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**FREEDOM OF INFORMATION STATUS – To be advised**

**HSC/M09/2006**

**Health and Safety Commission**

**Minutes of a meeting of the Health and Safety Commission held on 17 October 2006 in the Globe Room, Rose Court London.**

**Present**

**Bill Callaghan – Chair**  
**Sandy Blair**  
**Margaret Burns**  
**Danny Carrigan**  
**Judith Donovan**  
**Sayeed Khan**  
**John Longworth**  
**Hugh Robertson**  
**Elizabeth Snape**  
**John Spanswick**

**William Sargent Executive Chair of the Better Regulation Executive - Item 6**

**Officials Present**

Geoffrey Podger  
 Justin McCracken  
 Jonathan Rees  
 Vivienne Dews  
 Alex Brett-Holt  
 Colin Douglas  
 Susan Mawer  
 Neal Stone  
 Trevor Cain  
 Ann Marie Farmer

Giles Denham – item 7  
 Richard Boland – items 4, 8  
 Sandra Caldwell – item 9

**Welcome/Introduction**

The Chair welcomed everyone to the meeting and in particular Trevor Cain who had recently joined the secretariat.

**1 Minutes of the meeting held on 5 September 2006 (HSC/M08/2006)**

**1** The minutes were agreed.

**2 Urgent Business**

**2.1** None.

**3 Chief Executive’s Report**

**3.1** Presenting his report Geoffrey Podger highlighted the following issues:

Barrow in Furness Legionella outbreak

HSE would be holding two public hearings in Barrow following the recent conclusion of criminal proceedings. The aim would be to establish how the outbreak occurred and to record the lessons for the future. A report would be produced following the hearings which could be distributed more widely.

HSE implementation of HSC Strategy: Fine tuning review

This would be examining how HSE could better deliver HSC’s strategy and would look at opportunities for local discretion, better evaluation of outcomes and recognising that there were important parts of HSE’s work that did not contribute to delivering the PSA targets.

Board visits to HSE offices

	<p>Board members would be visiting HSE offices over the next two weeks to engage with staff on a number of issues including the financial position.</p> <p><u>Nuclear issues</u> British Nuclear Group Sellafield Ltd (BNGSL) had been fined £500,000 after pleading guilty to breaching health and safety law in respect of the radioactive leak at the Sellafield Thermal Oxide Reprocessing Plant (THORP).</p> <p>British Energy had taken decisions to close down three of their reactors. NII had been closely involved in advising on the issues and were content with the action being taken.</p> <p><u>Asbestos</u> Ministers had signed the Asbestos Regulations, which would come into force on 13 November.</p>
3.2	<p>The Commission welcomed the steps being taken in Barrow in Furness, which were supported by the local authority.</p> <p>The Commission was interested in seeing the results of the fine tuning exercise and the Chief Executive suggested it should see and discuss the draft outcome before it was finalised.</p> <p>The Commission welcomed the discussions the Board was having with staff and was grateful for the information it had received on the financial position. It considered it would be helpful to have a longer and more detailed discussion on the finance situation. It was important that it understood what the priorities would be.</p> <p>A number of Commissioners had met with Amicus at the TUC to hear their views on offshore issues. The Chair confirmed that when the Commission met with the offshore industry at Aberdeen in March this would include both workers' representatives and employers. The Chief Executive reported that HSE was continuing to put pressure on the oil companies and he himself had taken part in a meeting with a major company.</p>
3.3	<p>The Commission thanked the Chief Executive for his report.</p>
4	<p><b>Proposed Construction (Design &amp; Management) (CDM) Regulations 2007 and related Approved Code of Practice (ACoP): draft regulatory package for approval by the Health and Safety Commission (HSC/06/54)</b></p>
4.1	<p>Jonathan Rees introduced the paper which dealt with the European Community implications of the proposed package. The proposals did not change the current transposition arrangements for the Temporary or Mobile Construction Sites Directive in any practical way, particularly in relation to the application of the directive to domestic clients and when co-ordination was required</p> <p>The key changes included: consolidating the main pieces of construction legislation; simplifying the trigger for formal appointments and plans; simpler and clearer designer duties; clear guidance on competence assessment; strengthened client duties; and a new dutyholder (the co-ordinator). The engagement of clients was fundamental to achieving real progress in</p>

	<p>improving standards, due to their influence on projects.</p> <p>The two contentious issues were the abolition of the 'client's agent' and making explicit client duties under the Health and Safety at Work Act and the Management Regulations. No new client duties were being imposed.</p> <p>HSE had asked an independent consultant to carry out research to better understand the concerns of small business construction clients about the strengthened duties. This had highlighted particular issues regarding small clients and those with a lack of construction experience; and identified a need for better CDM integration with the building and planning control regimes. To address these, HSE had simplified the client duty to make it less onerous and was working with DCLG (Department for Communities and Local Government) to see if there was scope for better, if not total, integration – but this would take time to achieve. The ACoP had also been strengthened to make responsibilities clearer for small clients. HSE was working with the CCG (Construction Clients' Group) who were producing simple industry guidance.</p> <p>The key messages were that the focus was on effective planning and sensible risk management, not paperwork; having competent designers, contractors and site workers; and getting the right information to the right people at the right time.</p> <p>HSC was formally asked to note the concerns of clients and HSE's work to address them; to approve the package for submission to the Minister and agree the implementation timetable; to agree the draft letter from the Chair to the Minister; and to agree to HSE continuing its work with the DCLG, on better integration of the CDM, planning and building control regimes and with CCG, to produce clear short guidance for small clients; and to agree that HSE reports back on both by January 2007.</p>
<p><b>4.2</b></p>	<p>Discussing the paper the Commission said there was general agreement about clients' influence and their responsibility for health and safety; and that the principles behind the CDM Regulations and the aims of their revision had been broadly endorsed. The aim of the package was to make the CDM obligations simpler, clearer and easier to comply with. There had been a long and full consultation on the proposals and the construction industry had reached a consensus, believing that the proposed Regulations removed existing confusion and strengthened the health and safety position. The package was supported by CONIAC and by the Strategic Forum for Construction.</p> <p>The Commission had concerns however about the impact of the package on small clients. HSC's Small Business Trade Association Forum opposed the package as it considered it would be too onerous and would not make it easier for small firms to comply.</p> <p>The Commission made the following points:</p> <ul style="list-style-type: none"> <li>• The proposal to work with DCLG and the Scottish Executive to better integrate CDM, Building Control and planning regimes was welcome and clearly the way to achieve real simplification, but this was a slow process. There appeared to have been insufficient discussion with local authorities to see if they were able to support this approach.</li> </ul>

	<ul style="list-style-type: none"> <li>• SMEs' views should be noted, and officials should continue to work with small firms between now and April to deliver good guidance, seen as the key to addressing SMEs concerns, but should not delay the package</li> <li>• No new responsibilities were being imposed on small clients. They had always had a duty to make suitable management arrangements, although they may not have complied with them. Under the new proposals they could appoint a construction professional to help them if necessary, but the duty was qualified by a reasonableness test and what was required was proportionate.</li> <li>• The package did make it easier to comply.</li> <li>• Regulations were only one element in achieving improvements in health and safety in construction; a wide range of interventions had been initiated.</li> <li>• It was suggested that the new proposals could add to the costs of construction work for clients, although as HSE was unaware of the basis for this estimate, and it did not concur with the detailed RIA, the Chair remarked that it would become self-fulfilling if not corrected.</li> <li>• Concern that there may be insufficient qualified people (e.g. co-ordinators) around to undertake the tasks;</li> </ul> <p>The Chair noted the concerns expressed regarding the client duties, but also the test of reasonableness. He considered that HSE had already taken more time than planned on the package in order to ensure industry consensus and felt that delaying it until October 2007 was unlikely to resolve small client concerns. In any event, the key guidance could only follow the Regulations, which therefore needed to be put in place first. The ACoP had been strengthened to give clear simple messages about what small clients were expected to do.</p>
<p><b>4.3</b></p>	<p>Responding, the Executive recognised that a process of education was needed as well as regulations in order to achieve improvement. Clients had a huge influence on standards and set the tone for projects, regardless of size. A lot of progress had been made, but nevertheless it had to be recognised that 75% of fatalities happened on small sites.</p> <p>Regulation 9 was a test of reasonableness; it did not mean that a small client had to become an expert; and what needed to be done was clearly set out in the ACoP.</p> <p>HSE would report back to the Commission in January on progress made in taking forward the actions outlined in paragraph 12 of the paper to help small clients.</p> <p>The RIA showed that the benefits outweighed the costs, but if there was a perception that the proposals would add significantly to costs then this needed to be addressed. The proposals were a simplification measure, which HSE believed would lead to better outcomes, and therefore felt it was right to go ahead</p>
<p><b>4.4</b></p>	<p>The Commission noted the genuine concerns of small clients. It formally approved the package for submission to Ministers and agreed the implementation timetable. It agreed that the work with DTI and CCG to produce good clear guidance was crucial; and that taking forward the work with DCLG, the Scottish Executive and local authorities to integrate with</p>

	planning and building controls was equally important.
<b>5</b>	<b>Communications Update (HSC/06/81)</b>
<b>5.1</b>	<p>Introducing the paper Colin Douglas said it provided an overview of progress with the communications strategy and focused on the steps taken to put the press office on a more proactive basis, which had already shown positive results. The annex to the paper showed a continuing positive movement in MPs' satisfaction levels with HSE.</p> <p>In response to earlier questions from Commissioners about the evaluation of the Backs campaign he said that a substantial evaluation would be carried out not just on impact but on how awareness translated into changed behaviour, although this was difficult to do. There had already been a significant response to the campaign. The issue was one that affected 80% of the population. Back pain accounts for 40% of musculoskeletal disorders which, themselves, cost the economy around £5.7 billion. The £2.2m cost of the campaign compared well to national advertising campaigns which were usually in the region of £3 to £4 million.</p>
<b>5.2</b>	<p>The Commission welcomed the recent campaigns but wanted to be sure that such major campaigns were developed in consultation with key stakeholders.</p> <p>It commended the web-site and welcomed the restructuring of the press office. It was encouraged by the improved press coverage HSE was receiving, reinforcing the constructive work being done.</p> <p>The Commission also made the following comments:</p> <ul style="list-style-type: none"> <li>• Whether the organisations HSE was benchmarked against (Annex 1 paragraph 11) were relevant and wondered whether the work with IIP (Annex 2 paragraph 12) was as effective as initially planned.</li> <li>• Whether the annex to the paper could be presented in a way that was more relevant to those with no media expertise.</li> <li>• No mention was made of EEF (Annex 2 paragraph 12), a key stakeholder which had made a significant contribution to our work.</li> <li>• What feedback had been obtained on how the public perceived HSC/E.</li> <li>• Whether a recent press article about the number of HSE press officers had been accurate.</li> </ul>
	<p>Responding, the Executive agreed that stakeholder input to campaigns was important and it had had positive feedback from stakeholders during early engagement on the backs campaign. Focus groups were only used when the campaign brief had been set.</p> <p>MORI surveys had been used to assess public views. These had shown that HSE was well regarded and health and safety seen as important. However they revealed some complacency amongst both employers and employees.</p> <p>The staffing figures given in the press article included all communications staff, including those dealing with publications and the website. The press office was much smaller.</p> <p>It undertook to improve the next paper.</p>
<b>5.3</b>	The Chair thanked the presenter for the paper and stressed the importance of involving stakeholder groups.

<b>6</b>	<b>BRE presentation on delivering the better regulation agenda</b>
<b>6.1</b>	The Chair welcomed William Sargent, executive Chair of the Better Regulation Executive (BRE), to the meeting.
<b>6.2</b>	<p>William Sargent explained the background to the BRE, which had been tasked by Government to facilitate and enable the recommendations of the Better Regulation Task Force 2005 and Hampton reports. HSE was one of the four regulators perceived to have the biggest impact on the private and public sectors and he was pleased to work with both HSC and HSE</p> <p>The aim of the simplification programme was to look at existing regulations and see if they could be simplified. The measurement of administrative burdens had an ambitious timetable.</p> <p>HSE's plan had been the first significant plan received and was an exemplar. It had set itself a significant target of achieving a £500 million reduction in the £2billion administrative costs in this area. He was also encouraged by HSC's initiative on sensible risk, which he was encouraging other departments to take on board. One of the major costs to business was through over compliance because of a vacuum in information.</p> <p>Regulation was crucial but he wanted to remove the economic waste in compliance.</p>
<b>6.3</b>	<p>The Commission were pleased to hear that the focus was on better regulation rather than abolition. Regulation was in place to protect the vulnerable and it was important not to focus solely on the regulated.</p> <p>HSC had a history of simplification; the Health and Safety at Work Act had reduced a large swathe of regulations, but regulation was not necessarily a burden, it was a positive thing. In many cases it provided a basic safety net and the aim was to develop a culture of continuous improvement.</p> <p>HSE's simplification plan had been supported by both CBI and TUC, and they also recognised that it was not seen as a threat.</p> <p>The Commission had concerns about the definition of an administrative burden, for instance safety cases were part of achieving safety rather than just an administrative exercise. Evidence showed that the process of producing a safety case could lead to improved health and safety.</p> <p>It questioned how BRE would measure success; for instance what did it expect the impact to be on small businesses. A lot depended on the guidance that reached small firms.</p> <p>It questioned the relationship between BRE and LBRO and thought there was some confusion about the structure. There was a fear that a small number of targets at the centre grew to many more out in practice.</p> <p>It asked whether he could become a champion for better regulation</p>
	<p>William Sargent emphasised that for him the objectives of regulations were a given, it was how they were achieved that was his concern. His focus was on waste.</p> <p>He saw his role as champion as challenging the media when they got it</p>

	<p>wrong and explaining what was happening across government.</p> <p>He acknowledged that the relationship with LBRO would need more work.</p> <p>He was working with Treasury on the next Spending Review to ensure fewer better targets.</p> <p>Success would be measured through surveys and assessing the way the principles were embedded in legislation from the start.</p>
	<p>The Chair thanked William Sargent for his presentation and the good relationship HSC/E had with BRE. HSC had been pleased to sign up to HSE's simplification plan but targets were challenging and not all within HSC/E's control, for instance EU developments. At times it was difficult to distinguish regulatory burden from policy purpose.</p> <p>However, HSC saw no purpose in having regulations that were unduly burdensome.</p>
<p><b>7</b></p>	<p><b>Options for the merger of the Gangmasters licensing Authority with HSE (HSC/06/81)</b></p>
<p><b>7.1</b></p>	<p>Giles Denham introduced the paper. The Hampton review had recommended a number of mergers with similar regulators including the Gangmasters Licensing Authority (GLA). This had not been sought by HSC but there were potential synergies. The merger was planned, with government agreement, for 2009 since the GLA had only recently been established. However, Defra ministers had given a public commitment to consult on the options soon.</p> <p>The paper set out a range of options and tried to balance the sensitivities of stakeholders with the efficiencies to be gained. Whilst the merger had to be real, it was important to preserve the expert input provided by the GLA Board. For this reason HSE recommended that a reshaped Board remained to advise the Commission.</p> <p>To realise some of the synergies it was proposed that 'corporate services' were amalgamated but that GLA should start as a separate body within HSE. This would be subject to review.</p> <p>The Commission were asked:</p> <ul style="list-style-type: none"> <li>• Were the right options identified and explored;</li> <li>• Did it agree with the proposals for the GLA Board;</li> <li>• Was the right option proposed for the GLA initially, and did it support a longer term review of this</li> </ul>
<p><b>7.2</b></p>	<p>The Commission commended the paper and in particular that it had included a range of options.</p> <p>It discussed the proposal regarding the GLA Board. Whilst recognising that it was currently preferable that it should remain an externally recognisable entity it was concerned about the constitutional implications for HSC and the potential for ambiguity. The Executive advised that whilst the Board would advise the Commission, it would be the Commission that was accountable to Ministers.</p> <p>The arrangements for the GLA itself would also be subject to review.</p>

	The Commission asked about the financial and resource implications; HSE must not be left in position where there was insufficient funding to enable the GLA to carry out its important tasks.
7.3	The Commission agreed that option A was the only way forward for the Board likely to be acceptable to stakeholders and that option B was the best for GLA staff. However, any merger must be on the basis of adequate funding.  The Commission agreed that the options recommended in the paper should be consulted upon by Defra.
	<b>Items 8 and 9 are fully closed.</b>
→8	<b>Fully Closed Freedom of Information Act Sections; 35(Formulation of Government Policy) and 42 (legal professional privilege)</b>  <b>Supplementary Note: Proposed Construction (Design &amp; Management) (CDM) Regulations 2007 and related Approved Code of Practice (ACoP): draft regulatory package for approval by the Health and Safety Commission (HSC/06/54)</b>
8.1	
8.2	
9	<b>Fully Closed Freedom of Information Act Section 22 – Statistical Information which is not yet in the public domain.</b>  <b>Progress Report from the Enforcement Strategic Enabling Programme (HSC/06/80)</b>
9.1	
9.2	
9.3	
	<b>←</b>
	<b>Below the Line</b>
10	<b>The Olympics – an update (HSC/06/79)</b>
10.1	The Commission noted HSE's proposed approach to the Olympics as summarised in the paper.
11	<b>ILO Promotional Framework Convention for Occupational Safety and Health (HSC/06/72)</b>
11.1	The Commission agreed that the Chair should write to the Minister supporting ratification of the Convention.
12	<b>Update: Public Safety in the Sensible Risk Management Campaign (HSC/06/53)</b>
12.1	The Commission noted the outcome of the work and agreed that the workstream should be subsumed within that of Sensible Risk Management.
13	<b>The Implications of the Court of Appeal Decision in HTM Ltd (HSC/06/85)</b>
13.1	The Commission noted the ruling and its implications.
	<b>Miscellaneous Papers</b>
14	<b>BACKS 2005 Campaign – Final Report MISC/06/22</b>
14.1	The Commission noted the outcome of the campaign.

