

Health and Safety Executive Board		Paper No: HSE/09/20	
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<b>Chief Executive's Report to the Board</b>			

## House of Commons Justice Committee

1. The House of Commons Justice Committee examines the work of the Ministry of Justice and its associated bodies, including the Crown Prosecution Service. The Committee requested that an HSE witness give oral evidence to its inquiry into the role of the prosecutor in the criminal justice system and that of the CPS as the principal prosecutor - to give evidence in particular about how the CPS relates to other organisations with prosecution powers. Peter McNaught, the head of the Legal Adviser's Litigation and Enforcement Team, gave evidence on Tuesday 14 February alongside David Green the head of the Revenue and Customs Prosecution Office.

The Committee's questions were about –

- whether outcomes for health and safety prosecutions were better or worse than in Scotland where the Procurator Fiscal Service brings all prosecutions
- the advantages of an independent prosecution service for all prosecutions
- how an in-house prosecution service achieves consistency between prosecution decisions
- HSE's policies where death has occurred
- focus on victims, their experience of delays and the involvement of multiple agencies
- arrangements where more than one prosecutor has an interest.

2. Peter McNaught's evidence was that –

- it is difficult to make comparisons with Scotland because in England and Wales prosecutors other than HSE may be involved
- an HSE Inspector deciding on enforcement is able to consider the whole range of enforcement options to secure compliance, including advice and the service of notices
- adherence to the Enforcement Policy Statement, the Code for Crown Prosecutors and HSE's published guidance helps to achieve consistency as well as HSE's internal referral procedures for reaching enforcement decisions
- relations with other prosecutors are governed by the Work Related Death Protocol signed by police, CPS and other prosecutors; broadly, these bring about discussion at local and national levels ensuring sharing of good practice
- HSE attaches importance to explaining to victims and the bereaved what will happen during and following the investigation, and the reasons for any delay, particularly where primacy in the case needs to be handed from one body to another.

3. The evidence can be seen on the video archive from the Justice Committee at <http://www.parliamentlive.tv/Main/VideoPlayer.aspx?meetingId=3406> and a transcript should be available soon at the Committee website.

## **Helicopter Crash near the BP ETAP platform**

4. A Super Puma helicopter carrying 18 persons, including 2 crew, ditched (controlled landing on water) 500 metres from the BP ETAP oil production platform 125 miles east of Aberdeen on the evening of Wednesday 18th February 2009. Three people were winched to safety by a rescue helicopter. The remaining 15 were rescued via the offshore installation rescue vessel. All 18 are now back safe in Aberdeen. 3 were taken to hospital and have since been discharged.
5. HSE has no direct responsibility for aviation matters. The Air Accident Investigation Branch (AAIB) investigates aviation incidents but is a facts found, lessons learnt and recommendation organisation only. They have no enforcement powers. Aviation safety is enforced by the Civil Aviation Authority (CAA). We have a Memorandum of Understanding with CAA for dealing with topics of mutual interest including incidents.
6. HSE Offshore Safety Division has responsibility for the enforcement of safety on helidecks on offshore installations. The Prevention of Fires and Explosions and Emergency Response Regulations (PFEER) require the duty holder of offshore installations to make provision for the rescue and recovery of ditched or crashed helicopters approaching or departing an installation.
7. Our priorities were to assist AAIB on the evening of the incident. We have now begun an investigation to determine whether there were any contributory actions arising from activities on the installation and to review rescue and recovery arrangements. We will be co-operating closely with CAA and AAIB in their investigations.

## **Gas Safe Register**

8. The Gas Safe Register will become the statutory registration scheme for gas engineers from 1 April 2009. The Gas Safe Register brand is held in trust by HSE on behalf of gas engineers and Capita will operate the scheme. As part of its contract with HSE, Capita is responsible for promoting and communicating the new Gas Safe Register™ brand to engineers and the general public. They are required to raise awareness and understanding of the new Gas Safety brand to achieve the contract Key Performance Indicator of 40% unprompted awareness amongst gas consumers by October 2009, rising to 75% by 2011. A significant amount of media, PR and stakeholder work has already been undertaken, with a GB wide public awareness campaign starting in February 2009. More detail is attached at Appendix 1, as promised to the Board last month.

## **Agriculture Revisited**

9. The 'Make the Promise - Come Home Safe' campaign has had over 6250 responses from farmers in the initial six weeks following the direct mail packs in early January, the most responses to an agriculture safety campaign in the last ten years.
10. Judith Donovan and I attended the NFU annual conference in Birmingham on 16/17 February and a final press release and radio interviews and pod cast from Judith were sent out on 20 February.
11. We are taking stock of the results of this initial phase as part of planning for the further campaign roll out.

## **Shattered Lives Campaign**

12. Phase 2 of the 'Shattered Lives' Campaign launched on Monday 9th February. Early indications are that there has been a positive response to our Press Release with extensive coverage in the regional press. Web stats for the first two days of the campaign show that over 4,000 visitors clicked to the campaign homepage and over 6,000 visitors visited the STEP e-tool (Slips and Trips eLearning Package). This would appear to be a good start with encouraging numbers reflecting the regional focus of the campaign and the marketing of a practical tool that will help to promote action in the workplace.
13. Over the next six weeks over 30 journals will carry DVD's to encourage new users to sample STEP, and HSE will be promoting the tool at a series of events including the IOSH Conference & Exhibition in March and the Safety and Health Expo in May. We are also seeking the support of our stakeholders through HSE's networks such as the Cleaning Industry Liaison Forum, and following a presentation at its meeting on 12th February members have offered to promote STEP on their own stands at The Cleaning Show 2009 - the largest UK exhibition for the cleaning industry, in March. The second e-tool, WAIT (Work at height Access equipment Information Tool) is expected to be launched in w/c 16th March.

## **Exemption to allow deferral of statutory maintenance**

14. HSE has agreed an exemption that will allow the UK's principal supplier of rock (road) salt, Salt Union Ltd, to defer statutory maintenance of key plant at Winsford Mine, Cheshire. This action will ensure continuity of salt production without compromising safety.
15. The connection systems at the end of the winding ropes in the mine were due to be replaced during February. This maintenance is carried out at statutory intervals in accordance with mine safety legislation. HSE and Salt Union Ltd worked together to agree how maintenance could be delayed, with appropriate safeguards, to maximise production during the coming weeks.

## **Prosecution of Tameside Metropolitan Borough Council**

16. On 26 January Tameside Metropolitan Borough Council (TMBC) entered a plea of guilty to a charge under Section 3 HSWA and were fined £25,000 plus £23,565 costs at Manchester Crown Court. In relation to the same incident Clockwork Day Nursery, who had previously entered a guilty plea under Section 3 HSWA had their appeal against sentence rejected, their fine of £21,000 plus £6779 costs stood and additional costs of £780 were awarded to HSE.
17. The case arose from an incident in which a 4-year-old boy received life-threatening injuries while on an outing organised by Clockwork to a park managed by TMBC. The child slid down a steeply sloping, man made, 24m long water channel. The channel was not fenced or protected in any way. Enforcement action by HSE resulted in TMBC assessing the risk and constructing a fenced enclosure around the spillway. This adequately addresses the risk, allowing the spillway to remain functional and the park to remain open to the public. The case attracted significant local and national media attention.

## **Recruitment of Construction FTA Inspectors**

18. To support the proactive element of HSE's Construction Programme, Field Operations Directorate are currently looking to recruit up to 25 new Construction Inspectors on 2 year fixed term contracts, commencing in June 2009. The recruits will join with experience directly related to their role.
19. The main reason for taking this initiative is to provide a boost to inspection, in particular of refurbishment sites which are numerous and represent one of the most dangerous forms of construction work at present. The Inspectors will concentrate on preventive inspection rather than investigation. They will serve enforcement notices and assist in prosecutions. They will receive tailored training so that they can get out on site quickly and for a high proportion of their time. That training is being designed by a dedicated training manager so that it satisfactorily meets their needs.
20. The recruitment has been targeted on GB's main conurbations- the Scottish industrial belt, Manchester, East and West Midlands and London/Home Counties.

## **HWWW update**

21. We continue to make good progress in moving staff and posts out of our Rose Court premises and building our capability in Bootle. In round figures, almost half of the 300 staff whose posts are relocating to Bootle have now moved on, with 80 of those moving to other Government Departments and 30 remaining within HSE. Of those remaining, 60 are in the process of moving or have realistic plans to move. We are working with the remaining 90 to develop plans and of those almost a third are currently out of the organisation on loan to other departments, etc. So far we have recruited over 110 staff into posts which have relocated to Bootle and early feedback suggests that they are settling in well and we are impressed with the quality of our new recruits.
22. The business case prepared by the Government Department interested in taking over the lease of Rose Court has been cleared by the relevant Treasury Spending Review Team and is being submitted to the Chief Secretary of the Treasury for final approval.
23. A second DWP Gateway review of the Programme will take place w/c 23 February 2009.

**GEOFFREY PODGER**

### RAISING PUBLIC AWARENESS ABOUT THE NEW GAS SAFE REGISTER

#### Publicity to date

Significant stakeholder engagement work and press briefings have already been undertaken with an increased focus on consumer awareness. This has included:

- Direct mailing to all gas engineers currently registered with CORGI with full details of the new scheme and how to register with Gas Safe
- Briefings to the trade press by the Gas Safe Register and HSE
- Meetings with and presentations to stakeholders, including energy suppliers, local authorities, consumer organisations, voluntary organisations, charities etc
- Briefing of the HSE Infoline on the new scheme
- Consumer and gas engineer focused frequently asked questions with answers on the Gas Safe Register website and the HSE website.

#### Further awareness raising initiatives

The current registration scheme will operate until 31 March 2009 and therefore the consumer campaign has been specifically timed to avoid confusion as to which scheme is in operation. In framing the following initiatives, Capita also received professional PR advice that due to the immediate change to the new scheme and brand on 1 April a campaign largely focused around this time would have maximum effect in raising awareness:

- **Media day (17/3/09):** Radio interviews with a Gas Safe Register representative and CO victim to warn of dangers of not using a registered gas engineer and announce new Gas Safe Register. Targeting regional radio stations and national consumer programmes
- **“Gas Street” media day (1/4/09):** This initiative is a targeted at national broadcast opportunity centred around live examples of typical households and focused at broadcasters such as BBC Breakfast; GMTV; This Morning; Sky News, Channel 5 news etc. Capita have identified a residential street in London, adjacent to a gasholder, and have met with a number of residents to establish some case studies of good or poor quality gas work. Filming will be undertaken with the householders, an inspector from Gas Safe Register and Dr Chris Steele (regularly seen on ITV’s This Morning) to highlight gas safety risks and the symptoms and dangers of carbon monoxide poisoning. Interviews will also be used as Vodcast clips for Gas Safe Register website, and supplied as content to other websites and media
- **Gas Safe Register House of Commons Launch (3/3/09):** Hosted by Barry Sheerman MP, supported by Maria Miller MP, where Lord Mackenzie will also speak. This event builds on existing support amongst MPs and is aimed at reaching senior people within the industry, public facing organisations and key opinion formers
- **National Print** – Interviews/ briefings and research-based news stories to all national and regional newspapers in UK, and national consumer magazines (e.g. Good Housekeeping, House Beautiful) and on-line media. Colour advert in Classified Services Section in all weekly free newspapers in England, Scotland and Wales. Information in NHIC National Home Improvement Week press pack
- **Outdoor** – Billboards in key conurbations and high footfall areas e.g. railway stations
- **Radio** – National and regional coverage though hard hitting messages

- **Road shows** - 5 x 1 day Shopping Centre events in England, Scotland and Wales taking the message to the public and linking in to increased local advertising, radio, press etc
- **Perimeter signage** – Advertising at Rugby League (Feb – Oct) and Twenty 20 Cricket matches, (April – Sept), with this being picked up by television
- **Direct mail** - Provision of thousands of consumer leaflets, landlords and tenants leaflets, posters, copy for website and newsletters and logo to local authorities, housing associations and landlords, and on request to engineers and others for distribution to consumers.
- **Online initiatives** – to support awareness activity aimed at directing people to the Gas Safe Register site for more information. Web merchants to carry information on changeover.
- **Stakeholder engagement** - Meetings with and presentations to stakeholders, including energy suppliers, local authorities, consumer organisations, voluntary organisations, charities etc
- **Consumer events** - Attendance at Homebuilding & Renovating shows across the country i.e. Ideal Home Show.
- **Directory leverage** – Working with Yellow Pages, Yell.com, Thomson Local directories, thomsonlocal.com to ensure content correctly references Gas Safe Register.
- **Gas Engineer communications** – Registered Gas Engineer is the new free magazine produced by Gas Safe Register which will be distributed monthly to all registered engineers.

A number of further media, PR and stakeholder activities will be repeated throughout 2009 to maintain awareness of the Gas Safe Register, the dangers of carbon monoxide and highlighting gas safety risks. Additional opportunities are actively being pursued by Capita and will supplement the existing publicity campaign.

HSE is also undertaking publicity to support the work being undertaken by Capita. This includes writing to all 55,000 gas engineering businesses to highlight that from 1 April 2009 the Gas Safe Register will be the only register approved by HSE for gas work under gas safety legislation within Great Britain. HSE are providing interviews and taking out advertisements in the trade press in support of this message.

### Operations

- There were 22 fatalities reported to HSE in January. Brief details are given in **Annex 2**.

### Significant prosecutions in January

- Arthur David Fletcher was fined £10,000 and ordered to pay costs of £6,257.40 after pleading guilty to a charge under Section 3(2) of the Health and Safety at Work etc Act 1974 when he appeared at Swansea Magistrates' Court on Monday (26 January).
- The Health and Safety Executive (HSE) has warned of the danger of using forklift trucks after a man died when a container of dye crushed him when he was assisting with an unloading operation. The warning follows the prosecution of Townley Dyestuffs Ltd of High Street, Tarporley, Cheshire following the incident on the 24 August 2005. The company pleaded guilty to a charge under section 2(1) of the Health and Safety at Work etc Act 1974 that they failed to ensure the safety at work of an employee. They were fined £10,000 and ordered to pay £6,963.25 costs.
- The Health and Safety Executive has warned firms to properly assess risks when working with asbestos and ensure, if necessary, only licensed contractors are used. The call follows the prosecution on 4 February 2009 of Westpoint Schoolcare Ltd for breaching Regulations 5, 8(1) and 11 of the Control of Asbestos Regulations 2006. The firm from Gorton, Manchester was fined £1,000 and ordered to pay costs of £515 after pleading guilty to failing to properly assess whether asbestos was present before starting refurbishment work at a Manchester school. The company also failed to take the necessary steps to prevent its employees being exposed to asbestos dust and undertook licensable work without holding a license.
- East Lancashire Box Company was charged with failing to ensure the health, safety and welfare of an employee under Section 2 (1) of the Health and Safety at Work etc Act 1974. Failing to make a suitable risk assessment under Regulation 3 (1)(a) Management of Health and Safety at Work Regulations 1999, and also an offence under the Employment of Women, Young Persons and Children Act 1920 in that they employed a child in an industrial undertaking. The company pleaded guilty at Hyndburn Magistrates Court to three charges under health and safety legislation, it was fined a total of £12,000 and ordered to pay £3,451 costs.
- Coastal Container Line Limited was today fined £150,000 and ordered to pay costs of £26,732 at Liverpool Crown Court. The company had earlier pleaded guilty to charges under Section 2(1) and Section 3 of the Health & Safety at Work etc Act 1974 at South Sefton Magistrates Court and had been committed for sentence at the Crown Court
- Tameside MBC of Wellington Road, Ashton under Lyne pleaded guilty to two charges under health and safety legislation at Manchester Crown Court, and were sentenced for one offence incorporating both contraventions, fined £25,000 and ordered to pay £23,565 costs. At a previous hearing at Trafford Magistrates Court Clockwork Day Nursery Ltd of Stamford Street East, Ashton under Lyne was fined £21,000 and ordered to pay £6,779.10 costs after pleading guilty to two charges. They appealed against the sentence at Manchester Crown Court and but the sentence remained unchanged at a fine of £21,000 plus costs of £6,779.

### Myth of the Month

- Health and safety requirements were given as the reason that a pancake race couldn't take place last year

A straightforward event like this one only needs a short, simple risk assessment. And when an event has taken place lots of times before, all that's needed is a review of the previous assessment - just to check nothing has changed - so that the fun can go ahead! Managing risk is about practical steps to protect people from real harm and suffering - not bureaucratic back covering.

### **FOI Requests**

- There were 505 FOI requests made to HSE in January.

### **Events, Campaigns and Publications**

- A total of 61 people died and more than 14,000 suffered serious injury as a result of a slip, trip or fall from height in British workplaces last year. These shocking statistics have prompted the launch of an awareness raising campaign from the Health and Safety Executive (HSE). The second phase of the Shattered Lives campaign was launched today to highlight the devastating consequences of slips, trips and falls in the workplace and to encourage employers, in consultation with their employees, to 'take action'.
- The Health and Safety Offences Act 2008 comes into force on Friday, 16 January 2009. This new Act will increase penalties and provide courts with greater sentencing powers for those who break health and safety law, and is being welcomed by the Chair of the Health and Safety Executive (HSE).
- Today saw the re-launch of a Health and Safety Executive (HSE) campaign that warns about the dangers of falls from vehicles. This type of incident involving workplace transport is a major cause of injuries and costs industry over £35 million each year. The campaign will highlight the many cost effective ways that exist to stop these falls happening.
- HSE invites water management specialists plus suppliers and users of surface treatment equipment to a Legionella Awareness seminar, Birmingham, 27 March 2009
- A campaign to prevent deaths on farms launches today (Friday 2nd January 2009) - highlighting farming as one of the most dangerous ways to make a living in Britain.
- **"Make the promise. Come Home Safe"** is a hard-hitting campaign from the Health and Safety Executive (HSE) targeting farmers and their families, including grandparents and children, with the individual stories behind the statistics and the devastation caused to bereaved families.

### **Parliamentary Business**

- There were 12 PQ's in January.

### FATALITIES REPORTED TO HSE DURING JANUARY 2009

These initial notifications are not validated because their investigations have not yet confirmed that all the deaths were work related

AGE	REGION	INDUSTRY SECTOR	DESCRIPTION
23	London	Ground works	Killed by electric cable explosion
44	Kent	Arboriculture	Fell from a tree
23	Scotland	Road Haulage	Using machinery that came into contact with a power line
31	Devon	Agricultural and Food	Came into contact with a capstan winch
45	Preston	Precision Engineering	Crushed between saddle and chuck of a lathe
50	Newcastle	Air Transport	Crushed between aircraft and vehicle
62	Salford	Vehicle Maintenance	Crushed by HGV
45	Northolt	Construction	Found unconscious outside a house they were painting
66	Manchester	Gas	Suspected CO poisoning
95	Warwickshire	Utilities	Killed in gas explosion
61	Cornwall	Transport	Buried under tipped coal
86	Rochdale	Public Services	Fell from a hoist
51	Berwick upon Tweed	Construction	Struck by reversing telehandler
65	Leicestershire	Agriculture	Stuck by plastic wrapped bale
71	Walsall	Health and Social Care	Fell from a window
74	Northampton	STSU	Stuck by a bus
47	Oswestry	Transport	Apparently crushed by vehicle during repair
47	Lincoln	STSU, Utilities Section, (domestic gas)	CO poisoning
17	Rochdale	MVR	Struck by reversing vehicle
25	Herts.	Education	Found unconscious at photo shoot
	Essex	Healthcare	Fell from a hoist
46	London	Healthcare	Jumped off glass wall

## UPDATE ON EU HEALTH AND SAFETY DOSSIERS

This annex to the Chief Executive's Report provides the Board with a monthly update on progress with EU health and safety dossiers that HSE leads on for HMG or other dossiers that HSE has an interest in but not the lead. To help the Board keep track of developments, each dossier is either marked '[UNCHANGED FROM LAST BOARD UPDATE](#)' or '[NEW DEVELOPMENTS](#)'. For further information about this annex, please contact Stephen Taylor, EU Coordinator in HSE's International Unit (Tel: 020 7717 6677 or e-mail: [stephen.taylor@hse.gsi.ov.uk](mailto:stephen.taylor@hse.gsi.ov.uk))

### ON THE HORIZON:

<b>Initiative on Carcinogens and Mutagens</b>	
<b>Current status (UNCHANGED FROM LAST BOARD UPDATE)</b> The second stage of social dialogue on potential amendments to the Carcinogens and Mutagens Directive (2004/37/EC) ended without an agreement. The EC has tendered for a contractor to undertake an Impact Assessment to help decide the next steps for the initiative.	
<b>Lead Department</b> <b>HSE contact</b>	<b>HSE</b> SCS Lead – Steve Coldrick Policy Lead – Robin Foster, International Chemicals Unit, 020 7717 6990, <a href="mailto:robin.foster@hse.gsi.gov.uk">robin.foster@hse.gsi.gov.uk</a> SCS Lawyer – Stephen Amos

### PRE-PROPOSAL STAGE:

<b>Initiative on Musculoskeletal Disorders</b>	
<b>Current status (UNCHANGED FROM LAST BOARD UPDATE):</b> A concluding conference on the social and economic impact of future European initiatives on the prevention of musculoskeletal disorders was held in Amsterdam on 29 October 2008. The researchers found the majority of stakeholders consulted thought a new Directive covering all MSDs would have the greatest impact. However, no consensus emerged from Member States at the conference. The EC favours a new Directive covering all the <u>physical</u> risk factors for MSDs that allows for a flexible approach to risk assessment. It looks like a proposal for a Directive may come forward in 2009.	
<b>Lead Department</b> <b>HSE contact</b>	<b>HSE</b> SCS Lead – Peter Brown Policy Lead – Nick Snelham, MSD Programme, 0151 951 3691, <a href="mailto:nicholas.snelham@hse.gsi.gov.uk">nicholas.snelham@hse.gsi.gov.uk</a> SCS Lawyer – Caroline Croft

<b>Initiative on Needle Stick Injuries</b>	
<b>Current status (NEW DEVELOPMENTS):</b> The EC has suspended its work on bringing forward an amendment to the Biological Agents Directive addressing needlestick injuries in healthcare workers as the social partners (employee and employer representatives) at a European level in the public hospital sector have formally agreed to start negotiations on a social partners' agreement. This work will commence in January 2009. The Commission may still bring forward a proposal if the social partners fail to reach agreement. <b>Public health sector employers have approached HSE to accompany them to social partner meetings.</b>	
<b>Lead Department</b> <b>HSE contact</b>	<b>HSE</b> SCS Lead – Les Philpott Policy Lead – Sarah Senior, Specific Interventions, 020 7717 6266, <a href="mailto:sarah.senior@hse.gsi.gov.uk">sarah.senior@hse.gsi.gov.uk</a> SCS Lawyer – Stephen Amos

<b>Initiative on 3<sup>rd</sup> List of Indicative Occupational Exposure Limit Values (IOELVs)</b>	
<b>Current status (UNCHANGED FROM LAST BOARD UPDATE):</b> The EC's Advisory Committee on Safety and Health at Work has voted on its opinion on a draft Commission Directive establishing a 3rd list of IOELVs under Directive 98/24/EC on Chemical Agents. A vote of Member States on the final text prior to adoption by the Commission is expected in spring 2009.	
<b>Lead Department</b> <b>HSE contact</b>	<b>HSE</b> SCS Lead – Steve Coldrick Policy Lead – Robin Foster, International Chemicals Unit, 020 7717 6990, <a href="mailto:robin.foster@hse.gsi.gov.uk">robin.foster@hse.gsi.gov.uk</a> SCS Lawyer – Stephen Amos

<b>Proposed amendment of Electromagnetic Fields Directive (2004/40/EC)</b>	
<b>Current status (UNCHANGED FROM LAST BOARD UPDATE):</b> The revised implementation date of is 30 April 2012. The EC has awarded a contract to the FICETTI consortium (lead by Finnish Institute of Occupational Health) to gather evidence to inform new EC impact assessment. HSE is aiming to facilitate UK stakeholder contributions to the contractor.	
<b>Lead Department</b> <b>HSE contact</b>	<b>HSE</b> SCS Lead – Les Philpott Policy Lead – Matthew Penrose, Specific Interventions, 0151 951 4909, <a href="mailto:matthew.penrose@hse.gsi.gov.uk">matthew.penrose@hse.gsi.gov.uk</a> SCS Lawyer – Stephen Amos

**Proposed revision of Biocidal Products Directive (98/8/EC) - main revision****Current status (UNCHANGED FROM LAST BOARD UPDATE):**

In a combined report to the Council and the European Parliament on the implementation and progress of the BPD, the EC stated its intention to revise the BPD. The revision will take a two-tiered approach - a 'mini-revision', which involves necessary administrative changes to the legislation and the 'main revision', which will involve more significant changes.

- The key issues that the EC have suggested for the **main revision** are:
- Replacing the current Directive with a direct acting European Commission Regulation,
- Using the new Regulation to widen the scope of the original Directive,
- Establishing a partially centralised system for the authorisation certain substances/product types,
- Setting reduced fees for Small & Medium sized Enterprises (SMEs) and in some cases waiving the fee altogether.

HSE will need to consider the consequences arising from these suggestions, including:

- The introduction of direct acting European Regulation,
- The implication of widening the scope of the legislation,
- The practical aspects of operating a partially centralised system,
- The consequence of reducing/waiving fees.

A formal proposal on the main revision is likely to be submitted to the Council and European Parliament early in 2009.

**Lead Department****HSE****HSE contact**

SCS Lead – Steve Coldrick  
Policy Lead – Gill Smith, Corporate Specialist Division, 0151 951 4919, [gill.fod.smith@hse.gsi.gov.uk](mailto:gill.fod.smith@hse.gsi.gov.uk)  
SCS Lawyer – Caroline Croft

**Proposed revision of Seveso II Directive (96/82/EC) – Linking GHS to Seveso****Current status (UNCHANGED FROM LAST BOARD UPDATE):**

An EC technical working group is currently looking at the implications of bringing GHS into the Seveso Directive. A proposal is not expected until early 2010.

**Lead Department****HSE****HSE contact**

SCS Lead – Les Philpott  
Policy Lead – Sandra Ashcroft, Specific Interventions, 0151 951 3531, [sandra.ashcroft@hse.gsi.gov.uk](mailto:sandra.ashcroft@hse.gsi.gov.uk)  
SCS Lawyer – Caroline Croft

**Proposed recast of Basic Safety Standards Directive (96/29/EURATOM)****Current status (NEW DEVELOPMENTS):**

A Working Party of the EC's Article 31 Group of Scientific Experts is currently considering a recast of the directive. They are expected to produce a full report by late 2009. The Commission is not expected to produce a proposal until mid 2010.

<b>Lead Department</b>	<b>HSE</b>
<b>HSE contact</b>	SCS Lead – Les Philpott Policy Lead – Kate Haire, Specific Interventions, 0151 951 3792, <a href="mailto:kate.haire@hse.gsi.gov.uk">kate.haire@hse.gsi.gov.uk</a> SCS Lawyer – Caroline Croft

**Proposed simplification of Pressure Equipment Directives****Current status (UNCHANGED FROM LAST BOARD UPDATE):**

The EC has decided that the review of the directive will not take place until 2010, after which next steps will be decided.

<b>Lead Department</b>	<b>BERR</b>
<b>HSE contact</b>	SCS Lead – Marcia Davies HSE Policy Lead – Phil Papard, STSU, 0161 952 8402, <a href="mailto:phil.papard@hse.gsi.gov.uk">phil.papard@hse.gsi.gov.uk</a> SCS Lawyer – Caroline Croft

**Initiative on Nuclear Safety****Current status (UNCHANGED FROM LAST BOARD UPDATE):**

The Council Directive on Nuclear Safety (revised and updated from the original draft) was adopted by the Commission on 26 November 2008 and went to the Atomic Questions Working Group (AQWG) on the same day for information. The Directive was on the agenda for the subsequent 3 meetings. A revised draft is being considered under the Czech Presidency starting with the AQG on 28 January 2009. FCO is liaising with Department of Energy and Climate Change (DECC) and HSE to coordinate the UK responses.

<b>Lead Department</b>	<b>DECC (Policy Lead) HSE (UK Competent Authority)</b>
<b>HSE contact</b>	SCS Lead – Mike Weightman Policy Lead – Peter Addison, Nuclear Directorate, 0151 951 3550, <a href="mailto:peter.addison@hse.gsi.gov.uk">peter.addison@hse.gsi.gov.uk</a> SCS Lawyer – Caroline Croft

## UNDER NEGOTIATION:

Marketing and Use Directive (76/769/EEC) – Restrictions on marketing and use of Dichloromethane	
Current status ( <b>UNCHANGED FROM LAST BOARD UPDATE</b> ): In February 2008 the EC published a proposal to restrict the marketing and use of Dichloromethane (DCM)-based paint-strippers. This has been subject co-decision via the Council Working Party on Technical Harmonisation (Dangerous Substances) and the European Parliament's (EP) Environment, Public Health and Food Safety (ENVI) Committee. A UK negotiating strategy was cleared by Ministers. The EP's ENVI Committee voted on 9 September 2008 for a ban on professional and consumer use of DCM based paint-strippers. The last Council Working Party meeting took place on 27 November and the finalised text of the Decision was considered by COREPER in December 2008. The outcome of negotiations is a compromise position and is the best that HSE officials have been able to achieve. We secured wide spread support for the view that licensing was an inappropriate control measure. The result was a provision for Member States to derogate from a ban on professional use, subject to appropriate conditions, including training. In addition, HSE officials secured substantive changes to requirements on industrial use, where existing standards are often poor. The dossier was voted on and agreed by the European Parliament in its plenary session on 14 <sup>th</sup> January 2009. It will now go back to Council for adoption.	
Lead Department HSE contact	<b>HSE</b> SCS Lead – Steve Coldrick Policy Lead – Robin Foster, International Chemicals Unit, 020 7717 6990, <a href="mailto:robin.foster@hse.gsi.gov.uk">robin.foster@hse.gsi.gov.uk</a> SCS Lawyer – Stephen Amos

Proposed EC Regulation on Community Statistics on Public Health and Health and Safety at Work	
Current status ( <b>UNCHANGED FROM LAST BOARD UPDATE</b> ): The Regulation completed its Second Reading at the EP Plenary session on 18 November 2008 and was adopted. The Regulation will come into force twenty days after formal publication in the Official Journal of the European Union before the end of the year. Eurostat is expected to begin preparatory work on secondary implementing Commission Regulations in 2009.	
Lead Department HSE contact	<b>ONS</b> HSE SCS Lead – Jenny Eastabrook/Elizabeth Hodkinson HSE Policy Lead – Kevin Walkin, Better Regulation Unit, 020 7717 6298, <a href="mailto:kevin.walkin@hse.gsi.gov.uk">kevin.walkin@hse.gsi.gov.uk</a> SCS Lawyer – Stephen Amos

<b>Biocidal Products Directive (98/8/EC) – amendment of the transitional deadline to allow for completion of the review of active substances used in biocidal products that were already on the market before the Directive came into force</b>	
<b>Current status (UNCHANGED FROM LAST BOARD UPDATE):</b> The proposal was presented at the Environment Working Party meeting on 28 November 2008. It is currently anticipated that the proposal will be agreed at first reading so that final agreement can be reached early in 2009.	
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### UNDER IMPLEMENTATION:

<b>EC Regulation on Existing Substances (793/93) – Risk Assessment and Risk Reduction Strategies</b>	
<b>Current status (UNCHANGED FROM LAST BOARD UPDATE):</b> The UK has completed its work to prepare Risk Reduction Strategies for four outstanding ESR substances (Bisphenol A, MCCP, Styrene and Tetrachloroethylene) before the due completion date of 1 December 2008. These have been submitted to European Chemicals Agency to take forward the recommendations.	
<b>Lead Department</b> <b>HSE contact</b>	<b>HSE (UK Competent Authority)</b> SCS Lead – Steve Coldrick Policy Lead – Robin Foster, International Chemicals Unit, 020 7717 6990, <a href="mailto:robin.foster@hse.gsi.gov.uk">robin.foster@hse.gsi.gov.uk</a> SCS lawyer – Stephen Amos

<b>Artificial Optical Radiation Directive (2006/25/EC)</b>	
<b>Current status (UNCHANGED FROM LAST BOARD UPDATE):</b> The transposition deadline for this Directive is 27 April 2010. An above-the-line paper is proposed for the 29 April 2009 Board meeting to present evidence for the various transposition options and to take direction on the way forward.	
<b>Lead Department</b> <b>HSE contact</b>	<b>HSE</b> SCS Lead – Les Philpott Policy Lead – Matthew Penrose, Specific Interventions, 0151 951 4909, <a href="mailto:matthew.penrose@hse.gsi.gov.uk">matthew.penrose@hse.gsi.gov.uk</a> SCS Lawyer – Stephen Amos

## EC Regulation on Registration, Evaluation, Authorisation and Restriction of Chemical substances (REACH) (1907/2006)

### Current status (UNCHANGED FROM LAST BOARD UPDATE):

The regulation came into force on 1<sup>st</sup> June 2007. At Community level, HSE officials are working with other Member States, the Commission and key stakeholders in a number of committees and other groups to establish the working principles for the Regulation. Key recent developments include review of annexes to the Regulation including developments:

- On 1<sup>st</sup> June 2009, Annex XVII to the REACH Regulation will replace the existing Marketing and Use Restrictions on substances, including the restrictions on asbestos. A meeting on 17<sup>th</sup> December 2008 failed to vote on adoption of the revised text, as the European Commission were not able to resolve opposition on several key points, including issues with the entry for asbestos. Failure to adopt the revision of Annex XVII causes significant problems for the UK, as legislative process and consultation will cause our implementation of the solution, once agreed, to be later than the 1st June. This problem will be the subject of separate Board engagement in coming months.
- A report from the working group considering the 'Risk Communication Network' proposed by the European Chemicals Agency (ECHA) to facilitate Member State and ECHA duties to communicate information has been adopted by Member States, ECHA and the Commission. Officials are satisfied that the draft mandate for the group does not extend beyond the duties on Member States agreed in REACH negotiations.
- REACH-IT, the online system set up by ECHA to manage the REACH process, continues to cause concern. It is not robust or accessible, and is the subject of considerable criticism from industry. Officials are representing these concerns to ECHA, but do not expect the situation to improve soon.
- ECHA have published a consultation on their draft recommendation to the European Commission on substances that should be added to Annex XIV of REACH (i.e. made subject to 'authorisation' requirements controlling their continued use). Defra lead on the UK policy response.
- HSE are continuing to develop guidance on the relationship between REACH and COSHH.

**Lead Department**  
**HSE contact**

**DEFRA (Policy Lead) HSE (UK Competent Authority)**

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SCS Lawyer – Stephen Amos

**Directive (2006/121/EC) amending Directive 67/548/EEC relating to classification, packaging and labelling of dangerous substances in order to adapt it to the REACH Regulation**

**Current status (UNCHANGED FROM LAST BOARD UPDATE):**

This Directive was adopted on 18 December 2006, with transposition required by 31 May 2008. The Directive is due to be transposed in two parts. The UK implemented the substantive parts of the Directive on 1 December 2008 through the REACH Enforcement Regulations 2008. The remaining requirements will be transposed through amendments to CHIP, which will be made in relation to the GHS Regulation; this is likely to be in Spring 2009. As full transposition has not yet taken place, the UK is currently subject to infraction proceedings on this Directive.

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**Identification and Traceability of Explosives for Civil Uses Directive (2008/43/EC)**

**Current status (UNCHANGED FROM LAST BOARD UPDATE):**

This Directive was adopted on 4 April 2008 with transposition required by 5 April 2009. The Board has cleared an approach for transposing the Directive and this is being put to Ministers for approval.

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Dangerous Substances Directive (67/548/EEC) – 30<sup>th</sup> Adaptation to Technical Progress (ATP)

Current status (**NEW DEVELOPMENTS**)

On 31<sup>st</sup> December 2008, the EC's new Classification Labelling and Packaging (CLP) Regulation (EC Regulation 1272/2008) was published in the Official Journal. As a result, Member States no longer have an obligation to implement the 30th ATP, as Article 55(11) of the CLP Regulation deletes Annex I of the DSD. **The deletion of Annex I of the DSD became effective on 20 January 2009, i.e. 20 days after publication of the CLP Regulation.**

**Annex 1 of the DSD is now incorporated into Annex VI of the CLP Regulation, up to the 29th ATP.. We understand that the European Commission will bring forward a proposal for a 1st Adaptation of Regulation 1272/2008 to add the content of the 30th and 31st ATPs in February or March 2009, with a view to this coming into direct effect around June 2009 or shortly thereafter.**

**In December 2008, ETIME SA, a Turkish borate producer issued proceedings against DWP seeking Judicial Review and referral from a British Court to the European Court of Justice, challenging the classifications for borate substances which appear in the 30th ATP. This follows similar action initiated by the Nickel Industry against DWP in September 2008, seeking Judicial Review of the classification of certain nickel compounds also in the 30th ATP, and again referral to the ECJ.**

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**Dangerous Substances Directive (67/548/EEC) – 31<sup>st</sup> Adaptation to Technical Progress (ATP)**

Current status (**NEW DEVELOPMENTS**):

**The 31st ATP amends Annex 1 of the Dangerous Substances Directive (DSD) (67/548/EEC) i.e. the list of substances with harmonised classifications. The vote on the 31st ATP took place on 19 November 2008. There was a comfortable QMV in favour and the 31st ATP was published in the OJ in January 2009.**

**On 31st December 2008, the EC's new Classification, Labelling and Packaging (CLP) Regulation (EC Regulation 1272/2008) was published in the Official Journal. As a result, Member States no longer have an obligation to implement the 30th ATP, as Article 55(11) of the CLP Regulation deletes Annex 1 of the DSD. The deletion of Annex 1 of the DSD became effective on 20 January 2009, i.e. 20 days after publication of the CLP Regulation.**

**Annex 1 of the DSD is now incorporated into Annex VI of the CLP Regulation, up to the 29th ATP. We understand that the European Commission will bring forward a proposal for a 1st Adaptation of Regulation 1272/2008 to add the content of the 30th and 31st ATPs in February or March 2009, with a view to this coming into direct effect around June 2009 or shortly thereafter.**

**As the 31st ATP includes numerous entries for nickel substances, we anticipate that the nickel industry will also seek a referral to the ECJ to challenge these, perhaps by addition to the existing judicial review.**

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**EC Regulation on Classification, Labelling and Packaging of Substances and Mixtures (1272/2008)**

Current status (**UNCHANGED FROM LAST BOARD UPDATE**):

The Regulation was published in the Official Journal of the European Union on 31<sup>st</sup> December 2008 and will enter into force on 20<sup>th</sup> January 2009. However the provisions on classification, labelling and packaging do not become mandatory until 1<sup>st</sup> December 2010 for substances and 1<sup>st</sup> June 2015 for mixtures. HSE is working on amendments to the Chemical Hazard Information and Packaging for Supply (CHIP) Regulations to align them with and to enable enforcement of the EC Regulation. A Consultation Document on the proposed amendments was published on 19<sup>th</sup> December 2008.

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**Machinery Directive (2006/42/EC)****Current status (NEW DEVELOPMENTS):**

The Supply of Machinery (Safety) Regulations 2008 (published in June 2008), come into force on 29 December 2009. The EC has submitted a proposed amendment to introduce environmental protection requirements for pesticides application machinery. The French Presidency held first Council WG meetings on 3 and 16 December 2008. BERR, with HSE support, represented the UK. The Czech Presidency took over in January with meetings on 19/1 and 2/2 – next meeting on 20/2 will consider EP Rapporteur's report containing 35 amendments. We expect the Council to agree a text in the first quarter of 2009 or shortly after.

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SCS Lawyer – Caroline Croft

**Services Directive (2006/123/EC)****Current status (UNCHANGED FROM LAST BOARD UPDATE):**

BERR is currently working on measures to implement the Directive in the UK.

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SCS Lawyer – Stephen Amos

**EC Regulation applying aspects of the New Regulatory Framework (New Approach) that set out the essential requirements which apply directly to all Member States concerning control of most non-food products supplied in the UK or elsewhere in the European Community (765/2008)**

**Current status (NEW DEVELOPMENTS):**

This EC Regulation sets out the requirement for Member States accreditation and market surveillance obligations relating to the marketing of products in the EU. The Regulation will apply from 1 January 2010. BERR considering with OGDs what UK legislation changes may be required. This includes looking to see if the new requirements for recall and withdrawal of defective products are adequately covered by existing UK legislation, including Section 6 of HSWA and POMSTER – STSU, PG and LAO are in close liaison with BERR. The new Market Surveillance Coordinating Committee, including an HSE representative, has met twice to help plan the implementation of this Regulation. Following discussions and presentations between the Information and Communication System Across-Border Market Surveillance (ICSMS) Board headed by the UK, the EU Commission has obtained agreement from member states not using ICSMS (already in use in HSE) to use this to develop the information exchange and coordination system required under the Regulation.

**Lead Department**

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**EC Regulation on Mutual Recognition of Goods in the European Union (764/2008)**

**Current status (UNCHANGED FROM LAST BOARD UPDATE):**

Adopted at the June 2008 Agriculture Council. This EC Regulation defines the rights and obligations of, on the one hand, national authorities and, on the other, enterprises wishing to sell in a Member State products lawfully marketed in another Member State, when the competent authorities intend to take restrictive measures about the product in accordance with national technical rules. The Regulation will apply from 13 May 2009.

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