

**Health and Safety Commission Minutes****HSC/04/M012****Meeting Date:**

7 December 2004

**Open Gov. Status:**

Fully Open

**Type of Paper:**

Above the line

**Paper File Ref:****Exemptions:****Health and Safety Commission**

**Minutes of a meeting of the Health and Safety Commission, held on 7 December 2004 in the Hope Room, 2 Southwark Bridge, London, SE1 9HS.**

**Present**

**Bill Callaghan – Chair**  
**Danny Carrigan**  
**Abdul Chowdry**  
**Judith Donovan**  
**Joyce Edmond-Smith**  
**Judith Hackitt**  
**John Longworth**  
**Hugh Robertson**  
**Elizabeth Snape**

**Apologies**

**Margaret Burns**

**Officials Present**

Timothy Walker  
 Justin McCracken  
 Jonathan Rees  
 Alex Brett-Holt  
 Colin Douglas  
 Vivienne Dews  
 Susan Mawer  
 Paul Nicholson  
 Paul Baldwin

**Observers:**

Tom McLaren

**1****Minutes of the open meeting held on 9 November 2004 (HSC/M10/2004)****1.1**

Subject to a significant amendment in relation to Potters Bar, the minutes were accepted.

**2****Urgent business not covered by items on the agenda****2.1**

**Hampton Review.** Vic Coleman updated the Commission on the Hampton interim report, which was published on 2 December. It focussed on four key areas:

- Regulatory reform of regulators,
- The work of Local Authorities and consistency,
- The penalties regimes; and
- Reducing paperwork burdens.

The review team had commented that HSC's strategy had been influential in shaping their thinking.

HSE detailed the remaining timetable and informed the Commission that they would receive a substantial paper on the review in January.

The Chair felt the key issue was now about how the Commission positioned itself to contribute to the continuing debate.

	<p><b>Spending Review</b> – Vic Coleman gave a short update on the latest position.</p> <p>Details about the final settlement were expected by Christmas.</p> <p><b>Senior staff Moves</b> - Laurence Williams has been appointed as the Nuclear Decommissioning Authority's Director of Nuclear Safety and Security and will take up post on 1 February 2005. Mike Weightman will be appointed Acting Chief Inspector and Director of Nuclear Safety pending the outcome of an open competition.</p> <p>Nick Starling has taken up a three-year secondment to the Association of British Insurers as Director General of Insurance and will take up post on 4 January 2005. His post will be filled by a secondment from elsewhere in Whitehall.</p> <p>Allan Sefton will remain (after his normal retirement date) as Chief Inspector of Railways until the end of 2005 – this has been agreed with ORR.</p>
<p><b>3</b></p>	<p><b>Injury and ill health trends and their implications.</b></p>
<p><b>3.1</b></p>	<p>John Ewins gave a presentation to the Commission on the recently published health and safety statistics for 2003/04; he highlighted some of the key issues and explored how the data lined up with the Commission's Revitalising and PSA targets.</p> <p>Key areas for action were:</p> <ul style="list-style-type: none"> <li>• Public services</li> <li>• Stress</li> <li>• Slips and trips.</li> </ul> <p>PowerPoint presentation is attached at annex 1</p>
<p><b>3.2</b></p>	<p>The Commission welcomed this update. The Chair indicated the potential for confusion as RIDDOR showed an increase in reported injuries while estimates based on the Labour Force Survey showed a decline. The increase in RIDDOR reported injuries could be partly due to improved reporting in the services sector.</p> <p>The Commission felt HSE could do more to highlight areas where its interventions have seen improvements in injury and ill health figures, for example MSD.</p> <p>They explored the relationship between the frequency of incidents and the numbers of lost workdays and felt it was important to link in with DWP programmes. They also felt that the area of rehabilitation and long-term absence was where the most significant gains could be made.</p>

3.3	<p>The Chair thanked the presenter. There was a lot of interesting work going on in this area. Next year's statistics, when performance against the targets including the Revitalising mid-point would be assessed, would be critical.</p> <p>He believed reducing the number of lost workdays was the most challenging area – not just reducing the number of new cases. This meant working with others including insurers and other Government departments, which was in line with the partnership theme central to the strategy.</p> <p>He noted that research on reporting levels in services was due to report late summer and asked that the Commission receive timely briefing. He also asked for a separate briefing for Commissioners and their advisors on the workplace health and safety survey (WHASS) and the GP survey.</p>
4	<p><b>(HSC/04/130) Strategy for workplace health and safety 2010 and beyond next stage deliverables.</b></p>
4.1	<p>Peter Buckley introduced the paper, which asked the Commission to agree the next set of deliverables and to a rolling six month programme.</p>
4.2	<p>The Chair welcomed Peter in his new role as Head of Strategy Division. The Commission felt this was a good way of presenting the information, however it was important HSE did not lose sight of the strategy.</p> <p>The Commission explored some of the detail. They questioned the focus on prosecution in the first deliverable, although they accepted that all interventions, including prosecutions, notices and cautions were being looked at.</p> <p>The Commission also wanted better identification of target audiences. It also felt HSE needed to be clearer about what action it plans to take in relation to advice for duty holders – this was a clear outcome from the Hampton review.</p>
4.3	<p>The Chair welcomed the paper and the general approach, particularly the six-month reviews. He agreed it was important not to forget the overall strategic theme, to be clear about how the deliverables contribute to the strategy and to better identification of target audience.</p>
5	<p><b>(HSE/04/136) RIDDOR Incident Selection Criteria</b></p>
5.1	<p>Justin McCracken introduced the paper and set out the background. He reminded the Commission that they asked HSE look at the ratio of reactive to proactive work, with the aim of shifting the balance to 60% proactive work. The Commission also agreed to a pilot of different incident selection criteria and this was conducted between July 2003 and June 2004 as part of the North West Division's pilot of the New Model for FOD.</p> <p>Sarah Mallagh presented the paper and highlighted some of the key findings. The first pilot had removed discretion, which had a significant impact in reducing the number of investigations. The second pilot, allowing</p>

	<p>more discretion, was inconclusive. The view taken as a result was that fundamental changes were not required. This was supported by the evidence that the rest of FOD had move towards achieving a 60/40 balance. However, the pilot had demonstrated that specifying criteria focusing on priority topics had a good effect on the mix of incidents investigated.</p> <p>The main change proposed to the policy was to introduce a clause which enables the Executive to determine additional criteria on the basis of the agreed strategic programme plans. This was seen as a more flexible and consistent approach.</p> <p>The Commission would be informed of the additional criteria set by the Executive.</p>
5.2	<p>The Commission welcomed these proposals. They were reassured that this approach would not devolve the Commission's responsibility but was in fact a formalisation of the process. The Commission asked about the type of information being put together for Inspectors and duty holders so that they were aware of the new selection criteria. Any information and message need to be simple and easily understood.</p> <p>The Commission, in general debate, was informed that the paper on the review of RIDDOR would go to the Commission in February.</p> <p>HSE noted the Commission comments about the use of unexplained abbreviations.</p>
5.3	<p>The Chair thanked the presenter. He agreed the approach and main messages. He felt that HSE had listened to the feedback following the NW pilot exercise and had revised the criteria accordingly. When selecting accidents for investigation, the Commission expected consistency and that strategic programmes were addressed</p> <p>He felt, as with much of the Commission's work, communications was central and it was important to get it right.</p>
6	<b>(HSC/04/135) Communications update.</b>
6.1	Colin Douglas introduced the paper and summarised progress and detailed the key achievements since the last update.
6.2	<p>The Commission felt this was a useful and informative paper and held a detailed debate around some of the key issues. In general discussion the Commission raised a number of issues:</p> <ul style="list-style-type: none"> <li>• The strategy was too HSE focussed. There was no real strategy for the Commission engaging with and influencing others</li> <li>• The Commission were concerned at the inflexible use of HSE's new logo. Publications from HSE, produced in partnership with others, were not allowed to have joint branding</li> </ul>

	<ul style="list-style-type: none"> <li>• The shift in emphasis from publications to web-based documents</li> <li>• Commissioners were now much more actively involved. Consequently they needed to be kept up to date on issues; lines to take covering key issues that concern the reputation of the organisation. They would like timely press briefing</li> <li>• They asked HSE to explore the possibility of providing Commissioners with intranet or extranet access.</li> </ul>
<b>6.3</b>	<p>The Chair thanked the presenter. He noted and welcomed the improvements made. He felt that communication was important to everything the Commission was trying to achieve. He agreed there should be follow up and/or papers on:</p> <ul style="list-style-type: none"> <li>• HSE's new publication policy and the shift from papers to electronic media; and the use of logo for joint publication, which should include looking at branding issues</li> <li>• Improved briefing for key issues</li> <li>• Possibilities of providing the Commissioners with access to internal material via the intranet or extranet.</li> </ul>
<b>7</b>	<b>(HSC/04/131) Employee liability for damages arising out of occupational ill health or injury.</b>
<b>7.1</b>	<p>Neal Stone introduced the paper and reminded the Commission that Public Concern at Work had written to the Chair about the amendments made to the Management of Health and Safety at Work Regulations 1999 in 2003 removing the civil liability exclusions. Their main concern was that the new regulations resulted in third parties having the right to bring civil claims against employees for personal injury or ill-health caused by a breach of their duties under regulation 14 of the Management Regulations.</p> <p>HSE had obtained Counsel's opinion which supported this view, although it was thought that the likelihood of such a case being brought was likely to be very rare. They therefore proposed to amend the Management Regulations to exclude the right of third parties to seek damages from employees in breach of their duties.</p>
<b>7.2</b>	The Commission noted that the area of redress was adequately covered in Common Law.
<b>7.3</b>	<p>The Chair thanked the presenters. He noted that this was a minor revision to deal with this unintended right for third parties to seek damages from employees.</p> <p>He noted the proposal to bring draft consultative proposals for amending Regulations to the February 2005 Commission meeting for clearance and the intention to consult on the removal of the civil liability exclusion in the Health and Safety (Consultation with Employees) Regulations 1996.</p>

<b>8</b>	<b>(HSC/04/138) Communication strategy for new OEL Framework – presentation.</b>
<b>8.1</b>	<p>Michael Topping introduced the paper which set out HSE’s developing communications strategy for the new OEL framework. He explained that communication of the new framework would be in two stages, the first of which was with the professional audience already aware of the existing OEL framework. The second stage would be with those, such as many small firms, who were unaware of their current duty under the COSHH Regulations and would therefore require a different message. Dr Topping explained that a specific strategy for communication with the latter audience would be developed as part of the wider communication strategy for HSE’s Chemical Programme, of which the OEL framework formed part.</p>
<b>8.2</b>	<p>The Commission felt this was highly important work which would remove some of the confusion around this very technical area and very much welcomed this simplification. However, they felt that how messages were conveyed to small firms was vital. Small firms had little understanding of chemical hazards and needed good practice advice rather than information about the new framework. How this was conveyed was critical. They were concerned that there were no plans for consultation with the small firms sector or forum at this stage. They also stressed the need for this work to be consistent with the planned EU legislation. The Chair wanted to be sure that it would be possible to demonstrate that this is going to be a simpler approach.</p>
<b>8.3</b>	<p>The Chair thanked the presenters and welcomed the paper.</p> <p>He believed for this change to be effective, HSE had to engage with different audiences so that the final product had credibility. The Chair stressed the importance of the new OEL framework being consistent with REACH.</p> <p>The Commission approved the developing communications strategy for the new OEL framework, and noted the proposal to develop a communications strategy for the chemicals programme.</p>
<b>9</b>	<b>(HSC/04/137) Cross Government response to the EFRA Committee Report: Dismantling Ships in the UK</b>
<b>9.1</b>	<p>Bill MacDonald introduced the paper, which provided briefing on the recent DEFRA Select Committee report on “dismantling defunct ships in the UK.”</p> <p>HSE would be contributing to the government response. Its position was: it didn’t want to see any weakening of the prohibition regulations, any application for an exemption would be considered on a case-by-case basis; and that any recycling or disposal work should be carried out with full regard to health and safety legislation.</p> <p>HSE invited comments on the report so that they could be included in HSE’s response.</p>

<p><b>9.2</b></p>	<p>The Commission supported the position and the holistic approach set out in the paper. It was right that future exemptions would be considered on a case-by-case basis.</p> <p>They also strongly believed it was inappropriate for UK PLC to export its health and safety problems to other countries that may well be less well equipped to understand and manage the relevant risks. They supported the Committee in moving towards binding international agreements.</p>
<p><b>9.3</b></p>	<p>The Chair accepted the papers subject to the inclusion of the Commission's comment on the necessity of international standards.</p>
<p><b>10</b></p>	<p><b>(HSC/04/134) Options for openness; (HSE/04/133) HSC policy on being open with information.</b></p>
<p><b>10.1</b></p>	<p>Susan Mawer introduced the papers and updated the Commission on progress in making their formal advice to Ministers public.</p>
<p><b>10.2</b></p>	<p>The Commission saw little value in just having one or two open meetings a year and thought all their meetings should be open. There could be a closed session during the meeting for any items not appropriate for open discussion. Attendance should be notified in advance. However, even with open meetings the Commission felt there would still be a demand to discuss specific issues with them. They also discussed whether meetings should be held outside of London, for example at Bootle.</p>
<p><b>10.3</b></p>	<p>The Chair asked for a separate discussion to look how the large volume of business the Commission was being asked to consider could be better handled.</p> <p>The Chair agreed:</p> <ul style="list-style-type: none"> <li>• The Commission would hold open meetings from the start of the financial year</li> <li>• Commission papers and agenda would be available before the start of meetings</li> <li>• A public meeting would be held in October/November</li> <li>• He agreed the revised policy statement on openness which should be published in January</li> </ul>
<p><b>11</b></p>	<p><b>(HSC/04/132) Proposed Regulations on Railway Safety – Industry Consultation</b></p>
<p><b>11.1</b></p>	<p>Robin Foster introduced the paper, which set out the main issues raised by rail industry employer bodies during the consultation, and sought a steer. The Industry did not want discrete requirements on safety critical work; nor an ACOP on fatigue; they were concerned about timing of the consultation; and some in the 'non-mainline' sectors continued to be concerned about replacement of the HSE approval system by safety verification using an appointed competent person.</p>

<b>11.2</b>	<p>The Commission strongly supported specific requirements in the regulatory framework for safety critical workers, for the reasons set out in the paper.</p> <p>Fatigue is a real problem and the Commission noted the comparisons with other transport industries. They felt that the ACOP was the best option, but noted that the present draft should be shortened and refined in discussion with the industry. The proposed ACoP was fully supported by employees.</p> <p>They discussed whether an extension could be given to the non-mainline rail sectors but concluded that some extension of the transitional arrangements would not help the industry. The proposed transitional measures should be retained, but the Commission recognised the importance of managing the change.</p> <p>The Commission thought it important to keep to the overall timetable for rail legislative reform.</p>
<b>11.3</b>	<p>The Chair agreed:</p> <ul style="list-style-type: none"> <li>• To proceed with the proposals for a specific regulatory framework for safety critical workers in the industry</li> <li>• To proceed with the proposed fatigue ACOP for railway safety critical workers</li> <li>• The proposed timetable</li> <li>• There should be no extension of transitional arrangements for safety verification</li> <li>• The draft letter to stakeholders.</li> </ul>
<b>12</b>	<b>Any Other Business</b>
<b>12.1</b>	RAIB paper - Chair said he had concerns about the tone of the letter and would discuss with officials.
<b>13</b>	<b>Below The Line Papers</b>
<b>14</b>	<b>(HSC/04/121) Review of Confined Spaces Regulations</b>
<b>14.1</b>	The Commission agreed that the draft letter at Appendix 1 is sent to the Minister.
<b>15</b>	<b>(HSC/04/67) RAIB accident, reporting and investigating Regulations 2004</b>
<b>15.1</b>	The Commission agreed the response attached at Annex 2.
<b>16</b>	<b>(HSC/04/125) Fees Regulations</b>
<b>16.1</b>	The Commission agreed the proposed changes in fees for 2005/06 and subsequent submission of the Health and Safety (Fees) Regulations 2005 to Ministers