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HEALTH AND SAFETY COMMISSION

Delegated Authority for the Metropolitan Police to Enforce under the Health and Safety at Work etc Act 1974 (HSWA)

A Paper by Andy Freeman

Advisor: John Furlong

Cleared by Jonathan Rees on 11 July 2006

Issue

1. The Metropolitan Police are seeking delegated powers under the HSWA for the duration of a pilot project, the Freight Operators Recognition Scheme (FORS), aimed at improving the safe, reliable and efficient movement of freight transport within London.

Timing

2. At this meeting.

Recommendation

3. That the Commission grant powers to the Metropolitan Police in accordance with Section 13 (1) (a) of HSWA.

Background

4. Work-related road safety (WRRS) was not identified as one of HSC's strategic priorities. When the Commission was invited to approve the establishment of the Releasing Capacity-Enabling Others (RCEO) Programme in April 2005 (HSC/05/32), WRRS was cited as an example of an area of work which had already been 'run down'.
5. The RCEO Programme recognizes, however, that such areas may need to be reappraised in the light of new developments which bear on the risk profile or on HSE's reputation. Stakeholders, including RoSPA and Parliamentary Advisory Council for Transport Safety (PACTS), have continued to urge HSE to take a more active role in relation to road safety. Following discussion between Stephen Ladyman (Minister for

Roads) and Lord Hunt last November, HSE has embarked on a programme of work, in close co-operation with DfT, to demonstrate the proportionality of our approach. This work should generate a clearer understanding of the health and safety management aspects of the risk and the most appropriate measures for mitigating that risk. The main elements of the work programme are summarized at Annex 1.

Freight Operators Recognition Scheme (FORS)

6. This pilot project, which the Metropolitan Police and Transport for London (TfL) have devised, offers a valuable means of driving forward our programme, especially with regard to research and the mechanisms for ensuring that linkages between road safety violations and employers' safety management failures are made. FORS is a major three-year initiative aimed at encouraging freight operators in London to implement policies and procedures to improve safety, reduce environmental impact, and improve efficiency of movement and delivery. It will raise awareness of the human/social, financial and legal costs associated with a failure to implement robust occupational road risk policies and procedures.
7. Although the project is restricted to London, it offers an excellent opportunity to explore the links between road accidents and underlying health and safety management failures. Thus, it would provide the data we need for the research we have undertaken to commission.
8. The police believe health and safety management failings (eg scheduling of hours, maintenance of vehicles, competence of drivers) could be the underlying cause of a number of accidents. They consider that it will be necessary to address these as well as the more immediate causes in order to achieve the measurable improvement in standards that they are seeking.
9. They are, therefore, proposing to undertake company visits to explore the management of driving-related risk, and have asked whether the officers implementing FORS could be given enforcement powers under the HSWA for the duration of the project.
10. The Releasing Capacity-Enabling Others (RCEO) Board considered this request and recommended that the Metropolitan Police be granted powers in accordance with Section 13 (1) (a) HSWA. The HSE Board has supported this recommendation.

Argument

Risks for HSE

11. There is a risk that the approach of the police would be inconsistent with HSE's Enforcement Management Model and the Commission's Enforcement Policy Statement as well as our messages on sensible health and safety. THE RCEO Board has agreed, however, that this can be managed by seconding an HSE member of staff to the project to provide the necessary training in HSE enforcement policy and techniques of safety management auditing as well as initial monitoring of police performance.
12. The project may raise expectations of increased activity in this area. There may well be calls for it to be extended beyond London. This could be especially sensitive if the project demonstrated that the long-term delegation of HSWA powers was unfeasible, but

also uncovered a significant volume of safety management breaches which HSE would then be expected to tackle.

13. It will be important to make connections between this project and others bearing on freight transport which HSE is running, so that confusion and inconsistency are avoided. For example, Phase 2 of Moving Goods Safely is due to be rolled out nationwide, and an initiative on safe movement of vehicles at work is being taken forward within the Workplace Transport Programme.

14. There would be significant reputational risk in not supporting the project at a time when we are making a concerted effort to present our approach to WRRS in a more positive light.

Opportunities for HSE

15. An important element of our own work programme is to commission research to establish the extent of the causal links between management interventions and accident rates. Although FORS is restricted to London, it offers an excellent opportunity to obtain the robust data needed for that research project.

16. FORS offers an opportunity for partnership working with the police in a discrete piece of work with measurable outcomes and benefits for improved health and safety. If the delegation of powers is successful, it will be an excellent demonstration of the benefits of innovative partnership working: we shall effectively have achieved an enhancement of enforcement (and preventative) capacity without diversion of our own resources from our strategic priorities.

17. There is a precedent for such delegation. HSE's Hazardous Installations Directorate (HID) has already used section 13(1)(a) of the HSWA to delegate limited enforcement responsibilities under an agency agreement with the police on the carriage of dangerous substances.

18. The project may also give an indication of how the police are applying the guidance agreed between ACPO and HSE earlier this year on the reporting and investigation of work-related road death (see Annex 1).

Consultation

19. We have consulted interested parts of HSE and the Trade Unions, and shall continue to consult in connection with further issues that arise as the details of the project are developed.

Presentation

20. As discussed above, this is likely to be welcomed by stakeholders who have been urging HSE to take a more active role in road safety and can be presented as a creative example of working through partners to achieve objectives. We may, however, need to allay concerns about extension of police powers into an area which falls within the enforcement remit of HSE and LAs. It may also be necessary to explain how this particular instance of partnership working is not compromised by HSE's recent decision to

prosecute the Metropolitan Police in connection with the swimming pool fatality at Hendon Police College in 2002.

Costs and Benefits

21. TfL has estimated that the pilot project will cost around £867k to the end of March with potential savings/benefits of around £2.8 million (of which safety benefits are estimated to be about £1.84 million).

Financial/Resource Implications for HSE

22. The only additional cost to HSE of engagement in the project would be that of seconding a member of staff. It is currently proposed that the duration of the secondment would be three months. Assuming the secondee was at Band 3 or Band 2 level, the full cost would be between £16,800 and £23,900. TfL has said that it will fund the secondment and has earmarked up to £95,000 per annum up to 2010 should we wish to extend the duration of the secondment. In this case, HSE would bear only the residual opportunity cost.

Environmental Implications

23. FORS is designed to reduce air pollution and improve fuel efficiency as well as road safety.

Other Implications

24. None

Action

25. The Commission is asked to delegate powers to the Metropolitan Police as described in paragraph 3.

HSE PROGRAMME OF WORK ON WRRS

- Guidance for HSE inspectors has been revised and is being posted on HSE's website.
- Guidance on investigation of work-related road accidents was agreed between HSE and ACPO in January 2006.
- RoSPA is developing a management standard for the Freight Operators Recognition Scheme.
- Research into causal links between road accidents and employers' safety management is being commissioned from the Health and Safety Laboratory.
- Several participants in HSE's Large Organizations Pilot Project (LOPP) have agreed to consider including road safety in the improvement plans which they are drawing up. They may also assist in trialling the CD-ROM setting out comprehensive guidance on WRRS.