

OPEN GOVERNMENT STATUS – Fully Open		HSC/M08/2004
Health and Safety Commission		
Minutes of a meeting of the Health and Safety Commission, held on 3 August 2004 in the Hope Room, 2 Southwark Bridge, London, SE1 9HS		
Present Bill Callaghan – Chair John Longworth Abdul Chowdry Joyce Edmond-Smith Hugh Robertson Judith Donovan Apologies George Brumwell Margaret Burns Judith Hackitt Elizabeth Snape		Officials Present Kate Timms Alex Brett-Holt Colin Douglas Vic Coleman Susan Mawer Wendy Beeston Paul Baldwin
1	Minutes of the meeting held on 08 June 2004 (HSC/M06/2004)	
1.1	The minutes were agreed	
2	Urgent business not covered by items on the agenda	
2.1	<p>HSC/04/97 DWP Select Committee report - Phil Kemball introduced this item. The Work and Pensions Select Committee had published its report into the work of HSC/E on Sunday 25 July. This report represented good news. The overwhelming view in the report was that HSC/E was a high quality organisation with an international reputation, albeit constrained by resources.</p> <p>The protocol is for the Government to respond within two months of publication. However HSE had proposed to DWP that this period be extended by a month. This would allow HSE time to present considered views to the Commission and thus contribute positively to the Government's response.</p>	
2.2	<p>The Commission discussed the report and the process by which the Committee had reached its conclusions and the potential impact the Committee's recommendations might have on the strategy. A wide range of recommendations had been made, but without any prioritisation. It would not be possible to deliver everything asked for without additional resources.</p> <p>The report focussed on the work of FOD and did not reflect in the same detail the work of policy or major hazard directorates.</p> <p>The response should make clear that HSC/E had delivered a new strategy, to which the Commission was committed to and was taking forward. Several items identified in the report, including on LAs, were</p>	

	<p>already being done. HSC's response should be clear, punchy and not too long. The Committee had expressed concern over the enforcement policy and it may be necessary to look at this again. The Chair thanked the presenter for preparing the paper at short notice. He welcomed the interest the Select Committee had shown in health and safety and in the work HSC/E. He was keen that the Commission should be able to shape the Department response and draw attention to the fact that HSE was already doing a lot of work, not all of which had necessarily been reflected in the report.</p> <p>The Chair also felt there would be a need to prioritise work against the select committee's recommendations, but always guided by the strategy.</p> <p>The Chair asked HSE for a draft letter on resources for him to send to Ministers and for HSE to report back to the Commission at the September meeting.</p>
2.3	<p>HSWA S3: Legal Challenge on enforcement policy – Jonathan Russell introduced this item. HSE has received challenges to its enforcement policy relating to Section 3. In January 2004 the Director of the Centre for Corporate Accountability (CCA) wrote to HSE to question a decision not to investigate a fatal road accident. The CCA has also written to the Director General expressing concern about HSE's policy as set out in OC130/9.</p> <p>HSE sought the opinion of Leading Counsel and written opinion is expected around mid-August.</p>
2.4	<p>The Commission discussed the issues. The Commission felt it was important that the policy intention behind the Commission decision on Section 3 was maintained. If it was not possible to set reasonable boundaries, the strategy was at serious risk. The Commission received a brief oral outline of the road traffic incident that prompted the CCA to write. The Commission asked HSE to ensure they consulted Local Authorities (LAs) who would need to be clear about how any decision impacts on their role. The Commission noted that LAs had a dual interest, one as enforcers of Section 3 and the other as organisations with Section 3 duties.</p>
2.5	<p>The Chair reminded the Commission that this issue has been around since the "Foot" letter of the '70s. The intention was that Section 3 be used to cover areas where there was a gap in the regulatory framework and not for HSE to be drawn into areas where other organisations had appropriate powers. This was an important issue with the potential to distort HSC priorities. He asked HSE to report back to the Commission when Leading Counsel provides his written opinion.</p>
3	<p>Implications of Hampton (HSC/04/88)</p>

<p>3.1</p>	<p>Brian Etheridge gave a presentation: power point slides attached at annex 1.</p> <p>The draft Hampton report was expected in November followed by a consultation period. The purpose of the commission's discussion was to reflect on emerging scenarios at an early stage of Hampton's work. HSE had recently attended a workshop looking at the principles underpinning the Hampton review and felt this was an opportune moment for the Commission to consider the issues and the potential impact on HSC/E's role as a regulator.</p> <p>Although there were various scenarios and potential issues the likely outcome of the Hampton review was not at all clear. A further paper in the autumn would capture HSC's thinking for purposes of informing the Hampton team.</p>
<p>3.2</p>	<p>The Commission had a detailed discussion around the issues. They welcomed the review which could provide an excellent opportunity to do things better; and unlike other previous reviews did not attack regulators. The fact that HSC/E both proposed policy and carried out enforcement meant the implications for HSC would be different from other enforcers. The principles set out in the presentation were ones HSC should be prepared to defend, particularly safeguarding health and safety outcomes, separation of economic and other regulation, and an evidence and risk based approach. HSC/E had demonstrated it was not afraid of change and had improved how it worked with other regulators. But it would be prepared to argue strongly against something which looked good on paper but was unlikely to stand up to the real world. It was unlikely that a one size fits all approach would work in practice.</p>
<p>3.3</p>	<p>The Chair thanked the presenter. He believed that the review team should be invited to meet Commissioners to help inform their understanding on HSC/E and its role. Meanwhile a paper reflecting the discussion should be submitted to HSC in September.</p>
<p>4</p>	<p>Implications of SR 2004 and Planning (HSC/04/86)</p>
<p>4.1</p>	<p>Vic Coleman gave a presentation: power point slides attached at annex 2.</p> <p>The precise outcome of the spending review for HSC/E was not yet known. But it was likely to focus on delivering more for less. The fact of having a PSA indicated that occupational health and safety was a priority, albeit not at the highest level.</p> <p>HSE believed that a 'flat cash' settlement was the most likely outcome of SR 2004, even though a formal announcement of our settlement would not be made before October. There would be a substantive discussion at the September Commission meeting on the internal direction internally on the planning framework. A flat cash settlement would have a significant effect on HSC/E's spending power, requiring</p>

	<p>more savings through efficiency gains and some tough decisions on priorities.</p> <p>The major challenge of the emerging settlement would be how HSC/E aligned resources behind its priorities and how to bring about a managed withdrawal from 'non-priorities'.</p>
<p>4.2</p>	<p>The Commission noted the implications of a possible flat cash SR2004 settlement and discussed the options given the likely scenarios.</p> <p>The Commission was adamant that HSC/E could not continue with all its current planned work and still deliver its PSA targets if in real terms it received a cut. It welcomed the opportunity to find savings through efficiency gains. It was concerned about how new initiatives for example the partnership working with LAs, the WSA scheme and its occupational health projects might be affected.</p> <p>The Commission also felt that realistic representations needed to be made so that the Department was clear about what work HSC/E could deliver and what work might have to be stopped in light of the settlement received. The Commission should highlight the options, decisions taken and consequences publically.</p> <p>The Commission felt some hard choices would need to be made and that it should not shy away from closing down workstreams if they could not be adequately resourced. Government has cut resources given to health and safety The Commission discussed whether additional revenue could be gained through charging, although it accepted that additional charging would be resisted by many stakeholders. The Commission noted that spending on health and safety and inspector numbers had risen steadily from 1998, peaking in 2003/04</p> <p>The Commission concluded there was now an opportunity to consider the macro picture – to look at how HSE should be shaped to deliver. The Hampton review would be a key factor in this.</p>
<p>4.3</p>	<p>The Chair thanked the presenter. The Commission agreed with the broad message of the presentation. A clear message would need to be given to the Department on the impact of the settlement. Although a strong argument had been made against charging, those areas with charging had increased number of inspectors and develop partnerships with stakeholders. The Chair's vision was that HSC/E would look and be a different organisation once it had implemented the changes, rather than just simply doing less of the same work. He accepted that there would be some difficult messages which HSC/E would have to communicate to stakeholders.</p> <p>The Chair asked HSE to report back to the Commission in September as proposed.</p>

5	Quarterly Report HSC/04/93
5.1	<p>The Delivery Board had discussed the targets and the report would form the basis of advice to Ministers in September.</p> <p>The Delivery Board reported:</p> <ul style="list-style-type: none"> • Sectors: Overall Amber. Most key milestones met; a number of lowlights reported including GSE Task Force meeting postponed; trajectories are being developed but the process proving complex and lengthy. • Health and safety hazards: Overall Amber. All significant milestones met; progress on MSD changes from amber to green; action being taken on poor press interest in the Stress Management Standards consultation and poor “Slips/Trips” indicator scores; indicators/trajectories are being developed for future reports. • Major Hazards: Nuclear: Green. Offshore: Amber. Onshore: Green. Rail: Amber. The first quarter of 04/05 showed an improving picture. • Better Health at Work Partnership: Overall Red. Although all milestones had been met this quarter, more urgency was required. This, coupled with projected shortfalls in workstreams indicated a “Red”. An action plan had been prepared. Extra resource allocated to the programme would allow HSE to develop a more structured/controlled pilot programme in addition to the incremental pilots starting up. Work on identifying indicators for each workstream was underway. • Local Authorities: Overall: Amber. Much of the 1st quarter has been taken up with capacity building, although a number of key milestones met and activities undertaken. The high-level Statement of Intent between HSC, HSE and local authorities’ institutions has been endorsed. This will move the programme forward significantly. Work on trajectories is under way.
5.2	<p>The Commission felt that further explanation was required for Ministers for the Red traffic light assesment of progress for the Better Health at Work Partnership Strategic Programme. The Minister should be alerted to the rise in fatal accidents as an early warning that the mid point Revitalising targets were unlikely to be met. However definitive information on the composite safety indicator would not be available until autumn 2005.</p>
5.3	<p>The Chair agreed the recent fatal statistics should be included in the quarterly report and futher explanation was required to explain the red assesment given to the Better Health at Work Partnership Strategic</p>

	Programme before the report was sent to the Minister.
6	CD on new Rail Safety Management Regulations (HSC/04/51)
6.1	<p>Liz Gibby introduced the paper seeking the Commission's agreement to publish the consultative document (CD) and highlighted a number of specific issues which required the Commission's consideration. The proposal was for one set of Regulations, revoking three existing sets. Annex 1 of the paper highlighted areas where there may be a small risk of infraction from EC with the interpretation of the Railway Safety Directive for implementation into domestic laws. A number of new issues had been identified that were not covered in the paper and needed to be discussed.</p> <p>The Railway Industry Advisory Committee were in broad agreement with the proposals, although some members had written to Margaret Burns to urge good co-ordination of the outcomes of regulatory consultation with other rail directive implementation packages led by DfT.</p> <p>The draft Regulatory Impact Assessment had cleared the Panel for Regulatory Accountability.</p> <p>DfT officials have been asked by Ministers to review the draft proposals in light of the Rail Review and to advise on the merits of alternative ways of implementing the Directive. In the meantime, work would continue on this package to deliver a modern regulatory system.</p>
6.2	<p>The Commission had a detailed discussion of the following:</p> <p>Point 5 of Annex 1 of the paper – Arrangements to allow affected operators to make representations about applications for safety certificates. The Commission felt the draft regulations should be extended to include relevant trade unions and recognised formal passenger groups, to make representations, and if necessary these organisations could be defined in the regulations.</p> <p>Para 11 of the paper – Annual reports. The Commission thought HSE should invite views in the CD as to whether the requirement for annual reports should be extended to non-interoperable transport systems.</p> <p>Para 27 of the paper – Safety verification. The Commission asked how a competent person was to be defined. HSE explained where this was defined in the regulations.</p> <p>Para 28 – 29 of the paper – Notification to HSE where a competent person is minded not to issue a safety verification certificate. The Commission asked if this requirement set a new precedent. Although other legislation did have requirements for duty holders to engage a competent person, the requirement to notify HSE could be setting a new precedent. However this was a unique situation as HSE was</p>

	<p>replacing an approval regime with a verification system.</p> <p><u>Issues not set out in the paper</u></p> <p>Exclusion of MoD railways on military bases. The Commission asked why HSE wanted to exclude MoD railways. These systems were private and were used mainly to transport equipment and not personnel and so were similar to those systems used in quarries and factories which were already excluded from existing requirements.</p>
<p>6.3</p>	<p>The Chair thanked the presenters and acknowledged all the hard work that had taken place over the last two years. Although a final decision on implementing the RSD had not been made, the Chair noted that a lot of progress had been achieved on modernising the regulatory framework and it was important that this work was not lost.</p> <p>The Chair summed up as follows:</p> <p>The draft Regulations should be extended, to include the right for relevant trade unions and formalised passenger groups to make representations on applications for safety certificates and authorisations.</p> <p>HSE should invite views as to whether the requirement for annual reports should be extended to non-interoperable transports systems.</p> <p>The outlined approach to safety critical work was agreed with a more targeted ACoP on the management of risks from fatigue.</p> <p>HSE should consult on the safety principles for safety verification for the non-interoperable railway and asked that the findings should be presented to the Commission in due course.</p> <p>HSE should be notified when a competent person is minded not to issue a safety verification certificate.</p> <p>The proposed transition arrangements should allow a period of 18 months from coming into force of the new regulations in which approval under ROTS could continue to be given.</p> <p>The definition of infrastructure manager should be extended to include station operator.</p> <p>MoD railways should be excluded from the scope of the regulations and that further adjustments to the CD could be made before publication if these were in line with current HSC policies.</p> <p>The CD should be published in September.</p>

7	Industry Progress on Driver Licensing and Accreditation (HSC/04/52)
7.1	Peter Hornsby introduced the paper. DfT had just issued a formal consultation on the negotiation strategy for the EC Directive on driver certification with a limited consultation period. HSE considered that a response to DfT from the Commission would help strengthen HSE's negotiating line.
7.2	The Commission reaffirmed their support for a voluntary licensing regime.
7.3	The Chair agreed that a Commission response based on annex G of the paper should be drafted for him to send to DfT this week.
	Below the Line Items:
8	Consultative letter on the tank vehicles (loading and unloading of petroleum spirit) Regs (HSC/04/55)
8.1	The Commission approved the Consultative Letter
9	Proposed physical agents (optimal radiation) directive (HSC/04/75)
9.1	The Commission agreed the negotiating line for submission to Ministers
10	Health and Safety Committee for Scotland (HSC/04/78)
10.1	The Commission noted the paper.
11	Mark 1 Exemption application from Reg 4&5 of the Railway Safety Regulations. Purpose: To ask the Commission to agree HSC response to HSE's consultation exercise. (HSC/04/81)
11.1	The Commission approved the response to the consultation.
12	HSC Forum for Trade Associations (HSC/04/83)
12.1	The Commission noted the intention for Judith Donovan and HSE's Social Inclusion Policy Branch to establish a Small Firms Trade Association Forum.