

'Taking account of risk in regulation – the HSE experience'
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A number of recent reports and speeches have suggested that there has been a drift into a disproportionate attitude to risk. They have gone on to call for a fresh look at the recognition and tolerance of risk in regulation. The paper contends that some UK regulators have, for some considerable time, explicitly rejected a zero-risk approach and sought to balance risk and benefit. However, this approach and intent does not always translate into understanding and action on the ground; in practice it is far harder to communicate risk-based approaches than absolute requirements.

The paper concentrates upon the approach to risk taken by the Health and Safety Executive and explains two key structures used to take account of risk in the regulations it enforces. Firstly HSE and its parent body the HSC, use a tolerability of risk framework to inform decisions about when to recommend new regulation, or amendments to existing regulation. Secondly, most legislative provisions in British law are not absolute in nature, but are qualified by the term 'so far as is reasonably practicable'. Reasonable practicability is a legal concept that requires that a (weighted) balance be struck between the level of risk against the level of sacrifice involved in controlling that risk. The paper contends that the combined effect of these two structures is a form of risk-based regulation.

The paper goes on to briefly identify some of the challenges HSE has faced in making clear to the public both the expectations of health and safety legislation, and its limitations, beyond which the individual has to accept responsibility. It concludes by outlining HSE's response to the challenge in the form of its 'Sensible Risk Campaign'.