

UPDATE ON CURRENT LEGAL ISSUES
including
The Regulatory Enforcement and Sanctions Bill

A meeting, hosted by Asda, a Supporting Company Member of SOFHT, at Asda House, Leeds attracted a total of fifty-nine delegates, many of whom were Environmental Health Practitioners from both the public and private sector, as well as representatives from various divisions of the food industry including retailers, manufacturers and consultants. The meeting was a joint event between SOFHT Yorkshire and North East Branch and the Chartered Institute of Environmental Health Yorkshire & Humber Region. It provided an opportunity for regulators and the regulated to share common interests and to obtain expert guidance on developing areas of legislation.

Rod Hunt, a partner of Osborn Abas Hunt Solicitors, Manchester, was the speaker. His presentation was both informative and enlightening.

Interviews under caution were described as potential opportunities for offenders to put forward mitigation; however, he warned that they should also be treated with caution as the regulators will be looking for an admission of guilt from the offender. Rod advised that tactics can be adopted to ensure businesses achieve the best outcome from an interview under caution; preparation was strongly advised. It was suggested that good preparation could provide possible opportunities for seizing the initiative from the regulator when answering questions under caution.

The new power of arrest introduced in January 2006 was explained; individuals can now be arrested by the police at the request of local authorities in certain circumstances. Included in the powers of arrest by a police officer are situations where there are reasonable grounds for suspecting that an offence is about to be committed. Rod advised that local authorities have been known to use the police to exercise these new powers to enable the prompt and effective investigation of an offence. He warned that businesses need to protect the interests of themselves and their employees. Businesses need to be training individuals in how to deal with interviews under caution as they may have no notice of the situation. Businesses need to prepare by arranging legal cover at the police station to assist any employees arrested under these powers.

Rod provided a clear outline of the government's intention to improve trade in the UK by reducing the regulatory burdens on business, as advised by Hampton, of the Cabinet Office, in 2005. The proposed changes are detailed in **The Regulatory Enforcement and Sanctions Bill**. The meeting was informed that this legislation will overhaul the enforcement powers of regulators and provide them with new sanctions, some of which can be readily administered by the regulators without the need to involve the courts. The meeting was advised of the new enforcement powers and their likely impact on business. There are still many questions to be answered whilst the Bill progresses through the parliamentary process; however its implementation is a government priority - a statute is expected by April 2008. Advice and incentives are seen as the more appropriate method of changing behaviour to achieve legal compliance rather than prosecution. Fixed monetary penalties and Enforcement Undertakings are two of the alternative sanctions. Enforcement Undertakings will require improved liaison between the regulators and businesses to achieve success; the result is a potential benefit on both sides by a reduced number of prosecutions.

Some concerns were discussed at the meeting: the role of primary authorities (introduced by the Bill) was seen by regulators as a challenge in areas with limited resources. A positive feature is the power of regulators to require permanent or temporary cessation of production in situations of serious risk to health or the environment - this aims to limit the activities of unscrupulous traders.

With such major changes in enforcement practices about to be implemented there will be more meetings to discuss the potential impact on both businesses and regulators. All members are encouraged to attend future meetings and join in these opportunities for debate. Further meetings on a variety of topics will be advertised via the SOFHT website

Cath Graham, Meetings Secretary, SOFHT Y & NE Branch