution towards all recoverable costs such as the provision of guidance.

It is difficult, however, to ascertain from the various Member State reports, whether the food and drink sector is covered by the Directive in all Member States or whether Scotch Whisky is atypical in being covered by the Seveso Directive.

Direct charging schemes

It is helpful that HSE sets out in advance what its expected inspection regime is and planned interventions/activity. This allows our members to plan expenditure on inspections and interventions in advance and budget adequately. But we are concerned about the growing cost of compliance with little financial justification or benefit to site health and safety.

Liaison between HSE and other regulatory authorities

We do not wish to see any additional and unnecessary legislation and believe that the HSE should spend more time and effort focussing on those companies and sectors which are non-compliant and poorer performers. Our industry is subject to extensive inspections by a range of regulators and we believe there is scope for greater co-ordination between the HSE, Fire & Rescue Services, SEPA and Planning Authorities. Whilst engaging with these bodies, it is important for the enforcement demarcation to be clarified.

Many of our sites come under the inspection regime of HSE's Hazardous Installations Directorate (being classified under COMAH as a flammable liquid) as well as HSE's Field Operations Directorate (being classified as a 'food'). We believe it would be more cost-effective and bureaucratically less burdensome to have a single point of contact within the HSE rather than having to deal with inspectors from two different teams.

Overall, the Scotch Whisky industry and SWA has a good working relationship with the HSE and we find their approach to be reasonably fair, particularly when taking on board any concerns we might have. The industry's safety record and proactive approach to health & safety has been widely recognised. The industry is now safer than ever due to improved management systems, and advances in the understanding of hazards and the technical control of them. Companies want to continue a proactive, consistent, but pragmatic approach to ensure that they continue to meet the requirements of the regulations without a disproportionate burden.

We hope these comments are helpful.

Yours faithfully,

Alison Galbraith
Health, Safety & Skills Manager