

Health and Safety Commission Paper		MISC/04/47	
Meeting Date:	N/A	Open Gov. Status:	Open
Type of Paper:	MISC	Paper File Ref:	SASD/221/1031/02-03
Exemptions:	None		

HEALTH AND SAFETY COMMISSION

PROPOSED CHANGE IN CHIEF CONSTABLE LIABILITY FOR HEALTH AND SAFETY ENFORCEMENT

A Paper by Jonathan Russell

Adviser: Peter Johnson

Cleared by Peter Brown on 15 December 2004

Issue

1. The Serious and Organised Crime Bill clause 135 provides for HSE inspectors to enforce against an 'office' of Chief Constable for organisational breaches of health and safety law, instead of against the Chief Constable personally as now.

Timing

2. The Bill was given its Second Reading on 7 December 2004, and starts its Committee stage in January.

Recommendation

3. **For information.** The Home Office proposals in clause 135 reflect the outcome of HSC and Home Office consultation, and subsequent discussions involving police service stakeholders and HSE.

Background

4. The Police (Health and Safety) Act 1997 made Chief Constables the employers of police officers for health and safety purposes. Chief Constables became liable to be prosecuted personally for any police force breaches of health and safety requirements. This puts HSE inspectors in the unusual and unsatisfactory position of having to prosecute an individual for wider organisational failings.
5. The Police Reform Act 2002 section 95 sought to resolve this by making police authorities and not Chief Constables the employers of police officers. This would have enabled any enforcement to be against an existing corporate body. But, Home Office and HSC consultation with police service stakeholders established that section 95 would undermine the management of risks to police officers' health and safety at work, so it was never brought into force.
6. Clause 135 would repeal section 95, and provides for the following:
 - each Chief Constable in England and Wales would be designated as a 'corporation sole' for purposes of health and safety legislation – inspectors would be able to prosecute the corporation sole for any

serious breaches by the police force, putting them in a similar position to that of other organisations;

- it will be clearer that a Chief Constable can be represented in legal proceedings;
- there would still be personal liability if a serious breach took place with the consent or connivance or through the neglect of a Chief Constable;
- Chief Constables who retire or move to another force would no longer be prosecuted for organisational breaches which occurred during their time in office – the prosecution would be against the ‘corporation sole’;
- any fine against the ‘corporation sole’ could be paid from police funds at the police authority’s discretion;
- similar provisions would apply in Scotland, though using a different legal device.

Conclusion and Suggested Line to Take

7. We welcome this new approach, which will help all concerned focus on the need to manage risks effectively, in the interests of those working in the police service and those who are affected by its activities.