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HEALTH AND SAFETY COMMISSION

Responding to the Institute of Director's consultation on draft new guidance for directors on their responsibilities for health and safety

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Issue

1. Draft guidance for directors on their responsibilities for health and safety, prepared at HSC's request by an Institute of Directors (IoD) led steering group and issued recently by the IoD for public consultation.

Timing

2. The IoD has requested comments by 22 June 2007.

Recommendation

3. The Commission considers the draft (at Annex A) and:

- agrees that it would be willing to endorse guidance on these broad lines, subject to the results of the current consultation;
- agrees that a separate version aimed at small firms should be produced;
- gives a steer that the current draft needs a stronger emphasis on directors' leading/influencing; and
- offers any other comments they want HSE to feed into the consultation, by 15 June.

Background

4. At the Commission's request, the IoD has been working with a stakeholder steering group (with HSE providing the Secretariat) to prepare new guidance for directors on their responsibilities for health and safety.

5. The Commission's request was made following its last consideration of the issue of directors responsibilities at its May 2006 meeting (see paper HSC/06/44). At that meeting, the Commission underlined the importance of clear and credible guidance on directors' responsibilities for health and safety, and the need to build on progress made since the publication of their current guidance in July 2001.

6. Accordingly, HSE was asked to press ahead with producing new guidance, with IoD playing a leading role, and with input from business, trade unions, professional bodies, Government and other stakeholders. HSC indicated that the guidance should aim to set out how those responsibilities should be carried out, including practical approaches which are appropriate to different kinds of board (including SMEs, the public sector etc).

7. The IoD agreed and set up a Steering Group comprising nominations from key representative bodies (see Annex B). The Group is chaired by Michael Large, Vice Chairman of the IoD. The Chair of the Commission addressed the Group's first meeting in October 2006 and it has met three more times, with a further meeting planned to finalise the draft in the light of consultation which began on 11 May 2007.

Argument

Development of the guidance

8. The guidance has been drafted with the view of informing boards and their members, in the public, private and voluntary sectors, how to behave so as to help their organisation meet its legal obligations as an employer under the HSW Act. It has been produced in the form of an action plan for a board, enabling it to provide a lead on the planning, delivery, monitoring and review required for effective health and safety performance.

9. The guidance will not stand alone. An associated 'directors responsibilities' webpage will be created on the HSE website. This will provide links to further information, including other relevant guidance, case studies and contacts.

10. The IoD-led steering group will consider responses to the consultation and agree a final version. The intention is that IoD will send that version to HSC for its approval - a paper is planned for the Commission's meeting on 4 September 2007. The paper will include outline plans for evaluation of the guidance, and detailed plans for its promotion (see para. 18).

11. If the Commission is content with the guidance, the intention is for it to be jointly badged by HSC and IoD, and published in October 2007. HSE is in discussions with IoD over the precise timing of publication and launch. The possibility of the Corporate Manslaughter Bill coming into force in October could provide a useful platform for launching the guidance as this could raise board level interest in ensuring their organisation is managing its health and safety risks. However, the October timing is still uncertain, ahead of the Bill completing its passage through Parliament.

12. At the suggestion of the steering group, a version of the guidance for small businesses is also being prepared, based on the final version of this guidance but written in terms that are likely to be more relevant to small businesses. The draft for that version will be circulated to the Federation of Small Businesses and the HSE-run Small Business Trade Association Forum to check on its suitability, after which it will be put to the Commission for agreement to its publication before the end of 2007.

Responding to IoD's consultation

13. The Commission is invited to respond to IoD's consultation; for example,

- **is the form of the draft suitable?**

HSE's current assessment is that the draft is broadly right. However, the guidance is aiming both to inform (e.g. on good practice) and persuade (the case for board leadership), has the right balance been achieved?

For example, some change to the text is required so as to cast the guidance more clearly in terms of what directors have to do to lead, rather than manage, the health and safety performance of their organisations;

- **should anything should be moved or removed?**

For example, we are considering what if anything should be made of the potential link to the Corporate Manslaughter Bill. The corporate manslaughter offence is committed by a gross breach of the duty of care and a jury, in deciding whether there was a gross breach, may consider relevant health and safety guidance. It is not yet clear whether this guidance, with its advice cast in broad terms, is the sort of guidance that the Bill contemplates.

(In any case, the summary of the Bill's effect, set out in the second of the two status paras., on the back cover of the guidance, is wrong. It will require re-drafting (or, possibly, omitting) for the published version);

- **is anything missing?** The steering group has been concerned that readers' interest could be lost if much more material was added. But Commissioners may wish to comment; and

- **it is sufficiently persuasive?** Commissioners may wish to draw on their own experience as directors, or equivalents in the public and voluntary sectors, in answering this question.

Consultation

14. HSE's Legal Advisors Office (LAO) and the Communications Directorate's general view of the draft has been canvassed, prior to inviting detailed comment from HSE more widely in the formal consultation period. LAO sees no significant legal risk except in the way it is stated to relate to the Corporate Manslaughter Bill, as noted in para. 13 (second bullet) above.

15. Communications Directorate considers that the guidance achieves the objective of *informing* but could do more in *persuading*. It would also be worth further effort to reduce the text and so increase the focus on key messages.

16. IoD is making the draft publicly available for comment on its website. HSE has had discussions with IoD to ensure relevant stakeholders are approached for their comments. IoD's consultation has also been announced prominently through relevant sections on HSE's website.

Presentation

17. There is likely to be little interest in the issue at this consultation stage, outside of the stakeholders approached for comment.

18. HSE is considering plans for a joint HSC/loD launch and ongoing promotion of the final product. This is likely to include press activity, articles and mentions in speeches. More detail will be provided to the Commission in the September paper.

Costs and Benefits

19. Not applicable at this stage

Financial/Resource Implications for HSE

20. Costs to HSE of providing the Secretariat to the loD Steering Group and producing the guidance amount to £75K, i.e.

- Staff costs - £50K over a 15 month period (Sept 06 - Dec 07);
- Journalist fees estimated at - £7500 (£300/day x 15 days + further work on SME version + contingency);
- Production cost estimated at - £10K for 10,000 initial production run.

21. loD are providing resources, facilities and administration for the Steering Group; the consultation; and the launch event.

Environmental Implications

22. None

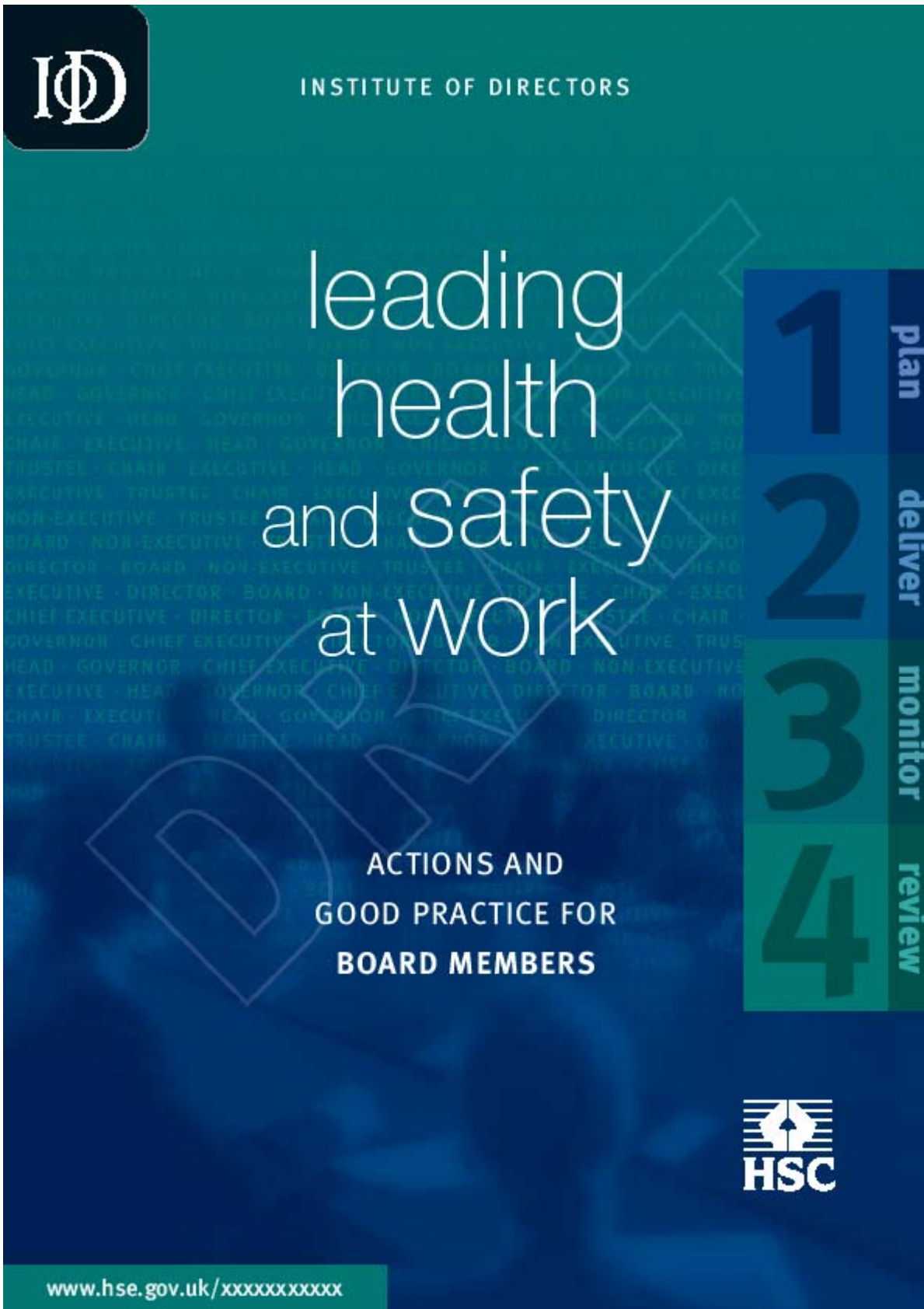
Other Implications

23. None

Action

24. The Commission is invited to:

- agree that it would be willing to endorse guidance on these broad lines, subject to the results of the current consultation;
- agree that a separate version aimed at small firms should be worked up;
- give a steer that the current draft needs a stronger emphasis on directors' leading/influencing; and
- offer any other comments they want to HSE to feed into the consultation by 15 June.



IoD Questionnaire at <http://surveys.iod.com/s/pfUsLP5bMqQo3eZ>

INSTITUTE OF DIRECTORS
Steering group
for the production of joint IoD/HSC guidance on
directors' responsibility for health and safety

Members of the steering group

Name	Nominated by	From
Michael Large	Chair	IoD
Dr Peter Doyle	CBI	formerly of ICI
Mike Welham	FSB	Total Control Risk Management, Norwich
Paul Lankester	LGA	Stratford upon Avon DC
Bud Hudspith	TUC	Amicus
Professor Frank Wright	Lawyer/academic	University of Warwick
Richard Jones	h&s professionals	IOSH
Dr Rowland B Hopkinson	NHS confederation	Heart of England NHS Foundation Trust, Birmingham
Eva Garland	NCVO	The Princess Alice Hospice, Surrey
Alan Morley	secretary	HSE
Mark Beishon	copywriter/journalist	
Geraint Day	observer	IoD
Patricia Peter	observer	IoD
Tom Nash	observer	IoD
Jenny Eastabrook/Elizabeth Hodkinson	observer	HSE
Laurence Golob	observer	HSE