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HEALTH AND SAFETY COMMISSION

AMENDMENT TO POLICE (HEALTH AND SAFETY) REGULATIONS

FOLLOWING THE POLICE REFORM ACT 2002

A Paper by Peter Johnson

Cleared by Mel Draper on 2 January 2002Date

Issue [OTR1]

1. The need to amend the Police (Health and Safety) Regulations 1999 to reflect the intended transfer of health and safety duties from chief police officers to police authorities, as set out in section 95 of the Police Reform Act.

Timing [OTR2]

2. Urgent. The Home Office are seeking to bring the provision transferring the health and safety duty into force this spring, ideally 1 April, though this depends on their progress towards a satisfactory statutory code of practice for police authorities and chief police officers. Our provisional timetable (**Annex 1**) shows the amendment being made on 23 April - we are exploring ways to bring this forward.

Recommendation [OTR3]

3. The Commission is invited to:
 - i. note that the proposed amendment to the Regulations will not change the standards of health and safety protection required for police officers;
 - ii. agree to an exceptionally short consultation period of 4 weeks to reflect the Home Office's prior consultation with stakeholders;
 - iii. agree to the Commission Secretary writing to the police service stakeholders affected (draft letter, **Annex 2**; summary consultation list, **Annex 3**);
 - iv. agree to the Chair considering replies and writing to Ministers proposing the amended Regulation, unless the consultation raises issues which the Chair considers require further Commission discussion;
 - v. note the progress towards a statutory code for police authorities and chief police officers (draft, **Annex 4**)

Background [OTR4]

4. With the agreement of all police service stakeholders, HSC/E, and the then Home Secretary, the Police (Health and Safety) Act 1997 applied health and safety legislation to police officers for the first time. The 1997 Act came into force on 1 July 1998, inserting a new section 51 A into the Health and Safety at Work etc Act 1974. Section 51 A made individual Chief Police Officers the employer of their force police officers for health and safety purposes. (Police civilian workers were already employees, of police authorities, and already subject to health and safety law).
5. The wording of the 1997 Act applied HSWA fully to police officers, but it only applied those regulations which would be made after the 1997 Act came into force. The Police (Health and Safety) Regulations 1999 (**Annex 5**) subsequently filled the gap by applying all the pre-existing regulations to police officers - the 1999 Regulations were made on 14 April 1999.
6. The new police health and safety legislation applied only to those officers not already regarded as employees, in effect the 'area police forces', covering the vast majority of officers, and officers in the Royal Parks Police.
7. **→ ← This section has been removed under exemption 2(indent 2) (Internal discussion and advice)**
8. The Home Office believes that the Police Act 1996 gives police authorities sufficient powers to hold chief police officers to account for ensuring health and safety. **→ ← This section has been removed under exemption 2(indent 2) (Internal discussion and advice)**
9. **→ ← This section has been removed under exemption 2(indent 2) (Internal discussion and advice)** the Home Office agreed the shift of duty holder would be brought into force only in tandem with a statutory code of practice (to be made under the Police Act 1996). The code would set out the respective duties and health and safety management roles of police authority and chief police officer in order to ensure effective compliance, and chief police officer accountability. The statutory code will be followed by further guidance which would also be developed in consultation with stakeholders, including HSE.

10. The changes desired by the Home Office are now set out in the Police Reform Act 2002 section 95 (1) - (3). The intention behind section 95 received widespread support in Parliament. There was no time to consider whether any consequential amendments were needed. (Further background at **Annex 6**).

Consideration [OTR5]

11. The position of a police authority as health and safety duty holder is similar in some ways to that of an organisation's board; indeed HSWA section 37 (2) makes individual authority members liable where an offence by the authority is proved to be attributable to acts or defaults by the member in their management capacity. Police legislation gives Chief Police Officers direction and control over police officers (and police civilians), and chief officers are responsible for police operations. The relationship between authority and chief officer can be seen in practice to resemble that between board and chief executive. Where a breach by the authority is the result of the acts or defaults of others, HSWA sections 7, 36 and 37 permit HSE to hold those others to account. The change will introduce for the first time similar lines of health and safety accountability for both police officers and police civilians.
12. As a result of the Police Reform Act section 95, there is now a need for the Police (Health and Safety) Regulations 1999 to be amended to reflect the transfer of health and safety duties.
13. The Home Office are leading the development of an agreed statutory code in consultation with HSE and police stakeholders. The Home Office hope to have the code ready in time to bring section 95 into force on 1 April. → ← ***This section has been removed under exemption 2(indent 2) (Internal discussion)***
14. On our present timescale the Regulation is likely to be made on 23 April. Between 1 April and 23 April HSWA would apply fully and should provide for enforcement to take place if necessary. However, regulations will not apply until the amending Regulation is made.
15. We will be discussing with HSSD and the Home Office what can be done to remove or shorten the gap. Any delay in bringing section 95 into force would achieve this, as would any possible shortening of the period for DWP to process the amendment prior to laying before Parliament.
16. The proposed short consultation period of 4 weeks would help speed progress. We believe a 4 week period, instead of the usual 12 week minimum, can be justified because all police stakeholders affected are aware of the expected change. → ← ***This section has been removed under exemption 2(indent 2) (Internal discussion)***
17. Solicitor's Office are currently drafting an amendment to the Police (Health and Safety) Regulations which will:
- (i) amend Regulation 2(a) so that the reference to the 'relevant officer' as the employer of police officers for health and safety purposes will be changed to refer instead to the police or 'service' authorities identified in the Police Reform Act 2002 section 95 (1) - (3).

(ii) amend Regulation 3 so that Schedule 1 identifies in column (3) the relevant service authority which will recognise the police staff associations listed in column (2).

18. We plan to attach the draft amendment to the consultation letter. This will help to underline the fact that no change is being made to health and safety requirements generally.

Recommendation: the Commission is invited to (i) agree to the Commission Secretary consulting stakeholders along the lines of the draft letter at Annex 1; (ii) to the Chair writing to Ministers recommending the amending Regulation, unless the consultation raises issues which the Chair considers require further Commission discussion.

Consultation [OTR6]

19. The Home Office preparations for the transfer of health and safety duties are being made in consultation with police service stakeholders, and HSE.

20. The Home Office will be leading a review in early 2003 to reexamine the impact of health and safety law on operational policing, in the light of three years experience. HSE will be closely involved in the review together with police stakeholders.

Presentation [OTR7]

21. → ← *This section has been removed under exemption 2(indent 2) (Internal discussion)*

Costs and Benefits [OTR8]

22. No change, provided accountability of chief police officers is underpinned by a satisfactory code of practice.

Financial/Resource Implications for HSE [OTR9]

23. The transfer of the duties to police authorities in itself should not have major financial implications for HSE. The current programme of planned force inspections may need to be modified. Investigating the longer management chain between police authority and police force operations may demand more inspector time in some cases.

PROVISIONAL TIMETABLE - summary

Consultation letter sent out□	15 January 2003
Final date for replies□	13 February
Submission to Chair, with outcome of consultation and draft letter to Ministers□	17 February
Letter sent to Ministers with proposed amending Regulation□	19 February
Consideration by Department and Ministers□	Normally a minimum of 30 working days
Regulation laid before Parliament□	2 April
Regulation made□	23 April 2003

ANNEX 2

PROPOSED LETTER FROM COMMISSION SECRETARY TO CONSULTEES

AMENDING THE POLICE (HEALTH AND SAFETY) REGULATIONS FOLLOWING THE POLICE REFORM ACT 2002

The Police Reform Act 2002, section 95, when it comes into force, will amend section 51 A of the Health and Safety at Work etc Act 1974. This change will make police authorities in Great Britain instead of chief police officers the employer of police officers for the purpose of protecting their health and safety. There is a need in turn to amend the Police (Health and Safety) Regulations 1999 so that health and safety regulations also apply to police authorities as the employer of police officers. There is a statutory requirement for the Health and Safety Commission to consult publicly before it proposes any new or amended health and safety regulation to Ministers. I am therefore writing on behalf of the Commission to seek any comments you may have on the proposed amendment (attached) [being drafted].

Replies are requested by 13 February 2003. Please reply to [Peter Johnson, Enforcement and Special Groups Branch, Health and Safety Executive, 8 South Wing, Rose Court, 2 Southwark Bridge, London SE1 9HS; e-mail peter.johnson@hse.gsi.gov.uk; telephone 0207 717 6430].

The exceptionally short consultation period in this case reflects the discussions which the Commission understands the Home Office have already been having with the police service stakeholders affected by the changes. The Commission is also aware of the involvement of stakeholders in developing the new statutory code of practice for police authorities and chief police officers.

The change in duty holder will not alter the requirements placed on the designated employers of police officers to safeguard health and safety, nor will it alter the standards of provision which the law requires.

The Police (Health and Safety) Act 1997 and the subsequent Police (Health and Safety) Regulations 1999 apply to all police officers who were not already regarded as employees and thus already covered by health and safety legislation. The 1997 and 1999 police health and safety legislation is thus considered to apply to officers in the Home Office funded 'area police forces', the National Crime Squad, the National Criminal Intelligence Service, and the Royal Parks Police.

The Police (Health and Safety) Act 1997 allocated the health and safety duties to chief police officers individually. Any prosecution for alleged health and safety breaches must therefore be brought against chief police officers individually. This is unusual under health and safety legislation, as the health and safety duties in respect of an organisation normally fall on the body as 'the employer' rather than on any individual.

The Commission understands that in recent years the working relationship between police authorities and chief police officers has been developing such that police authorities are now expected to act in some ways like the board of an organisation, while the chief police officer still retains direction and control over police officers and civilians, and runs policing operations. These developments in accountability have allowed consideration to be given to making the police authority the employer for health and safety purposes. Section 95 of the Police Reform Act will make the transfer the health and safety duties from chief police officers to police authorities.

It has been agreed that section 95 should come into force at the same time as a statutory code of practice for police authorities and chief police officers. The code is to be made under the Police Act 1996. The code will be important in setting out the respective roles of the authorities and chief officers in managing health and safety, and the way in which chief officers will account to police authorities for effective compliance with health and safety legislation. The Commission understands that the Home Office chaired Health and Safety Standing Committee which involves police stakeholders is the vehicle for consulting on the development of the code.

[Under the present timetable, the proposed amending Regulation would be made on or about 23 April. If the decision is taken to bring section 95 into force on 1 April this will mean there is a roughly three week period before all the police health and safety legislation is brought fully into line. You may wish to comment on this.

During that three week period, the general duties set out in the Health and Safety at Work etc Act 1974 would apply fully to police authorities as the employer of police officers, allowing for enforcement if necessary. However, health and safety regulations would not apply in that way during this period, until applied by the amending Regulation to police authorities as the employer of police officers. Efforts are being made to reduce or eliminate the three week gap if possible.] Of course, police authorities are already and will continue to be the employer of police civilian workers.

The attached draft amending Regulation proposes to change regulations 2 and 3 of the Police (Health and Safety) Regulations so that:

- (i) Regulation 2(a) will refer to the relevant police or service authority as the employer of police officers for health and safety purposes, as identified in the Police Reform Act 2002 section 95 (1) - (3).

(ii) Regulation 3, Schedule 1 will identify in column (3) the relevant service authority as recognising the police staff associations listed in column (2).

No other changes are proposed.

The Commission understands that the Home Office plan to lead a review of the impact of health and safety law on policing in the light of experience, in consultation with police stakeholders and HSE. The Commission welcomes this.

The Commission is aware that the special circumstances of some police work means that officers sometimes have to work in the face of significant risks. Where health and safety requirements must be complied with *so far as is reasonably practicable*, the legislation is considered to allow HSE and the courts to take full account of the public expectation for effective policing. The planned review should provide an opportunity to explore real examples so that it will be possible to illustrate better how this necessary operational flexibility applies in practice.

A review of the likely impact of health and safety regulations in the run up to the Police (Health and Safety) Act 1997 and the 1999 Regulations indicated that most requirements, whether qualified in some way or not, would be compatible with effective police operations. However, three requirements were found which appeared to conflict inevitably with the police service role. The Personal Protective Equipment and Provision and Use of Work Equipment Regulations were both amended accordingly by the Police (Health and Safety) Regulations 1999. An exemption from the Noise Regulations is expected to be issued by HSE soon, also reflecting the special circumstances of some policing.

The planned review will provide an opportunity to revisit these questions. If the review finds evidence of inevitable conflict between health and safety regulations and operational policing the Commission will consider whether amendments are needed. There is a statutory requirement for any such proposals to be the subject of proper public consultation before any proposals are made to Ministers, normally allowing a minimum of 12 weeks for comment.

The Commission would be grateful to receive any comments you wish to make on the proposed amending Regulation which is attached. Replies are requested as soon as possible, and no later than 13 February.

Commission Secretary

CONSULTATION LIST - summary

Chief Police Officers

Police Authorities

Chief Officer of the Royal Parks Police

Royal Parks Agency

Director, National Crime Squad (NCS)

Director, National Criminal Intelligence Service (NCIS)

NCS and NCIS Service Authorities

Association of Chief Police Officers (England and Wales)

Association of Chief Police Officers (Scotland)

Police staff associations (England, Wales)

Police staff associations (Scotland)

Public and Commercial Services Union (representing Royal Parks officers)

HM Inspectorate of Constabulary

Police training bodies

Home Office

(up-to-date lists will be obtained from the Home Office)