

| Health and Safety Commission Paper |   | MISC/04/16               |                   |
|------------------------------------|---|--------------------------|-------------------|
| <b>Meeting Date:</b>               | None  | <b>Open Gov. Status:</b> | Partially Open    |
| <b>Type of Paper:</b>              | Miscellaneous   | <b>Paper File Ref:</b>   | SASD/234/1002/903 |
| <b>Exemptions:</b>                 | Draft Instructions to DCA Legal Advisers (Appendix 1 of the Annex to this paper) closed until 1 January 2005: Exemption 2 of the Code of Practice on Access to Government Information (confidential communications between departments and public bodies etc) |                          |                   |

## HEALTH AND SAFETY COMMISSION

### Aligning HSWA section 28 with the Freedom of Information Act 2000 (FOIA)

A Paper by Keith Pritchard

Cleared by Peter Brown on 4 June 2004

#### Issue

1. To update the Commission on progress towards removing unnecessary barriers to openness in HSWA section 28 in line with FOIA.

#### Timing

2. Routine.

#### Recommendation

3. For information - the Commission is invited to note the contents of the Submission to DWP Ministers (at Annex 1) which asks them to confirm their previous agreement that section 28 of HSWA is amended using FOIA powers.

#### Background

4. As set out in HSC/03/113 (copies available from the contact point below).
5. Section 28 will be amended using FOIA powers. Therefore the Commission has not needed formally to consult on proposals or advise Ministers. Nonetheless, as noted in HSC/03/113, giving stakeholders and the wider public an opportunity to discuss the proposed change and contribute their views can only enhance the decision-making process and HSC/E's reputation as an open and accountable organisation.

## **Argument**

6. The consultation process has now finished, and a summary of comments received is at Annex 2 to the Annex. No serious issues were identified. Almost all respondents agreed with the reasons set out for amending section 28. One respondent disagreed with these reasons, while another considered amending section 28 unnecessary on the grounds that it can instead be abolished. However, while it is technically possible to repeal section 28, this latter response did not put forward counter-arguments to those in the consultation documents – ie, relating to the Common Law duty of confidence.

## **Consultation**

7. Within HSE and with DWP.

## **Presentation**

8. This informal consultation exercise should provide reassurance that HSC/E is genuinely committed to openness and freedom of information.

## **Costs and Benefits**

9. There are no costs specifically associated with amending section 28, and the benefits - eg, from greater openness with health and safety information and a public better informed about health and safety, leading to greater understanding of and confidence in the health and safety system - are not readily quantifiable.

## **Financial/Resource Implications for HSE**

10. An increased level of requests in some high-profile areas, especially in the short term, can be expected. And, where requests are refused, there may be greater recourse both to HSE's own appeals process and subsequently to the Information Commissioner, responding to which will have resource implications for HSE.

## **Environmental Implications**

11. None.

## **Other Implications**

12. None.