

Health and Safety Executive Board		HSE/12/25	
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Review of HSE activities in Wales

Purpose of the paper

1. To report to the Board on policy and operational developments and activities in Wales as well as updating the Board on the changing context within which HSE is working with Welsh Stakeholders to deliver its activities.

Background

2. The paper (Annex 1) updates the Board on
 - health and safety statistics
 - the changing political climate, continuing devolution of powers to the Welsh Government and relations with the devolved government and other devolved bodies in Wales
 - significant operational interventions

Argument

3. The Board has regular discussions in relation to issues in Wales. There have been significant changes in relation to the devolved government since the Board last considered a paper on Welsh issues in November 2010.

Action

4. The Board is asked to note the changing context in Wales, and the current activity to deliver the strategy in Wales.

Paper clearance

5. This paper was cleared by the SMT on 7 March 2012.

Annex 1

HSE Activities – the context in Wales

A. Statistics

Injuries

1. In 2010/11 there were 6,064 injuries to employees reported under RIDDOR in Wales. This represents a rate of 542.8 per 100 000 employees, and a reduction of 24% since 2006/07. Despite this reduction, the rate of injury for Wales remains higher than that for England (459.8 per 100 000 employees) and Scotland (447.5 per 100 000 employees).

2. The latest figure for fatal injury shows that 11 workers died in Wales in 2010/11, a higher rate than England and Scotland (0.8 compared to 0.6 for both England and Scotland). However, year on year fluctuations in such small numbers do not make for useful comparison in any one year.

3. There is a higher proportion of people employed in high risk occupations in Wales than in England; injury rates in Wales are consistent with England across 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.

4. The longer term trend across GB for RIDDOR reported injuries remains downward, and evidence for Wales is consistent with this. The Labour Force Survey (LFS) supports the RIDDOR findings by confirming a downward injury trend in Wales. The estimated annual incidence rates for 2008/09-2010/11 are statistically significantly lower than 2005/06-2007/08.

Ill Health

5. The prevalence rate of self-reported work-related illness in Wales has reduced since 2003/04 from 5110 to 3630 per 100 000 workers. This reduction is statistically significant and consistent with England and Scotland.

6. In total 1.5 million working days were lost due to work-related ill health or injury per worker in Wales in 2010/11 – this equates to an average of 1.4 per worker.

B. The context for HSE in Wales

7. Health and Safety law-making powers are not devolved but health and safety issues cut across the responsibilities of Ministers and the work of the supporting Directorates of the Welsh Government (WG). Following elections in May 2011 there have been changes of Ministerial responsibilities and new appointments across WG; HSE continues to ensure that consultation on legislative proposals and Assembly business takes place.

8. In 2011 FOD Wales contributed to the National Assembly for Wales's (Health and Social Care Committee) Inquiry into residential care for older people outlining HSE's role as a regulator; and to an Inquiry into Hanson Cement, North Wales which was set up in response to concerns in the community about the site's impact on them.

HSE continues to be part of the Welsh Resilience Forum; Wales Regulators Forum; to work with other Inspectorates and contribute to key WG committees where appropriate. A Concordat between HSE and WG is currently being revised and FOD is also considering whether further local liaison and internal communication arrangements are needed.

9. HSE's links to the Welsh Local Government Association, WLGA, is considered key to understanding the direction of travel for LAs' reform in Wales. The move towards consideration of shared services across the 22 LAs within Wales looks likely to have an impact on LAs both as duty holders and as H&S Regulators, and appears to be something the new administration wishes to promote. FOD Wales continues to support LA partners through the regional task groups; the Head of Operations attends the meetings of Directors for Public Protection in Wales.

10. HSE submitted a revised HSE Welsh Language Scheme and its first annual monitoring report on the implementation of its Welsh Language Policy to the Welsh Language Board in 2011. The board praised HSE for its provision of language training as well as its Welsh Language aspirations. HSE continues to implement its Welsh Language Policy during a time of changes in HSE's organisation and operational delivery.

C. Hazardous Installations Directorate

Chemical industries

11. 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 Environment Agency in Wales (EAW). The results so far have been seen in more consistent coordination, prioritisation and delivery of work at COMAH sites.

COMAH Competent Authority – changes in Wales

12. The intention in Wales is that the Environment Agency Wales (EAW) will separate from the Environment Agency as the Welsh Government intends to establish and direct a new body for the management of Wales' natural resources with implementation, if agreed, by April 2013. The proposal is to transfer (in so far as they apply to Wales) all of the main functions of the Environment Agency, Countryside Council for Wales and Forestry Commission to the new organisation. The COMAH Competent Authority (CA) is the HSE and EA and COMAH is not devolved, so it is not clear what will happen to the EA involvement in COMAH in Wales after this change but it is assumed similar arrangements to those in Scotland may be introduced. HSE (HID & FOD) will continue to liaise with the EAW during this transition phase.

Stakeholder issues

13. The UK Petroleum Industry Association (UKPIA) set up a representative office in Wales this year in recognition of the strategic importance of the oil industry in Wales, with two refineries: Valero, Pembroke (formerly Chevron); and Murco, Milford Haven, in addition to some major oil storage terminals. Some major stakeholders, refinery operators in West Wales, have concerns regarding the costs, scope and timescales for implementing the post-Buncefield MIIB recommendations, particularly those

relating to additional containment arrangements to secure adequate environmental control.

Chevron Refinery multiple fatality investigation

14. An explosion and fire on the amine recovery unit at the Chevron Refinery in Pembroke caused four deaths, and serious injuries to one person on site. This followed the ignition of flammable substance(s) in a tank being prepared by contractors for thorough examination. The incident was a major accident reportable to the EC under the Seveso Directive. The investigation is being conducted jointly with Dyfed Powys Police, who have primacy under the Work Related Deaths Protocol. The investigation continues as a joint investigation, is extremely complex and no conclusions should be drawn at this stage. Progress of the investigation is being overseen by the Gold Group and regularly reviewed by the Crown Prosecution Service and the Head of Operations in HID CI2.

Specialised Industries

15. Specialised Industries Division has continued its work to ensure that the two Liquefied Natural Gas (LNG) importation terminals at Milford Haven continue to meet safety requirements as they come fully onto stream. These terminals are top tier COMAH sites and will be of increasing strategic importance to meeting GB's energy needs over the next 20 years. HSE will continue its engagement with these sites to ensure that safety standards are maintained.

16. A recent judgment of the European Court of Human Rights (ECHR) in the case of "*Hardy & Maile v the UK*" found no violations by the UK Government concerning the granting of consents for LNG to be imported at Milford Haven. The Court was 'satisfied that an extensive legislative and regulatory framework is in place...to promote safety and to limit the risks posed by the transfer and processing of LNG in the area'. The judgment described how HSE discharged its statutory functions, stating HSE 'played an important role'. The Welsh Government is leading on a second related matter where the European Commission alleges a breach of the Environmental Impact Assessment Directive on the basis that it considers insufficient risk assessment was included as part of the original Environmental Impact Assessment processes before the LNG terminals were granted planning permission.

17. South Hook Liquefied Natural Gas terminal is one of the largest in Europe. Judith Hackitt visited it on 4th July 2011. The site provided an overview of their operations and health and safety management system. They have overcome the historical challenges faced during the construction and commissioning of the site and gave positive feedback regarding the COMAH Competent Authority's intervention approach in 2011.

18. Wales and West Utilities (WWU) opened their new gas training facilities in Newport on 1st September 2011. The facilities provide WWU with the opportunity to improve the quality of practical training delivered directly to their gas engineers to support the quality of response from their gas network emergency and repair teams.

19. Pembroke Power Station notified HSE that they had started to commission the station and work to prepare the gas supply pipeline continued during 2011 with the full commissioning proposed in quarter 1 2012/13.

Mining Sector

20. HSE continues to work with South Wales Police (who have primacy) in the large and complex investigation into the deaths of four workers following an inrush at Gleision Mine on 15 September 2011. The inrush has led to an increased political interest concerning the funding of the Mines Rescue Service and the Secretary of State for Work and Pensions met the Rt Hon Peter Hain, HSE and others to discuss on 21 February. The Secretary of State placed an action on HSE to arrange a meeting with industry and OGD's to take evidence for the forthcoming review of mines rescue arrangements; this took place at Unity Mine in S Wales on 29 February and a note is being prepared.

21. On 8 December 2011 HSE chaired a meeting of the South Wales Mines Health and Safety Committee which included representatives for the majority of Welsh mines and workforce representatives. The meeting discussed the industry strategy for improving H&S in the industry, the work of the Mining Industry Safety Leadership Group and mines rescue issues.

D. Construction Division

22. The construction industry in Wales has suffered a down-turn in projects during this recession. However, the surveys in the trade press show that the value of planning approvals has risen in 2011 compared with 2010.

23. Large projects include Pembroke Power Station, decommissioning of Trawsfynydd Power Station and preparing to construct another at Wylfa, BBC Studios Cardiff and blast furnace replacement at a steelworks. Funding for regeneration and refurbishment has continued with large projects in all parts of Wales and there is much refurbishment work in the private sector. Construction work in the education sector has continued strongly. Construction division in Wales has held a number of events for property developers to ensure they are equipped with the knowledge to manage their projects.

24. Inspectorial resource is targeted towards the high risk sectors of asbestos, small sites and refurbishment. These are the areas that have seen the greatest concentration of accidents and enforcement. Last year the construction division in Wales undertook a period of intensive inspections of refurbishment resulting in notices being served at approximately one site in five, mainly for failure to control the risks of working at height. A similar initiative is being carried out in the final quarter of 2011/12, again targeting refurbishment. Following the refurbishment inspection initiative last year the construction division in Wales has held a number of events for property developers to ensure they are equipped with the knowledge to manage their projects.

25. The North and South Wales Working Well Together (WWT) partnerships continue with high levels of activity, running events for the supply chain including "White Van Tours" and events specifically for designers, scaffolders, college students, work with asbestos and health in construction. The WWT partnership between industry and HSE focuses on the theme of industry helping industry.

E. Agriculture Sector

26. The Agriculture and Food Sector represents HSE on the Welsh On-Farm Health and Safety Partnership and together with FOD continues to support initiatives led by relevant Agricultural stakeholders in Wales. In January 2012, the industry partners committed publicly to working together for a safer farming industry in Wales by launching a health and safety charter, analogous to that launched in England in 2011. A limited presence at the Royal Welsh Show was achieved by partnering with the NFU Cymru and there is already interest from the Farmers Union of Wales to partner with them this year. Two successful Agriculture Safety and Health Awareness Days were held this work year in Haverford West and Monmouthshire with high attendance and positive feedback from the Industry.

27. An independent report commissioned by the Welsh Government on better regulation of farming, the 'Working Smarter' report, includes recommendations to reduce the regulatory burden on farmers with an emphasis on supporting business prosperity in this sector. The approach has some synergy with work done previously by DEFRA (England) and SEARS (Scotland) and although the scope of the report does not extend to work-related health and safety it does give a good overview of the industry in Wales and the WG approach to it.

28. Tangentially there may be some (limited) involvement for HSE in some areas and in particular in connection with 'Reducing the number of inspections' theme in their report. The Agriculture sector will be involved, if appropriate, if the proposed Task and Finish Group is set up.

29. Chemicals Regulation Directorate (CRD) investigate reports of illegal sale and supply of pesticides in Wales or any reports of misuse of pesticides. Samples for pesticide residue testing are bought by shoppers from retail outlets in Wales. In addition samples are taken in Wales by Horticultural Marketing Inspectors (employed by the Rural Payments Agency) and by Plant Health and Seeds Inspectors (employed by the Food and Environment Research Agency) for testing. Sampling is undertaken to ensure legal levels of pesticide residues in food are not exceeded. CRD and the Wales and South West Product Safety Team investigate issues of non-compliance relating to the registration of substances under the REACH Regulations by companies based in Wales.

F. Public Sector

Health

30. NHS Wales play a key role in providing leadership of NHS Boards & Trusts within Wales and FOD's ongoing work with DG NHS Wales has led to the setting of Key Performance Indicators on Health and Safety within their Annual Quality Framework. Health Boards were required to report on current health and safety plans and to the development of health and safety competence of Board Directors and Executive Leads. HSE held a workshop to support improvements in the management of the NHS estate in Wales in particular their 'Duty To Manage' Asbestos. CEO's and NHS Health Board members were invited and key issues of leadership, worker involvement and performance indicators formed the basis for discussion.

31. NHS Wales remains a key stakeholder in gaining sustained improvement within this sector and FOD will continue to develop and build on this relationship. The issue

of NHS Wales as a dutyholder has been identified and is currently under discussion with WG.

Local Authorities

32. Local authorities are large employers and commissioners of works and services throughout Wales. FOD completed work in 2011 where all 22 Local Authorities in Wales submitted plans outlining their arrangements for managing and prioritising H&S. All Chief Executive & their Corporate H&S Teams have been given specific feedback emphasising their ownership, leadership and responsibility for delivery. This work was coupled with the FOD priority to review the LA role in the procurement of waste and recycling services. All procurement and in house services for waste and recycling at LAs in Wales have been reviewed and follow up work is planned for next work year.

G. Enforcement:

33. Recent notable enforcement action in Wales include:

- prosecution of a gas fitter who fitted a boiler which was classed as "immediately dangerous," in breach of a previous Prohibition Notice. The case was adjourned three times as the individual did not turn up to court. It was referred to Crown Court where a warrant was issued for his arrest and he was eventually sentenced to 8 months imprisonment.
- prosecution of a packaging company in Caerphilly, after a worker was killed when a half-tonne metal cabinet fell on him. The company went into liquidation soon after the incident but HSE pursued the investigation and the company was found guilty. The Judge stated that he would have imposed a very significant fine, but for the financial position of the company. He levied a £5000 fine and awarded full costs to HSE.
- initiation of legal proceedings against a limited company and two individuals, a director and senior manager in relation to the management of health and safety in a Nursing Home. The cases are being jointly prosecuted with the CPS who has also laid fraud charges against one of the defendants, a Director of the home. This is a significant and complex investigation which involves ongoing joint working with Gwent Police.
- trial of a firm at Mold Crown Court, following the death of a contractor at Connah's Quay Power Station after he fell into a cooling water sump. The case was defended but the company changed their plea to guilty mid week and were fined £35000 in relation to the charge of failing to ensure the health and safety of employees, and failing to assess the risks involved in the cleansing and disinfecting of the cooling tower. Full costs of £120000 were recovered.
- HID and FOD worked together with North Wales Police to investigate the death of a worker at a metal recycling company after he was instructed to crush a quantity of aerosol canisters, which then caught fire. HSE prosecuted two companies (the supplier and metal recycling co) and the CPS brought HSWA S7 charges against an individual - fines of £330,000, £50,000 and £10,000 were awarded.
- prosecution at Caernarfon Magistrates Court in January 2012 for an incident in September 2009 which resulted in the loss of containment of 50kgs (100 litres) of propane LPG. Whilst the incident did not lead to any injuries, there was the potential

for serious personal injuries and or fatalities to the four persons present had the vapour cloud ignited. The Caernarfon depot is a lower tier COMAH site for the bulk storage and distribution of Propane LPG. The firm admitted a breach of Section 2 (1) of the HSW Act and were fined £17,000 and ordered to pay costs of £3054.45.

- Working closely with the Environment Agency Wales, in July 2011 HSE served an Improvement Notice on the Oil and Pipelines Agency (OPA) at their Redcliffe Bay site following OPA's failure to identify appropriate water provision measures for their emergency preparedness, following deficiencies highlighted during an emergency exercise in late 2010. OPA have now complied with the notice and HSE will continue to monitor standards during planned interventions in 2012.

- increased enforcement activity by the construction group in Wales over the last three years, including two separate cases against estate agents for failing to control the risks to contractors working for them; a case against a developer whose work resulted in significant disturbance of asbestos and exposure of workers to the fibres and prosecution of a company following manual handling of concrete beams which resulted in severe injury to a worker.

- a Hospital Board has committed to a major programme to manage the removal and repair of Asbestos following an investigation where an Improvement Notice was served. The wider lessons from this have been shared across the NHS Wales estate.

- Following an inspection carried out as part of HSE's response to the South Wales "Heads of the Valleys" Legionnaires Disease Outbreak a company was prohibited from operating its cooling towers until appropriate controls were put into place and was subsequently prosecuted. During the course of the inspection it was identified that the company had been operating a cooling tower on site, sporadically over a period of five weeks, without taking appropriate measures to control the risk of proliferation of Legionella bacterium.