



28 January 2003

Dear

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

I am writing on behalf of the Health and Safety Commission to seek any comments you may wish to make on a proposed amendment ([attached](#)) to the Police (Health and Safety) Regulations 1999, or on the underlying proposal to transfer the health and safety duty to police authorities.

The Police Reform Act 2002, section 95 provides for the amendment of section 51 A of the Health and Safety at Work etc Act 1974. Section 95 enables police authorities in Great Britain to be made the employers of police officers for the purpose of protecting their health and safety, instead of chief police officers as at present. An Order has yet to be made bringing this provision into force. The Health and Safety Commission understands that this is dependent on the development of a statutory code of practice made under the Police Act 1996 which will ensure that police forces are in effect accountable to police authorities for compliance with health and safety legislation.

Bringing health and safety legislation fully into line with section 95 would in turn require an amendment to 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.

Consultation period

The Commission understands that the Home Office have already had discussions 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. However, before the Commission can propose any change in health and safety regulation to Ministers, it needs to be satisfied itself that the change is compatible with protecting health and safety. The Commission has therefore decided that a twelve week period is needed to give all police service interests a full opportunity to make any views known.

Scope of police health and safety legislation

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.

'Employer' of police officers

The Police (Health and Safety) Act 1997 allocated the health and safety duties to chief police officers individually; the chief police officer became the employer of the police officers in their force for health and safety purposes. 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 making chief police officers the employer was intended to reflect the fact that legislation on policing gives chief police officers direction and control over police officers.

The intended change in duty holder should not alter the requirements placed on the designated employers of police officers to safeguard health and safety, nor should it alter the standards of provision which the law requires. It is also vital that any changes continue to provide for effective enforcement of health and safety legislation in relation to the variety of police activities.

Proposed statutory code

Steps therefore need to be taken to ensure that police authorities will find it reasonably practicable to secure police officer and police civilian health and safety. This will be an essential element in a satisfactory statutory code. The code will need to set 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 code would also need to be able to ensure that HSE would be able to carry out enforcement action when appropriate in relation to the full range of police operations.

The Commission requires that health and safety enforcement is proportionate to the seriousness of risks created, as set out in its Enforcement Policy Statement (available on the HSE website at <http://www.hse.gov.uk/pubns/hsc15.pdf>). In most cases inspectors secure compliance with health and safety law by means of giving advice and information. When appropriate, Improvement and Prohibition Notices are used in order to secure compliance. Prosecutions are reserved for the most serious alleged offences, and are very few in number.

It is important that any statutory code ensures that a prosecution can be brought in cases where it is alleged there have been serious failures to prevent or control risks to police officers or others. The code will be necessary to provide proof that it will be rea-

sonably practicable for police authorities to carry out the health and safety duties as employer of police officers.

The Commission understands that the Home Office chaired Health and Safety Standing Committee which involves police stakeholders is currently working to develop a suitable code of practice. As indicated above, a vital element in a satisfactory code will be a clear statement about the accountability of senior police officers on health and safety matters.

In Scotland, the Commission understands there may be no provision for such a statutory code. The Scottish Executive is considering what arrangements could be put in place in Scotland to ensure that police authorities there would be able effectively to perform the role of employer of police officers for health and safety purposes.

Draft amending regulation

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.

Impact of health and safety legislation on policing

In addition to the intended transfer of duties, 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 how this necessary operational flexibility applies in practice.

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;
- on the proposed transfer of health and safety duties to police authorities; or,
- on the implications of the transfer for safeguarding the work-related health, safety and welfare of police officers, police civilians, and others who may be affected by police force work activities.

Replies to this letter are requested by no later than 22 April 2003.

Please reply to Simon Newman, Enforcement and Special Groups Branch, Health and Safety Executive, 8 South Wing, Rose Court, 2 Southwark Bridge, London SE1 9HS; e-mail simon.newman@hse.gsi.gov.uk; telephone 0207 717 6888.

Yours sincerely,

A handwritten signature in blue ink that reads "Mark Dempsey". The signature is written in a cursive style and is positioned above a faint, circular official stamp.

Commission Secretary