

Health and Safety Commission Minutes**HSC/03/M09**

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Health and Safety Commission

Minutes of a meeting of the Health and Safety Commission held on 16 September in the Hope Room, 2 Southwark Bridge, London SE1 9HS

Present

Bill Callaghan – Chair
Abdul Chowdry
Joyce Edmond-Smith
Judith Hackitt
Margaret Burns
Owen Tudor
Judith Donovan

Apologies

John Longworth
George Brumwell

Officials Present

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

Presenters

Item 3 – Bill Macdonald, Helen Smart, Major General Peter Gilchrist (DPA), Dr Geoffrey Hooper (MOD), Duncan McDonald
Item 4 – Kevin Myers, Stephen Wright, Nick Starling, Richard Hooker
Item 5 – Bill Gillan, Maureen Kingman, Steve Peckitt
Item 6 – Rachel Russell, Donald Goodhew, Linda Buxton
Item 7 – Tony Bandle, David Bosworth, Richard Hooker, Nick Starling
Item 8 – Dr Elizabeth Gibby, Peter Hornsby
Item 9 – John Thompson, Bill Macdonald
Item 10 – Donald Goodhew, Baz Terych

1	Minutes of the meeting held on 05 August 2003
1.1	<p>The Commission recommended that:</p> <ul style="list-style-type: none"> • Only the QC's advice should be closed in section 2; • Sections 6.4 and 6.5 should be fully open. <p>With these changes made, the minutes were agreed.</p>
2	Urgent business not covered by items on the agenda
2.1	<ul style="list-style-type: none"> • <u>Implementation of the Framework Directive (SFARP):</u> Kate Timms updated the Commission. A submission had been sent to Des Browne and HSC/E was now preparing a robust reply to the Reasoned Opinion (RO) in defence of SFARP. However, there was a need to consider alternatives, including a satisfactory compromise. The government's reply was due to be ready just outside of the two month period, but the matter would still proceed to the European Court. • <u>The Commission asked to move paper HSC/03/98 above the line.</u> This would now be discussed as item 8.

3	Asbestos Elimination in the Ministry of Defence (MoD) – HSC/03/87:
3.1	Bill Macdonald introduced the paper. The Asbestos (Prohibitions) (Amendments) Regulations 1999, permit the Secretary of State for Defence to exempt Her Majesty's forces from all or any of the requirements imposed by these Regulations in order to ensure that defence capability is not compromised. The exemption certificates are renewed every two years and are due to expire on 23 November 2003. The MoD had submitted a report to the Commission annually since the Regulations were amended in 1999. This report was the fourth annual update to HSC and summarised the improvement achieved between June 2002 and July 2003.
3.2	Major General Peter Gilchrist thanked HSC for the opportunity to report on progress and explained that work on the elimination of asbestos in MoD was by no means finished. In 2002, the number of extant "justifications" was at 158. Currently the amount stood at 43 and was forecast to fall to 20 by 2006. The principal condition attached to each of the justifications was that there was "no suitable alternative" to the use of chrysotile asbestos in arms, munitions or war materials. Where there had been success in identifying suitable alternatives, equipment had often had to be modified accordingly and safety considerations were essential.
3.3	The Defence Equipment Inventory contained about 1,600,000 line items (gaskets, brake linings etc) and in 1999/2000 around 18,000 of these line items contained or were suspected to contain asbestos. This equated to approximately 1% of the total inventory. In 2002, the MoD reported some 13,240 items in service that contained, or were suspected of containing chrysotile. This number was currently estimated as 12,382 and was predicted to fall to 8800 by 2006, equating to approximately one half of one percent of the total inventory. These estimations were positive news but would need validating next year.
3.4	<p>There were various options with the removal of asbestos:</p> <ul style="list-style-type: none"> • Remove an item without need for a replacement; • Identify and procure alternative items and replace them on an opportunity basis; • Leave an item in place until the equipment goes out of service. <p>The example of the Sea King (SK) helicopter was used to illustrate the removal process. In 2000, 49 items that contained asbestos were identified. By 2001, 36 suitable alternatives had been found and the SK was forecast to be asbestos free by late 2005. An estimation of the total cost to remove asbestos from the SK fleet came to in excess of +£1m.</p>
3.5	A Restricted Materials electronic database had been established within the last 12 months to track and identify progress in eliminating chrysotile from the Defence inventory. This provided a clearer picture of the progress made and should provide a clear indication of when all chrysotile would be removed from the inventory. The database provided ease of access to the records, for effective maintenance and updating, and would be used to inform future reports. Work to add future components to the database was scheduled to be completed in this calendar year.

3.6	<p>The Restricted Material Steering Group was preparing a Submission to the Secretary of State for Defence. The Submission would:</p> <ul style="list-style-type: none"> • Note the progress made in reducing the number of Justifications required; • Confirm that the Exemption was still required; • Propose that the Exemption was extended for a further 2 years and that the terms and conditions remained unchanged; • Take into account comments made by HSC concerning this presentation.
3.7	<p>The Commission welcomed the progress made. They were reassured that the MoD has formed a defence disposal agency tasked by the Secretary of State to ensure that jobs were done properly.</p>
3.8	<p>The Chair thanked the presenters for both the presentation and the hard work that had gone into the Asbestos Management Programme. HSC was pleased with the methodical way the reduction was being undertaken. In summary, the Commission noted the work of the Restricted Materials Steering Group in relation to the elimination of asbestos. The MoD were invited to report back in the future.</p>
4	Proposed Revision of the CDM Regulations 1994 and the Construction HSW Regulations 1996 – HSC/03/93
4.1	<p>Stephen Wright introduced the paper. On 10 June 2003, HSE presented a proposed action plan to the Commission (paper HSC/03/55) which was prepared in light of responses to the Discussion Document “Revitalising Health and Safety in Construction”. A few of the wide ranging actions involved revision of the construction health and safety regulations. The Commission had asked for a further discussion on the case for change and an outline of the changes that were being considered.</p>
4.2	<p>The CDM ACoP was seen as the first change before revision of the Regulations. While the standards set out in the CDM ACoP were essentially correct, some issues could not be properly addressed in the ACoP because of wording in the regulations. Consequently, there was evidence that some of the resource currently devoted to CDM compliance was being wasted. Revision of the regulations would aim to maintain the CDM principles, but better focus attention on the management of health and safety – encouraging its integration into project management and discouraging paperwork that did not add value. This would involve clearer, better regulation, not more regulation. This clarity would also increase the enforceability of the regulations, where appropriate. However, regulations were just one part of HSC/E’s strategy.</p>
4.3	<p>The Commission felt that the principles of CDM were still a good model, but were sometimes difficult to operate in practice. While simpler, shorter, clearer regulations would be a positive step, the whole industry must be involved and committed to them. The complexity lay in the fact that HSC/E produced both ACoP’s, Regulations and Guidance. It was essential to involve stakeholders from across the industry in consultation and the involvement of CONIAC was useful. These regulations would need to be consistent with the working at height directive.</p>
4.4	<p>The Commission noted that the the value of changing the regulations, might be limited since the original ones were not intended to be complicated. It had not been long since the ACoP was revised and a judgement on its success may take longer to establish. The Commission questioned what would be done differently, in terms of process, to ensure a cleaner outcome than last time. It was noted that development of revised regulations, ACoP and guidance was only expected to account for 1-2% of HSE’s existing resources devoted to the Construction Priority Programme.</p>

4.5	The Chair thanked the presenters. HSC/E needed to get the whole package of regulations, ACoP and guidance correct. Key players from across the construction industry must be engaged and HSC concerns must be considered. With this in mind, the Commission agreed to the preparation of a consultative document (CD) with a view to publication in Spring 2004, proposing revisions to the CDM Regulations 1994 and the parts of the Construction HSW Regulations 1996 that remain after implementation of the WAH regulations.
5	Revocation of the Anthrax Prevention Order & Related Legislation – HSC/03/34:
5.1	Bill Gillan introduced the paper. HSE took the view that The Anthrax Prevention Order (APO) was no longer a credible strategy for controlling anthrax. HSE had reported to the Commission twice before on the revocation of the APO and HSC had been content. However, owing to industry opposition, a date for revocation was not set. HSE had subsequently met again with Industry employer and employee representatives to explain the case for revocation. In May 2003, HSE prepared a paper on revoking the APO for consultation with industry and trade unions via the HSC's Textile Industry Advisory Committee (TEXIAC). Overwhelming support had now been given to revoke the APO and related legislation provided HSC/E worked with industry to help them adopt the principles outlined in Control of Substances Hazardous to Health (COSHH) Regulations 2002. Such an approach would ensure that all the risks to workers and others associated with this process were assessed and controlled.
5.2	The Commission felt that the proposal was logical but care would need to be taken in the way this message was communicated. Interest in anthrax issues had increased and this action may be open to misinterpretation.
5.3	The Chair thanked the presenters. The Commission supported HSE's proposal to revoke the APO and associated legislation on the grounds that it was outdated legislation, had a very limited scope and relevant health and safety issues were addressed by COSHH 2002.
6	HSC/E Race Equality Scheme First Annual Review – HSC/03/90:
6.1	Rachel Russell introduced the paper. Some progress had been made against all of the actions, but it was a complex area with no one problem and no one solution. HSE had to maintain momentum and ensure the the issues became a part of mainstream business: the new strategy, sector and communications work provided opportunities for new approaches, and monitoring, research results and stakeholder engagement were important this year.
6.2	The Commission welcomed the work and felt that, now under a new Minister, HSC/E had a good opportunity to campaign further on this issue. The issue had moved on from race and was more about diversity involving all minority groups. The Commission noted that there was an increasing amount of migrant labour and that the labour market was rapidly changing. Certain sectors (agriculture and construction) now relied on migrant labour and the Commission were interested in HSE's approach to migrant workers. The Commission agreed that they had a role in promoting diversity when accompanying inspectors on site visits. While good work was going on the, on the organisational culture had to be more comfortable with diversity issues. A key test in the future would be to see if these developments filtered up to BME representation in the Senior Civil Service.

6.3	<p>The Chair thanked the presenters. The Commission:</p> <ul style="list-style-type: none"> • welcomed and noted the progress on consultation and the action plan in paragraphs 7-10 and Annex A; • agreed the wording of a revised Race Equality Scheme at Annex B (substantive amendments are summarised in Annex C); and • agreed proposals for publication and publicity at paragraphs 13 and 14. <p>The Commission also asked to be kept informed of projects, developments and research. Achieving the employment targets, especially at Senior Civil Service level were important.</p>
7	Use of Societal Risk in Regulating COMAH and Producing Advice for Major Hazards Land Use Planning – HSC/03/82:
7.1	<p>Tony Bandle introduced the paper and welcomed this early opportunity for discussion. The dilemma faced was:</p> <ul style="list-style-type: none"> • how should HSE (as the regulator and acting in the public interest) balance the risk of its advice not being requested (or not taken), against its being seen as unduly risk averse and promoting planning blight; • who should bear the cost of any increased safety arising from any new development adjacent to a major hazard installation; • what part should HSE and other government departments and local planning authorities play? The beneficiaries of the developments going ahead were principally the developer, the local authorities and the local communities (although in the later cases the benefits would need to be offset by the costs of lives lost of damage, emergency response and disaster recovery etc).
7.2	<p>In the event that HSE stays with its current policy and practice, the only really sustainable longer term solution to the reconciliation of land-use planning and COMAH regulation would be through a joined up government agreement. HSE would like a view from the Commission on how to take this work forward.</p>
7.3	<p>The Commission expressed concerns and felt that the paper did not fully highlight the seriousness of this issue. The idea of relocating 20 of the Top Tier installations at a cost of around £50bn was thought impossible, since the UK is such a crowded island. Relocation abroad would be at huge cost to the UK economy. The Commission felt that the paper made basic assumptions and that it was misleading to assume that HSC/E's own modeling processes was used elsewhere in Europe.</p>
7.4	<p>The Commission agreed that societal risk could not be dismissed. Many opposing views would need to be balanced and consistent advice must be given. A key element of HSC/E's role was not to stop people taking risks but to help and ensure that risks were properly managed. At the moment, HSC/E was under a great deal of pressure and there was a clear need to protect the organisation's integrity. It was strongly felt that this issue should be addressed in a joined up government process of working.</p>
7.5	<p>The Chair thanked the presenters. In conclusion, Des Browne needed to be involved to help push this issue across Whitehall. The heart of this matter was about how costs and benefits were shared. Under present planning law, it was difficult to find any scope for balance. This was a matter of urgency and importance, and more work was essential if the significance of the issues to other departments was to be recognised.</p>
8	Update on Accreditation and Licensing – HSC/03/98

8.1	<p>Dr Elizabeth Gibby introduced the paper. This provided an update on progress in developing policy to implement Recommendations 24,25, 26 and 47 of the Ladbroke Grove Rail Inquiry, Part 2 Report, given that the Railway Safety and Standards Board (RSSB) currently did not wish to fulfill the role envisaged by Lord Cullen. Specifically, RSSB was not minded to seek a significant role in setting up and operating a national accreditation/certification scheme for suppliers, or have responsibility for a similar scheme for the licensing of train drivers and signallers. The operation of such schemes would have significant financial and resourcing implications for RSSB. The Rail Industry Safety Body (RISB) development group, under the chairmanship of the Office of the Rail Regulator (ORR), did not consider such roles as falling within the organisation's core functions, although its constitution agreement does not prevent it from doing such work if its members wish it to do so. Currently, RSSB considered that the commercial administration of these schemes was more appropriate.</p>
8.2	<p>The Commission expressed disappointment. The issues of accreditation and licensing were Cullen recommendations, of which HSC/E were guardians. RSSB was a body created from recommendations made by Lord Cullen and had been identified as the body to take the specific work here forward and should be showing leadership. Leadership on these issues was not evident, despite encouragement from HSC/E.</p>
8.3	<p>The Chair thanked the presenters for their paper. He concluded that RSSB was set up to show strong leadership and that HSC/E needed to make its concerns on this matter well known. In the first instance, the Chair would write to RSSB. In summing up, the Commission noted:</p> <ul style="list-style-type: none"> • the current policy options now under consideration (<i>Para's 12-22</i>); • that these policy options would be developed further with industry stakeholders through dialogue in a HSC Discussion Document, due to be considered by HSC in October, and through the creation of a steering group;
9	<p>Discussion on HSE granting an exemption certificate lifting an order banning the import of asbestos, which will allow 12 ships containing asbestos to be brought to Teeside – Subsequent developments since the last HSC meeting on 5 August:</p>

9.1	<p>John Thompson updated the Commission and outlined a series of actions:</p> <ul style="list-style-type: none"> • A media handling strategy had been developed in light of a flurry of media coverage – Notably from Friends of the Earth and The Guardian; • A review by HSL examined the likely risks of removal and disposal of asbestos, were the exemption conditions to be met. The risk was found to be at the lower end of the tolerable scale, just above acceptable limits; • There was a need for a cross-governmental look at the trade in ship dismantling. DEFRA and the Environment Agency would need to be involved; • A study showed that stricter controls on the decommissioning of vessels would lead to ships having their lives extended beyond safe limits. This would cause a risk to those who took aged boats to sea; • The total amount of asbestos in the 13 ship fleet was comparable to the amount of asbestos involved in the decommissioning of a large UK power station (1,300 tonnes); • Information on the issue of this decommissioning programme had now been put on the HSE website; • Advice from Counsel indicated that HSE had acted legitimately in considering “other” factors such as employment and that HSE had an obligation to keep the exemption decision under review.
9.2	<p>The Commission was still not convinced that the tolerability of the risk was acceptable, particularly if quantities of blue asbestos were on board the decaying vessels. A clear need to review HSC/E’s exemption granting conditions was expressed. There was concern that two vessels were going to be decommissioned at the same time. There were still about 130 of these old ships in the USA. As HSE had already granted one exemption, there was a possibility that HSE would be expected to grant additional exemptions in the future. International Maritime Organisation rules would need to be explored further on this matter.</p>
9.3	<p>The Chair welcomed the update on developments. In conclusion he said that HSC/E’s exemption granting conditions would need to be urgently reviewed. There was also a question mark as to what this meant for the future of HSE’s 1992/93 Asbestos Regulations. A further update would be expected soon.</p>
10	Baz Terych
10.1	<p>Judith Donovan introduced Baz Terych, the head of health and safety for Royal Bank of Scotland’s central services division. Passionate about health and safety, Baz has linked the issue to grants he offers small businesses.</p>
10.2	<p>Baz explained how his grant scheme worked. Subscription is £70 per month and for that a client gets:</p> <ul style="list-style-type: none"> • The initial visit; • A health and safety report; • Legal documentation; • Health and Safety advice; • Insurance; • Up to £50k towards defence of a legal claim <p>A 24 hour telephone helpline service is also in operation. The scheme has been in operation for seven years and insurance activity has only been needed ten times, indicating that the scheme is successful. If good systems are in place, there is less risk to the Bank when they supply loans. The Royal Bank of Scotland tries to reach ethnic groups as they can be very productive. Overall, the bank does in excess of 1.1m business interfaces per year. By the end of this first quarter, the bank will have 80 consultants in the field. All consultants are health and safety qualified with, at least, the NEBOSH diploma.</p>

10.3	The Commission was assured that accident records did not get any worse under the scheme. Initially, accident rates might actually increase, but only because incidents were now being properly recorded. The new Occupational Health Advice Scheme offered in Scotland had not seen a decrease in sales of the bank's service. Some customers viewed the service as a way to support their cases for Local Authority work contracts. Other customers simply saw the health and safety documents as a piece of paper. The Commission was informed, however, that cases were regularly reviewed and the key was to ensure that all small and medium enterprises involved in the scheme were compliant.
10.4	The Chair thanked Baz for his presentation and for addressing questions from the Commission. Summing up, the Commission was very interested in the work. It was important for HSC/E to involve Baz in the forthcoming small firms strategy consultation document.
	Below the Line Papers
11	UK Voting Strategy for the 29th Adaption to Technical Progress of the DSD 67/548 - (HSC/03/84)
11.1	The Commission agreed the recommendation to vote for the proposal and for the Chair to write to the Minister of State, Des Browne, accordingly.
12	EU Negotiating Strategy & Planned International Activities 2003/04 –(HSC/03/107)
12.1	The Commission did not agree the paper. This will now be discussed above the line at the Commission meeting on 14 October.
13	HSC Response to the Government Consultation on the draft Nuclear Sites & Radioactive Substances Bill – (HSC/03/114)
13.1	The Commission: <ul style="list-style-type: none"> • Noted the further development of the Government proposals for dealing with the nuclear legacy by establishing the Nuclear Decommissioning Authority (NDA); • Noted the concerns of HSE and NuSAC on the draft implementing legislation; • Agreed to the draft response from the Chair at Annex 1
14	Advisory Committee on Dangerous Pathogens: New Guidance: Infection at Work: Controlling the Risks – (HSC/03/116)
14.1	The Commission approved the publication of this document. The new guidance has been approved by ACDP. A parallel submission is being made to health Ministers as ACDP is a pan-Government Advisory Committee with the Secretariat being provided jointly by HSE and the Department for Health.
15	Review of Offshore Installations (Safety Case) Reg's '92. Outline Proposals for Change –(HSC/03/127)
15.1	The Commission agreed the way forward for revising the OSCR proposed in paragraphs 5-10 and the Annex
16	Consultation Document: Implementation of Working Time Directive for Mobile Workers in Civil Aviation – (HSC/03/133)
16.1	HSC endorsed 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.
	Miscellaneous Papers
17	HSC's 2002 Annual Return to the DCA on Requests under the Code of Practice on Access to Government Information – (MISC/03/25)
17.1	The Commission noted the contents of the paper and of the attached copy Annual Return
18	Appointment of Dr Robert Smallwood to CTSA – (MISC/03/24)
18.1	The Commission noted that the appointment of Dr Smallwood, to the UK Delegation of the CTSA, as successor to Stephen Williams will take effect from 1 September 2003.
19	Maximum Workplace Temperatures –(MISC/03/27)
19.1	The Commission noted the contents of the paper.
20	HSC Meeting Dates 2004 – (MISC/03/28)
20.1	The Commission noted the meeting dates for 2004.

Commission Secretary
September 2003