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## **HEALTH AND SAFETY COMMISSION**

### **ENFORCEMENT OF HEALTH AND SAFETY ON AIRCRAFT**

#### **Implementation of the Directive on Working Time of Mobile Workers in Civil Aviation**

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**Cleared by Nick Starling on 26 August 2003**

#### **Issue**

1. The purpose of this paper is to inform Commissioners of the Department for Transport's (DfT) proposals for enforcing the occupational health and safety aspects of the Aviation Working Time Directive and to seek the Commission's agreement to our response to the proposals.

#### **Timing**

2. The UK is required to implement the EC Directive on Working Time of Mobile Workers in Civil Aviation by 1 December 2003. The closing date for comments on DfT's proposals is 30 September.

#### **Recommendation**

3. That HSC endorses the view that Civil Aviation Authority (CAA) should take the lead in respect of enforcement responsibility for both working time and occupational health and safety issues for mobile workers in civil aviation.

#### **Background**

4. At its meeting on 14 May 2002, the Commission discussed the Department for Transport's proposals for the allocation of responsibility for enforcement of passenger health issues in response to the recommendations of the House of Lords Science and Technology Committee. As a result of the response to the consultation document Ministers agreed that the CAA should be given responsibility for enforcement of passenger and crew health issues. A unit is currently being set up within the CAA to deal with these issues, funded initially by DfT.

5. The consultation document also invited comments on who should take the lead responsibility for enforcement in relation to occupational health and safety at work on aircraft in flight. This question arose from the adoption of Council Directive 2000/79/EC concerning the European Agreement on the Organisation of Working

Time of Mobile Workers in Civil Aviation (Annex 5). This Directive implements a social partners agreement between the organisations representing employers and employees in the civil aviation industry in the European Union. In addition to dealing with working time of mobile workers, clause 5 of the Agreement requires mobile workers in civil aviation to have “adequate health and safety protection” at all times. HSC expressed the opinion that enforcement responsibility should rest with CAA.

## **Argument**

6. DfT has now produced proposals for regulations implementing this Directive which takes account discussions with HSE, CAA and representatives of both sides of the industry. The draft regulations assign enforcement responsibility for the whole regulations to the CAA including the health and safety aspects. This proposal was not reached easily; CAA continue to have serious concerns that it will detract from their primary role in ensuring aviation safety, as well as over the resource implications and their lack of experience in OHS issues. However, unless there is a major objection during the consultation which overturns this proposal, CAA will assume responsibility for enforcing all health and safety issues relating to aircraft in flight wherever they are in the world (similar to the role the Maritime and Coastguard Agency has for the UK shipping industry). HSE will have no formal enforcement authority under the regulations although the HSW Act and much of its subordinate legislation will continue to apply to aircraft in flight over Great Britain. A draft of the regulations is at Annex 3.

7. In assigning enforcement responsibility to CAA the DfT’s proposals fulfil the objectives that HSC/E has pursued in negotiations on this issue over the last two years. In particular:

- assigning enforcement responsibility for all aspects of health and safety on aircraft (operational safety, passenger health and occupational health and safety) to CAA will avoid issues of overlapping jurisdiction and the potential problems of airlines having to deal with multiple enforcement agencies for flying operations; and
- as many occupational health and safety issues are inextricably linked to how aircraft are designed, operated and maintained, it means that HSE will not find itself responsible for enforcement in areas where it has no expertise and no power to bring about change except through the CAA.

8. Because of the lack of regulatory knowledge or experience in this field the DfT, after consultation with the airlines and trade unions, are proposing to set up a partnership approach involving CAA, HSE, and the representatives of employers and employees/trade unions in the industry in order to take this work forward. The draft guidance at Annex 4 sets out the background to this and indicates issues which will need to be considered.

9. The proposal will require an ongoing commitment from HSE to provide help and support to CAA as the regulator. We will also have a key role in the partnership approach, as work proceeds to establish standards for occupational health and safety. We envisage that our assistance will be needed particularly in the early stages of the work. However, overall this will involve considerably less than the

resources that would be needed if HSE took on the enforcement responsibility and is justified by the benefits of being involved:

- as CAA has little experience in purely OHS matters it would probably refuse to accept enforcement responsibility without the assurance of HSE's help and advice in this area;
- involvement in the partnership will enable HSE to influence the standards agreed for protecting the health and safety of aircrew without taking on enforcement responsibility; and
- because CAA has historically not had close involvement with trade unions other than the British Airline Pilots Association, HSE's involvement will provide some reassurance to the trade unions that the partnership approach will deliver adequate protection.

## **Consultation**

10 HSE's Planning Efficiency and Finance Division have been consulted about the resource implications and have agreed the line taken. HSE's Press Office is content with the presentational aspects of the paper. HSE officials have also spoken to representatives of both the airlines and trades unions about the proposed allocation of enforcement to CAA.

## **Presentation**

11 We do not think it is necessary to publicise the HSC's response to this consultation exercise. However, if we are asked for our views, we propose that we should take the line that:

- we believe that the CAA is the proper body to enforce occupational health and safety on board aircraft because of its knowledge and experience in relation to flying operations and its role in international negotiations on standards for aircraft construction and operation;
- it is right that there should be a single body with responsibility for regulating all aspects of health and safety in relation to aircraft operations; and
- we are satisfied that HSE's role in advising CAA and in the partnership proposed by DfT will enable us to make an effective contribution towards protecting the health and safety of the crews of aircraft during flying operations.

## **Resource implications**

12. An initial estimate of the work HSE would need to do to support CAA in establishing an enforcement regime for health and safety and contributing to the partnership approach suggests that we would need to provide about 75 days during the first year with an ongoing commitment of 28 days a year thereafter. The estimated cost of this assistance is £30,000 during the first year and £10,000 per year thereafter. HSE would seek to recover these costs from the Department for Trade and Industry which has overall responsibility for implementing the Working Time Directives.

## **Other Implications**

13. None

## **Action**

14. HSC's views on the consultation document will be communicated to DfT.

## **Attachments**

Annex 1	Draft reply from the Chairman
Annex 2	Consultation letter from DfT
Annex 3	Draft Civil Aviation (Working Time) Regulations
Annex 4	Draft guidance on the Civil Aviation (Working Time) Regulations
Annex 5	Council Directive 2000/79/EC - Aviation Working time Directive