

Health and Safety Commission Minutes		HSC/03/M12	
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Health and Safety Commission

Minutes of a meeting of the Health and Safety Commission held on 9 December in the Globe Room, 2 Southwark Bridge, London SE1 9HS

Present

Bill Callaghan – Chair
Abdul Chowdry
Joyce Edmond-Smith
Judith Hackitt
George Brumwell
Elizabeth Snape
Margaret Burns

Apologies

John Longworth
Owen Tudor

Officials Present

Timothy Walker
Kate Timms
Justin McCracken
Vivienne Dews
Robert Humm
Paul Kloss
Mark Dempsey
Ashley Salandy
Sian Lewis

Presenters

Item 3 – Brian Etheridge, Ian Greenwood, Phil Kemball, Steve Pointer
Item 4 – John Ewins, Jennifer Terry
Item 5 – Phil Scott, Allan Davies
Item 6 – Linda Varney, Anna Bliss
Item 7 – Les Philpott, Judith Critchley
Item 8 – Jonathon Holvey, Steve Kay, Chris Hurley

1	Minutes of the meeting held on 11 November 2003
1.1	The minutes were agreed.
2	Urgent business not covered by items on the agenda
2.1	<ul style="list-style-type: none"> • Colin Douglas had been appointed HSE's Director of Communications and took up his position in the new year. The Chair would arrange for him to meet Commissioners in due course. • The recent High Court ruling on the ships to be decommissioned on Teeside does not affect the status of HSE's previous decision to grant an exemption to Able UK. • The Commission had received letters from the Freight Transport Association, LP Gas Association, Calor Gas Limited and the CBI about HSE's proposals for the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004. It was agreed to have a substantive discussion in the light of their comments.
3	A Strategy for workplace health and safety in GB to 2010 and beyond (HSC/03/145)

3.1	<p>Brian Etheridge introduced the paper. The draft strategy had changed since October through external consultation and analysis of the research on the effectiveness of HSE interventions. The text had been simplified and there was now better clarity and more focus on the key messages. There were now 4 strategic themes instead of the 7 that appeared in the previous draft. The review of the research on intervention effectiveness had revealed some interesting facts but there was no “golden bullet”.</p>
3.2	<p>The Commission agreed that the draft had improved but there was concern over two issues - resources and enforcement. Commissioners agreed that HSE and LA resources should be better targeted to where they could have the most impact but felt that there should also be a statement at the outset of the document of the difficulties that the current resource constraints create. Similarly, the document sometimes gave the impression that HSE would be effectively “backing away” from enforcement. Justin McCracken confirmed that this was not the intention but that there would be more emphasis on other forms of intervention to encourage dutyholders to comply. Better prioritisation would be necessary even with infinite resources. It was important to anticipate any allegations about reduced enforcement by making these things clear early on in the document. It was agreed that the Chair’s foreword should include a reference to the need for adequate resources while recognising that these are finite and must be targeted.</p>
3.3	<p>The following points also came out in discussion:</p> <ul style="list-style-type: none"> • The role of trade unions and safety representatives should be highlighted; • The references to SMEs are welcomed but there was no mention of intermediaries; • How we communicate the vision should be spelt out (internet, marketing etc.); • The phrase “no coherent direction to the overall health and safety system” could be better articulated; • There were risks in encouraging self-regulation and moving away from public safety without robust evidence and arguments; • We needed to be clear about how the strategy sits with the health and safety arrangements that are already in place.
3.4	<p>It was agreed that the document would be amended in line with the discussion and the Chair would clear the revised draft with a view to getting it to the Minister before the Christmas break. The Chair thanked Brian Etheridge and his team for the work they had done in such a short period.</p>
4	Prosecution improvement project
4.1	<p>Justin McCracken introduced Jennifer Terry and John Ewins for this item. It was the first of several operational issues on which he wanted to update the Commission. The project’s main recommendation involved a formal separation of the roles of investigator and prosecutor (to be known as independent legal oversight) for HSE’s most significant cases (approx 10% of all cases) in line with the recommendations of the Philip’s Report (1981) and the Gower Hammond Report (2001). Currently HSE’s inspectors both investigated and prosecuted in most cases. The project proposed criteria against which individual cases could be assessed to see if lawyers should be involved.</p>

4.2	<p>This separation would be introduced from 5th April 2004 in England and Wales for certain cases:</p> <ul style="list-style-type: none"> • Those of national importance or high public interest; • Those where HSE needs to defend health and safety legislation or to manage the development of case law; • Those which impact on wider issues of law and policy; or • Those that involve joint working on enforcement with the police and CPS. <p>These cases would be managed and delivered by HSE's Solicitors Office. There was a need for modest additional resource at the beginning but this should be offset by savings in our use of solicitor agents (who currently handle many of these cases).</p>
4.3	<p>The project would also improve the management of solicitor agents who will continue to handle about 20% of cases. Guidance on ensuring independence in prosecution decision-making for all cases not subject to independent legal oversight will be issued shortly. Much of the court-related administrative burden can be borne by administrative staff freeing up inspector time. This was being trialled in the North West for rollout to other divisions in 2004/05. In the longer-term this should also improve quality and efficiency in our handling of court work. Enforcement guidance has been published on the intranet so that inspectors have access to advice on all aspects of legal and enforcement work. LAs would have access to this guidance either through the HSE website or via their local Enforcement Liaison Officer.</p>
4.4	<p>Commissioners felt this was a sensible idea particularly if it freed up inspector time and made better use of in-house legal support. The important thing was the impact it has on health and safety. The Chair thanked the presenters for the update and asked to be kept informed of the project's impact and evaluation.</p>
5	<p>LA Strategic Programme</p> <p>Phil Scott - who was leading the strategic programme - and Allan Davies introduced this item. A draft statement of intent capturing the essence of the programme had been drafted. The programme drew on and reflected the LA aspects of the HSC strategy. Positive meetings have already taken place with LACORS and LGA. More fieldwork was being planned and delivered jointly. Two-way secondment was one area being examined. The programme would be developed with LAs by the end of January and further proposals will be presented to the Commission at its February meeting. A detailed programme will be finalised in the Summer and implemented in April 2005.</p>
5.1	<p>The following points came out in discussion:</p> <ul style="list-style-type: none"> • LAs are keen to engage in the programme. It was important to examine the relationship between LAs and HSE but at some point it may be necessary to do the same for the LA/HSC interface. • It would be impossible to work with every LA in England, Scotland and Wales. The statement of intent should refer to working with Local Authority associations rather than LAs. • COSLA, LGA and WLGA are not fully representative but they have been the traditional way of reaching collective agreement across LAs.

5.2	Allan Davies gave an update on Local Authority auditing. There would be another report of a failing authority at the February Commission meeting. The HELA conference planned for the following day will focus on LA/HSE partnership working rather than auditing. The auditing programme should be seen as an accepted part of monitoring performance instead of a naming and shaming campaign.
6	OHAC reconstitution (HSC/03/149)
6.1	Linda Varney and Anna Bliss presented this paper. The Occupational Health Advisory Committee (OHAC) was due for review at the end of 2003 when its current period of appointment expires. The paper proposed a wider network of stakeholders to push forward the occupational health agenda, particularly through working on “task and finish” projects. A consequence of the proposals would be terminating OHAC at the end of this period.
6.2	The Commission was reluctant to make significant changes without a clearer view of the alternatives and how they would deliver the Commission’s priorities, although it recognised that OHAC had provided little recent strategic advice. Given the priority that occupational health was afforded in the new strategy, there could also be presentational problems in disbanding OHAC. It was agreed that OHAC would remain as it is for the time being until the Commission had seen worked up proposals on how its replacement would help to deliver the occupational health programme.
7	Proposals for the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004 (HSC/03/139)
7.1	Les Philpott and Judith Critchley introduced this paper which had been brought above the line after representations had been received from the industry on certain aspects of the proposed regulatory package. The Liquid Petroleum Gas Association had raised concerns about draft provisions which prohibited the use of pi-marked cylinders where, in accordance with a derogation, they were filled above normally permitted levels. They had also expressed concerns about draft provisions which did not allow the use of pi-marked valves with non-pi-marked cylinders. Officials have since met with the Liquid Petroleum Gas Association and the issues have been resolved through some changes to the relevant provisions.
7.2	A separate issue had been raised by the Freight Transport Association (FTA) on the transport of diesel. Previously, diesel had not been classed as a dangerous for domestic transport but has now been brought into scope for the first time. The FTA questioned the basis for this. In negotiations on the international ADR agreement, which went back many years and of which the FTA were aware, the UK had tried to keep diesel outside its scope but had been outvoted. The issue of new regulations covering diesel had been highlighted in the CD and HSE officials had had a number of discussions with the FTA with the aim of finding lawful means to minimise the operational impact of the new requirements. A further meeting had been arranged with the FTA on 17 December to try to resolve the problem.
7.3	Commissioners agreed to delegate to the Chair the final decision on whether to endorse the draft regulations in light of advice from officials following the meeting with FTA. If there were still unresolved issues, the Commission would be notified and there would be a further discussion.

8	HSE Trade Unions discussion on the HSC strategy
8.1	<p>Jonathon Holvey (Vice Chair, HSE TUs), Steve Kay (Prospect) and Chris Hurley (PCS) were invited to have an informal discussion about the HSC strategy. The Trade Unions had collectively submitted a response to the strategy consultation and had seen the paper discussed at today's meeting (HSC/03/145). The unions expressed concern over the following areas of the strategy:</p> <ul style="list-style-type: none"> • Resources; • What LAs will be able to achieve with HSE; and • What the strategy will mean in practice.
8.2	<p>There was also concern about the impression that enforcement would only be used as a last resort rather than a central theme of HSE's intervention strategy. The TUs were also concerned that HSE staff feel alienated from the whole process of developing the strategy, which could have been avoided if staff had been involved earlier. There was also a feeling that the current moratorium on publications should be lifted as many of the documents fit with the strategy.</p>
8.3	<p>The Chair said that the Commission shared many of these concerns which were discussed at length earlier today. The Chair assured the unions that he would make the most compelling case for resources but that whatever the eventual settlement, HSE would still need to prioritise its activities. He believed the strategy drew on the best of what is already happening in HSE and hoped that the final version would command staff support.</p>
	Below the Line Papers
9	HSC Rail Strategy 2002-2005 (Updated for 2004-2005) – (HSC/03/121)
9.1	The Commission agreed to the publication, via the internet, of the updated Rail Strategy.
10	Health & Safety Fees Regulations 2004 (HSC/03/147)
10.1	<p>The Commission agreed that:</p> <ul style="list-style-type: none"> ▪ the Chair writes along the lines of the attached letter to Ministers setting out the proposed changes for agreement in principle (Annex A); and ▪ the draft Regulations were sent to Ministers for approval, once finalised
11	Proposals for the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004 (HSC/03/139)
11.1	<p>The Commission:</p> <ol style="list-style-type: none"> a) endorsed the draft Regulations, in particular the proposed approach to maintaining existing requirements in relation to emergency placarding arrangements (see paragraphs 8-10); and b) agreed that the Chair submits the attached draft Regulations at annex 1 to David Jamieson under cover of the letter at annex 2, with a recommendation that he agreed them, signed the printed copy of the Regulations and put them before Parliament.
12	Publication of HSC's "Targets" Report 2002-2003 (HSC/03/153)
12.1	The Commission sends comments on the draft by 12 December in order to meet deadlines of publication on the HSE website by 18 December and a printed version as early as possible in the New Year.
	Miscellaneous Papers

13	Notification of Political Agreement on the proposed Physical Agents (Electromagnetic Fields) Directive (MISC/03/33)
13.1	The Commission noted that political agreement had been secured and the text would now be considered by the European Parliament at its second reading
14	Progress Report on ELCI Compliance (MISC/03/35)
14.1	The Commission noted the content of the paper and the attached Report
15	Able UK Update (MISC/03/36)
15.1	The Commission noted the chronology and the most recent events set out in this paper.

**Commission Secretary
December 2003**