

Health and Safety Executive Board		HSE/11/60	
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Annual review of developments in Scotland

Purpose of the paper

1. To report to the Board on policy and operational developments and the climate for HSE's work in Scotland in the current context of the Government's health and safety reforms.
2. The paper (Annex 1) updates the Board on:
 - updated health and safety statistics (section A);
 - the emerging focus of the Scottish Affairs Committee's inquiry into health and safety in Scotland and explains the current position on the HSE Delivery plan for Scotland 2011/12. (section B).
 - relations with the devolved government and other devolved bodies, including the new arrangements for Partnership on Health and Safety in Scotland (sections C - E); and
 - significant operational interventions (sections F - I).

Background

3. The Board has regular discussions on significant issues in Scotland when it holds its annual meeting in Scotland, usually in September. This paper provides highlights on the range of activities in Scotland and updates the Board on the current climate for HSE's work here.

Argument

4. To brief the Board, routinely, on factors which influence perceptions of HSE, policy considerations and operational priorities, in Scotland in the devolved landscape.

Action

5. The Board is asked to note current increased external interest in HSE's work in Scotland. This coincides with changes in the balance of HSE's interventions and policy consultation with devolved interests in order to implement the Government's reform agenda.

Clearance

6. This paper was cleared by the SMT on 7th September 2011.

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Annex 1 : Review of developments in Scotland

A. Statistics

1. There were over 8,000 reported injuries in Scotland in 2009/10 that required more than 3 days off work. This represents a reduction of 18% since 2005/06. This reduction is in line with England and Wales. There is no significant difference in the rate of self-reported work-related illness in Scotland since 2003/04 compared with that of England and Wales. Over that period the average number of working days lost due to work-related ill health and injury per worker in Scotland fell from 1.9 in 2003/04 to 1.2 in 2009/10; a slightly greater reduction than in England and Wales.

2. The latest provisional figure for fatal injury alone shows that 15 workers died in Scotland in 2010/11, a rate in line with England and GB and lower than Wales. However, year on year fluctuations in such small numbers do not make for useful comparison in any one year. The longer term trend across GB remains downwards.

3. Injury rates in Scotland are similar to those of English regions with similar occupational compositions. The type of occupation is the key driver of risk rather than industry category, and geographical variations in injury rates are therefore largely explained within Britain as the product of a region's relative occupational and industrial mix. Scotland has a higher rate of fatal and major injury compared to Great Britain as a whole, because there are more people employed in higher risk occupations in Scotland; but those workers are not at a higher personal risk than others doing similar work elsewhere in Great Britain. This explanation is either not well understood or is not accepted by some stakeholders.

B. Scottish Affairs Select Committee

4. HSE submitted written evidence in June. In addition to the initial National Audit Office (NAO) memorandum, 28 other organisations, 14 of them Scottish, submitted evidence. HSE was the first organisation invited to present oral evidence. The Directors of FOD and HID and the Director, Scotland attended. The session confirmed that the Committee's interest has now focused on the higher rate of serious (fatal and major) injury in Scotland; the evidence and evaluation HSE uses in Scotland and elsewhere to target and design its interventions; prosecution activity; and the impact of the Government's reforms and reduction in HSE's funding. The resumption of oral evidence sessions after the summer recess will be monitored to inform briefing for the Minister's appearance probably late in October/November.

5. The NAO and the Select Committee considered the Scotland Business Plan for 2010/11. This had been modelled very closely on the general HSE Business Plan for that year. Following the same principle a Delivery Plan for HSE in Scotland has been drafted for 2011/12 based on that for the HSE as a whole and as such it does not contain novel material or any great detail.

C. Scottish Government

6. The SNP Government was re-elected with a majority in May. We are in dialogue with LAs in Scotland on the UK Government's health and safety reforms.

7. Recent policy dialogue has focused on aspects of *Common Sense Common Safety* implementation as they affect devolved interests, for example, the removal of the Adventure Activities Licensing regime which has required communication at Ministerial level on the plans and options open to the Scottish Government.

Sometimes the reserved/devolved regulatory landscape proves tricky. For example, the introduction of a GB-wide framework for contained use work with animal and human pathogens and genetically modified organisms requires careful consideration of appropriate legislative powers between Westminster and the Scottish Government. This means the April 2012 implementation target is now challenging. HSE and Defra are working closely with Scottish Government officials on a solution, but all parties remain committed to a single regulatory framework.

8. Meanwhile, the Scottish Government remains an active partner in the national health and safety stakeholder body, the Partnership on Health and Safety in Scotland (PHASS). It continues to be chaired by HSE Board member Hugh Robertson, but, following the decision made by the HSE Board last September, it has changed its nature and format. It now meets in different locations around Scotland and local businesses are invited to attend an open session where they receive support and information sessions. In the autumn it met in Dumfries, in the spring in Inverness and in August in Fife. At the most recent event the focus was on competence and, for the first time, HSE handed over much of the organisation and funding to partner organisations (RoSPA Scotland and the Scottish Chamber of Safety). Since the change of approach nearly 200 business people have had a chance to discuss key themes and been offered access to resources, from Scottish health and safety advisory services, local support groups and exemplary businesses. Indications are that businesses like the simpler guidance now available on HSE's website and will turn to local networks for practitioner support when they are put in touch. The next event in November will be for PHASS members themselves and their wider constituencies to take stock of that experience and decide on future format.

9. A reasonably steady flow of Scottish MSP/MP correspondence on constituency matters as well as Parliamentary Questions about the reforms is allowing HSE to explain changes in operational policy and priorities. HSE in Scotland continues to identify and co-ordinate responses to Scottish consultations, most recently on the management of public health incidents.

D. Justice system

10. The effects of closer working with Crown Office and Procurator Fiscal Service (COPFS) specialist Health and Safety Division as well as their new approach to prosecution are becoming clearer. Overall, a higher proportion of guilty pleas and therefore convictions is being achieved from the number of cases taken. With every case now taken on indictment, resulting fines are more proportionate to the offence. The complexity of potential culpable, and now corporate, homicide offences as well as the greater effort to secure early pleas is likely to be responsible in part for a lower number of cases reaching court. COPFS and HSE have put more effort into securing immediate publicity and stronger communication about the damaging impact of prosecution on companies as a deterrent to unacceptable health and safety standards and downright negligence.

E. Public Services

11. Work to encourage sensible risk management and reduce risk averse behaviour has included an HSE action plan with the Scottish Schools Equipment Research Centre to produce a suite of material to promote proportionate risk management in schools. The work has the support of the Scottish Government Schools Curriculum Division and the Association of Directors of Education in Scotland.

12. Work on leadership and competence with the Scottish Government Health Workforce Directorate and NHS Scotland Health Boards has produced the NHS Scotland Manual Handling Passport and Information Scheme to enable transfer of skills between Health Boards and minimise duplication of effort and wasted resource in NHS Scotland. The Passport which was co-signed by the Scottish Minister for Public Health and Sport (with special responsibility for health and safety) and HSE was sent to senior management in Scottish Health Boards with a clear message strongly encouraging Boards to participate in the scheme. A similar scheme (being led by Fife Council) is now being planned for Local Authorities in Scotland with the support of the Scottish Government.

13. HSE has also advised the Scottish Government Health Workforce Directorate on their 'Occupational Health and Safety Strategic Framework for NHS Scotland' and will continue to work with them on the priorities identified in that Strategy. Work with newly created or reformed public services scrutiny bodies in Scotland has included a Letter of Understanding, arrangements and an awareness raising event with the Healthcare Environment Inspectorate in Scotland to ensure that duplication of effort is avoided and concerns about public safety are effectively communicated between the two organisations. Discussions are also ongoing to establish a working arrangements agreement with the social care regulator, Social Care and Social Work Improvement Scotland (SCSWIS), and Local Authorities in Scotland.

14. Care home deaths are unfortunately a major feature requiring at least initial enquiries by HSE even if they do not prove reportable. HSE has assisted Gold Command for the Operation Mall investigation into care home deaths. COPFS and the Police have primacy with SCSWIS as lead investigating body rather than HSE.

F. Chemical and specialised industries

15. 2010/11 was the first year of the COMAH Competent Authority (CA) Remodelled approach to COMAH Regulation, strengthening leadership of the Competent Authority and resulting in closer engagement at all levels between HSE and the Scottish Environment Protection Agency (SEPA). The results so far have been seen in more consistent coordination, prioritisation and delivery of work at COMAH sites. The Scottish CIA (SCIA) gave the changes broad support at a recent stakeholder event with the CA and further lessons will be learned from their feedback.

16. The joint HSE/SCIA annual stakeholder workshop was on process safety leadership and human factors, to promote the CA's strategic programmes. HSE confirmed that competence would be the focus of strategic attention but not at the expense of earlier work on management of ageing plant and process safety performance indicators. 60 delegates attended from the onshore chemical and oil and gas sectors and from the Scotch Whisky Association (SWA). SWA are a key stakeholder in Scotland. Engagement is led by FOD, but HID CI participates in their COMAH subgroup as there are 23 top tier and 43 lower tier COMAH whisky sites distilling or storing very large quantities of alcohol.

17. Support to the Scottish Responsible Care Cell network, to the Safety Representatives Group and to Chemical Sciences Scotland has continued. This year HSE has helped the Safety Representative Group to become more active.

18. HSE, with SEPA, assessed early health, safety and environmental information from the Scottish Power Consortium as part of their bid for funding under the first DECC Carbon Capture and Storage Demonstration Competition. Their proposal was to take high pressure carbon dioxide from Longannet Power Station in Kincardine via a 165 mile long former National Grid pipeline to the coast at St Fergus, for further compression and pumping to the decommissioned off-shore installation, Goldeneye for undersea storage. Despite very significant challenges, the team produced conclusions and recommendations within tight DECC deadlines. HSE demonstrated that it could balance public health, safety and environmental protection with support for emerging energy technologies essential to meet challenging global climate control targets – a key policy of the Scottish Government with whom the HSE team worked closely.

19. HSE Chemical Industries teams have dealt with loss of containment incidents in all sectors. Ineos Manufacturing Scotland Ltd, the biggest COMAH operator in Scotland, were prosecuted and fined £100,000 in July following an uncontrolled release of highly flammable crude oil at their Grangemouth refinery in May 2008. The incident happened when a pipeline became over pressurised due to thermal expansion. Ineos were aware of the risks and need to install controls, but chose to rely on staff manually draining the line.

20. HSE Specialised Industries Division was involved in the decision to temporarily close down the BP Forties Pipeline system in August. The system supplies around 40% of UK fuel demand. A routine sub sea survey identified an unexploded WWII mine adjacent to the pipeline and the decision to shut down was made after discussions with DECC, to minimise risks while the mine was removed – which was subsequently done safely.

21. National Grid sites have notified that their contract to supply liquefied natural gas to Scottish Gas Networks (SGN) via their site at Glenmavis in Airdrie terminates in April 2012. SGN are currently considering their options for maintaining gas supplies in Scotland including the gas they supply to the Scottish Independent Undertakings who take gas to the islands and other remote parts of Scotland. Their decisions will have implications for the work of HSE: there may need to be a re-assessment of a range of GSM, PSR or COMAH safety cases, notifications or safety reports at short notice to ensure the continued safe distribution of gas in Scotland.

22. The Land Use Planning team worked extensively with the Scottish Government, Perth and Kinross Council, and DF Concerts to enable the 2011 “T-in-the-Park” festival to go ahead, despite its proximity to the Forties Pipeline. The negotiations produced a revised layout of the main stages which improved public safety without compromising the festival. There will be further engagement later this year to refine the event layout for 2012 and to discuss a new home for the event in Perth and Kinross.

23. Hazardous Industries policy teams have maintained good working relations with Scottish Government. Engagement including:

- work, with Defra and Welsh Assembly Government officials as well, to make the legislative changes needed to introduce a single regulatory framework for contained

use work with animal and human pathogens and genetically modified organisms (see paragraph 7 above),

- gaining Scottish Government agreement to limit proposals for planners to consult HSE on Environmental Impact Assessments in Scotland,
- provision of formal comment on the Scottish Government's replacement circular on Planning Controls for Hazardous Substances and consolidated legislation on permitted development,
- informally advising the Scottish Government of HSE's priority to cost recovery for land use planning advice which is likely to require a change in planning legislation (the Scottish Government have in turn advised that this may be at odds with their focus on a single fee approach to charges for development management).

G. Agriculture

24. The agricultural workforce in Scotland accounts for approximately 4% of the total yet is responsible for around 40% of fatal accidents at work in Scotland. The Agriculture Revisited stakeholder strategy plans to work with FOD Scotland to engage with a range of industry leaders, including NFU Scotland, to support them in dealing with the challenges of taking ownership of the industry's poor health and safety performance in Scotland and of demonstrating leadership in tackling the problem. An early encouraging sign is the engagement plan with the Scottish Government's Scotland's Environmental and Rural Services Partnership (SEARS). It includes:

- identifying opportunities for Scottish Ministers to raise awareness of health and safety in agriculture through co-ordinated press releases,
- including health and safety messages in farm visits by other regulators involved in SEARS,
- promoting the free advisory services of the Scottish Centre for Healthy Working Lives to the Scottish farming sector.

25. The scaled down presence at the Royal Highland Show this year, in line with the communications freeze, reduced HSE's visibility but still allowed us in partnership with LANTRA to reach a sizeable audience.

26. The programme of Safety and Health Awareness Days (SHADs) continues with events in November in Ayr, Fochabers and Fort William. Another SHAD – unique to Scotland - for the aquaculture sector has recently been delivered in Oban. The SHAD is organised, funded and delivered through a partnership with Marine and Coastguard Agency, Northern Lighthouse Board, Crown Estates, RNLI, trade associations and the major aquaculture companies in Scotland.

27. Although proactive inspection of farms is no longer assessed as an effective use of resource, HSE's commitment to the programme of inspection of Liquid Petroleum Gas installations does involve many farm visits in Scotland and enforcement levels relating to LPG problems continue to be high.

H. Construction

28. The industry is still responsible for the second highest rate of serious injury after agriculture. Despite the economic downturn major infrastructure projects continue to give rise to significant risk. A fatal injury to a migrant worker crushed by a poorly-maintained telehandler at Glendoe dam, Fort Augustus, a large hydroelectric civil engineering project, resulted in a fine of more than a quarter of a million pounds for the German-based principal contractor. The inspector commented that it was the worst-maintained equipment he had ever seen in 30 years experience.

29. Work has started on many of the construction and major infrastructure projects for the Commonwealth Games 2014 including the new velodrome, SECC extension, Commonwealth pool refurbishment and completion of new motorway systems. The 2014 Games involve a lower proportion of new build than the Olympics and venues are more dispersed, but the construction work is very significant. HSE's strategy is on early intervention and CDM principles.

30. At the other end of the economic scale, an intensive inspection campaign in February and March targeted small refurbishment sites. Three quarters of all fatalities occur during refurbishment, repair and maintenance activities, particularly by small businesses. Of nearly 300 sites, 53 required enforcement action with 39 notices relating to unsafe work at height. The campaign picked up a lot of Scottish media interest in enforcement by HSE and how to avoid it.

31. Other successful prosecutions have included, in March 2011, Robertson Construction Central Ltd and Stirling Stone Ltd, following the first contested trial conducted by the Health and Safety Division of COPFS, who were each fined £200k. The prosecution resulted from HSE's investigation of the death of a stone mason's labourer.

I. Investigation and enforcement

32. Reactive investigation has always accounted for a significant proportion of the Scottish workload but has recently increased as a proportion of inspectors' time in line with Government policy.

33. Two companies were fined a total of £640,000 following the death of two fish farm workers on a barge on Loch Creran, Argyll & Bute. Oxygen levels below deck were so low that in an attempt to rescue a colleague who had passed out repairing equipment, the two men were asphyxiated and died at the scene. HSE found that Scottish Sea Farms had not provided instruction and training for employees working in the small sealed chambers.

34. Notices are being used to maximum effect, for example, an Improvement Notice served on Greater Glasgow and Clyde NHS required assessment of ergonomic risks in maternity units following a serious accident to a maternity nurse. This should improve standards for a very large workforce. Notices served following three investigations of falls and a sulphuric acid leak at Scottish Water treatment plants have been complied with and will have corporate-wide implications.

35. A number of potential corporate homicide investigations by the COPFS, Police and HSE are proving complex and time-consuming. New rules on disclosure of unused evidence to the defence is adding to the administrative workload of organising and careful storage of information. The "Cadder" ruling affecting the

Scottish justice system - on ensuring the right of suspects to legal advice - has not greatly affected HSE but was a timely reminder of good practice.

36. HSE has been working closely with local authorities and Health Protection Scotland on legionella outbreaks in the West of Scotland and Perth area. HSE was represented on the outbreak management team and has subsequently inspected registered cooling towers serving some Notices.

37. HSE continues to monitor and sometimes to provide representation at a significant number of Fatal Accident Inquiries (FAI). Their findings usually have wide ramifications which may affect HSE's reputation. In the case of a recent FAI into two deaths at Scottish Coal opencast quarry site, the Sheriff's determination was positive towards HSE inspection, investigation and recommendations made on vehicle safety for all opencast coal sites.