

<b>Health and Safety Executive Senior Management Team Paper</b>	<b>SMT/09/89</b>
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## **SIGNIFICANT DEVELOPMENTS IN SCOTLAND**

**A paper by Paul Stollard**

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### **Issue**

1. An update on significant developments in HSE's work in Scotland and recommendations on HSE's implementation of the main proposal in the report of the Calman Commission on Scottish Devolution.

### **Timing**

2. → ←

### **Recommendation**

→ ←

### **Background**

3. The Executive Board is meeting in Edinburgh on 23<sup>rd</sup> September and attending HSE's reception at the Scottish Parliament the previous evening. The paper at Annex 1 outlines significant recent developments in Scotland.

5. The remit of the Calman Commission on Scottish Devolution was:

*"To review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, improve the financial accountability of the Scottish Parliament, and continue to secure the position of Scotland within the United Kingdom."*

6. HSE submitted written evidence to the Calman Commission via DWP; and Judith Hackitt and Paul Stollard gave oral evidence in April this year. The Commission published its final report in June. The Commission did not propose changes to the reserved status of HSE or health and safety. The specific recommendation addressed to HSE is 5.5:

*“In recognition of the close interaction of the Health and Safety Executive’s reserved functions with areas of devolved policy, a closer relationship between the HSE in Scotland and the Scottish Parliament should be developed.”*

7. Other general recommendations are for all UK departments about improving consultation and awareness. There are also proposals on procedural changes to the way in which the Scottish Parliament considers issues which could impinge on reserved matters.

8. Health and safety is mentioned as a possible area for extending devolution in the Scottish Government’s “Choosing Scotland’s Future”, a White Paper examining constitutional options.

### **Resources**

9. Considerable resource is already devoted to liaison on devolved matters such as justice (with COPFS), health, emergency services and public services. Work proposed in response to the Calman report might represent a further £25,000 in staff resources (additional policy staff time (B2/3) for Director’s office), but is obviously dependent on the level of the Scottish Parliament’s interest in health and safety.

10. The cost of HSE’s publishing activities are met from payroll with other direct costs (for design and printing etc) recovered from our wider commercial publishing activities. Web-publishing on the Scotland micro-site would be the main route for much wider stakeholder readership.

### **Consultation**

11. Consultation has taken place with operational directorates, CCID, Communications Directorate and PFPD.

## Annex 1

### SIGNIFICANT DEVELOPMENTS IN SCOTLAND

#### A: Context

1. In 2008/09 there were 26 fatal injuries to workers in Scotland. The five year average is 30. The rate of fatal injury in Scotland is higher than other parts of Great Britain, but has decreased over the long term at broadly the same pace. In 2007/08, 113,000 people in Scotland suffered from an illness which they believe was caused or made worse by work. There is little statistically significant difference with other parts of Great Britain

2. HSE has approximately 270 staff in Scotland based in offices in Edinburgh, Glasgow, Aberdeen and Inverness. Approximately 170 are frontline inspectors, which include about 80 general and construction inspectors, as well as chemicals industry inspectors and offshore inspectors. Policy and administrative staff are also based in Scotland working in HSE's sectors, corporate support and Director's Office (for example, dealing with Scottish Government liaison, partnership management and official correspondence).

3. In May 2007 the Scottish National Party won the most seats, by one, in the Scottish Parliamentary elections and replaced the Labour-Liberal Democrat coalition as a single party minority administration. The new government rebranded the Scottish Executive as the Scottish Government. Sir John Elvidge remained Permanent Secretary reorganising civil servants in the core department under new Director Generals each with responsibility for leading one of the Government's five key strategic policy objectives:

- wealthier and fairer Scotland
- healthier Scotland
- safer and stronger Scotland
- smarter Scotland
- greener Scotland

4. In September 2007 Danny Carrigan on behalf of the then HSC approached Scottish Ministers to establish a key contact and co-ordinating minister with responsibility for health and safety. HSC/E's objective was to continue arrangements developed following devolution. The responsibility shifted from the enterprise to the health brief and Shona Robison MSP Minister for Public Health (and, now, Sport) agreed to provide strategic liaison although contacts at official level covering a range of policy areas.

5. The Scottish Government mention health and safety as a possible area for extending devolution in the "Choosing Scotland's Future" a White Paper examining constitutional options, which may lead to a referendum in 2010.

6. This paper describes recent significant developments in Scotland, in particular the Calman Commission and the creation of the specialist Health and Safety Unit within the Crown Office and Procurator Fiscal Service, and describes some of the current stakeholder and case work.

7. Much of what is currently being done is already closely aligned to the themes of the new strategy, and the process of consultation and launch was valuable in

building consensus and strengthening stakeholder networks. The goals of investigation and securing justice remain fundamental and the new relationship with crown Office and Procurator Fiscal Service set out (section C) is invaluable in this. The need for strong leadership, competence and workforce involvement are being developed through work with the Scottish Government, the devolved organisations stakeholders, and through the raising the profile with the Scottish media (sections D - I). Work with those industries which have the potential for high impact catastrophic incidents remain a key function (sections J - L). The importance of ensuring that what HSE does in Scotland is firmly grounded within the context so that wider issues are taken into account is clearly exemplified in the work for the Calman Commission (section B).

## **B: Commission on Scottish Devolution (The Calman Commission)**

8. The opposition parties within the Scottish Parliament, along with their counterparts in Westminster established the Commission on Scottish Devolution (The Calman Commission) with the remit:

*“To review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, improve the financial accountability of the Scottish Parliament, and continue to secure the position of Scotland within the United Kingdom.”*

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## **C: Crown Office and Procurator Fiscal Service Specialist division**

12. Although health and safety law is the same across Great Britain there is a major difference in how crime is prosecuted in Scotland. HSE inspectors report matters they have investigated and make recommendations on offences to the Crown Office and Procurator Fiscal Service (COPFS), who decide whether or not to institute criminal proceedings in the public interest. Under Scottish law, charges proposed by HSE can be adjusted by COPFS according to a defendant’s plea of guilty or not guilty; this is different to the position in England and Wales and affects the rate of prosecutions and offences to convictions.

13. During the last six months the Lord Advocate has established a specialist Health and Safety unit within the COPFS. This new unit is already leading to a closer dialogue with HSE. Individual Fiscals have been allocated desks in the Edinburgh and Glasgow offices and work from there one day a week. The unit has already had its first successful prosecution and it is clear that timescales should be reduced with the greater specialist knowledge. A short term problem has arisen as the new unit attempts to clear the backlog of cases built up over the last few years and therefore requires more inspector time than anticipated on supporting such retrospective case work.

#### **D: Work with the Scottish Government**

14. The Scottish Government has responsibility for almost all areas of private sector employment, including industry, agriculture, and construction. Most public sector bodies are also devolved (NHS, local authorities, blue light services). Therefore work with the relevant Scottish Government ministers, officials and agencies is important in developing stakeholder relationships and encouraging a positive leadership role on health and safety.

15. HSE has met with the MSPs from each of the major parties who hold the health and safety remit in the last year. The Director's office responds to MSPs (and Scottish MPs) who write to us on constituency matters. Regular assistance is provided in response to requests from Scottish Government officials on Scottish Ministerial cases and Scottish Parliamentary Questions. Recent examples of HSE's close working the Scottish Government:

- Engaging with Health and Wellbeing officials on the new Healthcare Environment Inspectorate (which will tackle Hospital Acquired Infections);
- Responding to the Justice Directorate's consultation on sentencing guidelines for criminal penalties;
- Working with the Maritime and Coastguard Agency, and the Environment and Rural Affairs Directorate on health and safety in fish farming and the move towards a single regulatory regime for human and animal pathogens;
- Raising awareness of asbestos in Scotland's system built schools;
- Liaising with the Health Protection Division on the regulation of tanning salons;
- Working with the Scottish Procurement Directorate on promoting the revised CDM Regulations and public procurement good practice;
- Engaging with the Directorate for Built Environment on ongoing reforms to the Scottish planning system and the implications for HSE's advice on developments around major hazard sites;
- Working with staff from the Rural Directorate, Animal Health Branch to develop an Agency Agreement and a Memorandum of Understanding to give HSE the powers to carry out a programme of inspections under the Specified Animal Pathogens Order (Scotland) 2009. (The Agency Agreement is being finalised and is expected to be signed in September); and
- Significant contribution to the Health Improvement Directorate's review of the Healthy Working Lives strategy.

#### **E: Work with Devolved Organisations**

16. HSE works with most of the public sector devolved organisations, for example:

- The Scottish Centre for Healthy Working Lives (SCHWL). This is the Scottish government initiative to improve health at work and is an integral part of the Scottish NHS. The HSE has been closely involved in discussion on the future direction of this centre and a working level agreement is under development. This is intended to reduce the areas of potential overlap and fill in any possible gaps between the respective organisations coverage.
- Scottish Care Commission, on their revised scrutiny regime and development of a protocol to clarify the relationship with HSE's duties; and delivering events for care home providers in Scotland.
- The Fire and Rescue Service Chief Advisors Unit to inform of a planned inspection programme and sector work on balancing operational and health and safety duties.
- Association of Chief Police Officers Scotland (ACPOS), work with their Health, Safety and Wellbeing committee resulting in a joint HSE/ACPOS workshop for senior officers on the prevention of work related stress and a leadership event for Chief Officers.
- Science Advice for Scottish Agriculture in developing the UK negotiating strategy on the EU Biocidal Products Directive.
- Scottish Schools Equipment and Research Centre (providers of health and safety advice/guidance to schools – science in particular) to raise awareness of HSE's sensible risk in education campaign.
- Co-ordinating Health and Safety in Tertiary Education project team (CHASTE), collaboration to deliver seminars and advice to Scottish further and higher education establishments.
- Commonwealth Games 2014. Overall, preparation for the Games is still at the enabling phase, although construction work has started on some projects. HSE's strategy is to intervene at an early stage to ensure safety is integrated into all stages of the project. Site visits have been paid to sample compliance and target high risk activities. Examples include the new Velodrome and the Commonwealth Pool, in Edinburgh which is undergoing significant refurbishment. Significant transport infrastructure projects which will support the Games have also started.

17. HSE has also instituted a programme of secondments of staff to the Scottish government to work with them on health and safety related areas. These secondments have been valuable in gaining a better understanding of HSE's interests and influences in the devolved policy agenda.

#### **F: Work with Scottish Stakeholders**

18. HSE has a long history of working directly with Scottish stakeholders, simply because many Scottish stakeholders are independent or semi-independent of their English and Welsh equivalents and in some cases unique to Scotland. Partnership work in Scotland is founded on building long term strategic relationships and not only short term bilateral working. This supports HSE's strategy of working with and through others and is more feasible within a small country like Scotland where networks are strong and many of the main personalities involved know each other.

19. More recently, HSE has started to encourage the delivery of work with partners on the themes set out in the new strategy. In developing this, the Partnership on Health and Safety in Scotland (PHASS) has been a useful forum. PHASS was formed in 2005 to capitalise on the close network of links in Scotland and partly as a response to demands from RoSPA, STUC and others, for a specifically Scottish forum on health and safety. PHASS is chaired by Danny

Carrigan. PHASS's remit is to advise on delivering HSE's strategy in the context of Scotland's economy, industrial makeup and culture, and effectively manage the overlapping interests of reserved and devolved governments. PHASS was mentioned in Calman's assessment of the current arrangements for managing devolved and reserved overlapping interests. It is not a policy-making or policy advisory body.

20. Current projects initiated with PHASS support include:

- An EU funded risk management campaign in the voluntary homecare sector delivered by Healthy Working Lives and the STUC;
- "Health Risks at Work – Do You Know Yours?", a DVD and toolkit for SMEs to improve management of common work-related health risks which has been developed by HSE for delivery by SCOS, RoSPA, SCHWL etc, and will be launched in September;
- A strategy delivery initiative for HSE by RoSPA to develop practical support for worker involvement in non-unionised workplaces; and
- A series of joint meetings with the National Advisory and Advocacy Group of the SCHWL to help reduce overlaps and more closely align the respective organisations.

21. Key members of PHASS are the Trade Unions and their support and involvement is valued. In addition to PHASS regular dialogue with the STUC and member unions occurs through a variety of industry specific forums. There is also regular participation in events ranging from the STUC conference to individual worker representative training events run by particular unions.

22. In the construction sector the HSE is a full member of the Scottish Construction Forum (SCF) which advises the Scottish Parliament's Industry Minister, contributing to their regular meetings and working on strategic matters with individual members. Additionally HSE/SCF/Scottish Government have jointly held (for the last 3 years) well-attended leadership seminars on public procurement good practice, CDM 2007, and opportunities presented by the Commonwealth Games 2014. "A safe and healthy industry" is the stated number one priority in the "People" strategic theme of the Scottish Construction Industry Plan 2007-2012.

23. Site Safe Scotland (SSS) is a particularly active group delivering in the Scotland specific environment. It is solutions focussed and sharing best practice is a frequent theme. HSE provides its chair and secretariat. Recent SSS products include an updated Site Induction Pack, materials for industry to deliver a designer workshop and a diverse programme of awareness raising events. HSE also works closely with its individual partners. Examples include joint work on safe electrical isolation, in which UNITE played a key part particularly with young workers, and close working with the Civil Engineering Contractors Association and IOSH in support of their workshops and seminars. SSS has also worked over a sustained period to identify and share good and poor practice in local authority procurement of construction services. HSE also contributes regularly to the meetings of the Scottish Homebuilders Forum.

24. The Scotland micro-site on the HSE website is undergoing a revamp. It will be relaunched with the style and content providing information to organisations and partners in Scotland with an interest in health and safety (rather than individual duty-holders), encouraging them to get involved in being part of the solution to improving health and safety.

## **G: Work with the NHS and the Vale of Leven Inquiry**

25. There is a normal and regular programme of engagement, inspection and where necessary enforcement with NHS. One particular investigation has taken up a significant amount of resource (more than 10% of the available fieldwork operations staff for the last nine months), but has been widely welcomed and praised. This is into the C.difficile deaths at the Vale of Leven Hospital, begun at the request of the COPFS in September 2008. Having taken account of the evidence identified by HSE, the wider public interest factor introduced by the intention to hold a full Public Inquiry, and the support from the bereaved families for an inquiry rather than a prosecution as a means of establishing the facts and securing improvements, the Lord Advocate decided that there will be no criminal proceedings. The terms of reference of the Public Inquiry are still to be determined, but it is possible that it will be extended to cover other similar outbreaks. In the meantime HSE is continuing to work closely with Greater Glasgow and Clyde Health Board to address some issues identified during the investigation. The methodology of this investigation might also be useful as a means of reacting to similar outbreaks elsewhere in Great Britain.

## **H: Work with Scottish Media**

26. The media in Scotland generally welcome a proactive approach from HSE, and work continues with those outlets that have been more reluctant to engage. Our best coverage comes from Press and Journal, Evening Express, Dundee Courier, and Aberdeen radio stations. Farming and offshore stories go down very well; and the construction refurbishment initiative was widely covered as was the asbestos campaign last year, in part due to the industrial legacy in Scotland and being able to provide the media with local spokespeople, case studies and third party endorsers. The strategy launch also received good coverage largely, because events were held in Scotland. The specialist press has been reasonably forthcoming and there have been a number of interviews this year, particularly on agricultural issues.

27. There is a real need for Scottish statistics to be available and even more local if possible as this generates most coverage. Radio nearly always gives good coverage and the strategy launch was carried on eight different programmes within 24 hours. The national tabloids will carry a story if it is strong enough but, as with the English media, there is a need to be vigilant against 'elf 'n safety' stories and continue to swiftly rebut them. There was a successful instance of this over the Dundee school baking ban, where HSE gained endorsement of the rebuttal by a tabloid columnist.

## **I: Work with Scottish Local Authorities**

28. Local Authorities regulate well over 50% of the Scottish workforce. HSE's partnership with Scottish Local Authorities follows a similar model to England and Wales has always been good, partly due to the relative ease of working with 32 unitary authorities, but has strengthened since devolution.

29. The LBRO initiative does not formally apply in Scotland, although the principles apply in Scotland in a way that suits the devolved administration. The Convention of Scottish Local Authorities (COSLA) made its view clear that a Scottish solution was required. HSE is introducing a closer relationship with COSLA through the appropriate officers and topic committees of elected councillors. The Scottish Government's concordat with Local Authorities includes the development of Single Outcome Agreements which major on devolved priorities. This means that

accountability for reserved functions tends to be blurred with broader health and community safety objectives. Section 18 compliance is however progressing and Scottish Local Authorities are forthcoming on their annual health and safety workplans.

#### **J: Work with the Offshore Industries**

30. The North Sea is one of the most challenging and hostile working environments for oil and gas extraction in the world, and the oil companies and related contractors are primarily based in Aberdeen. The industry currently employs around 26,000 offshore workers. The maturing and ageing nature of the offshore installations present particular and increasing challenges to the delivery of high standards of health and safety. Key concerns of the offshore regulator include:

- Low oil price and liquidity problems are beginning to impact and the industry must ensure that this does not affect its focus on addressing health and safety issues;
- Condition of the Infrastructure, many of the offshore installations are ageing and past their design date;
- Loss/shortage of skills within a maturing workforce (for industry and OSD);
- Ownership, as on some offshore installations major companies who have built up expertise over many years are being replaced with small specialist companies with different business models such as contracting out management and operations, and with complex financial and ownership arrangements;
- The introduction of new designs or novel technology to cope with the greater technical challenges of maturing oil/gas basins or deeper and more inaccessible fields;
- Decommissioning or changes of use of offshore installations; and
- The growth of emerging energy technologies offshore, such as carbon capture and storage, offshore wind farms etc.

31. HSE is currently focussing on four critical areas of concern: leadership, competence, safety culture and asset integrity. The last of these is a particular problem for the North Sea where assets include structure, process plant and connected wells and pipelines. The emphasis on the major hazard potential risks associated with poor asset integrity will continue for the foreseeable future. With the increasing ageing of the UKCS offshore infrastructure and the economic downturn improvements are needed to address the installation integrity problems and these must remain high on the industry's agenda. The HSE objective is to see that assets have integrity through meeting design performance standards for effective control of risks.

32. A major event in during 2009/10 was the launch in July of an HSE report, commissioned by the Secretary of State for Work and Pensions, reviewing how the offshore industry has responded to the earlier Asset Integrity Inspection Program (KP3) report (published in 2007). This earlier report had identified a number of concerns over how the offshore industry was managing the integrity of its assets and maintaining Safety Critical Elements. It is anticipated that the result of this review will help set the industry's future major hazard safety agenda

#### **K: Work with the Chemical Industries**

33. The chemical industries are big employers in Scotland, where there are a significant number of major hazard sites. Many of the Scotch Whisky makers also have COMAH sites. In total this amounts to 68 top tier and 114 lower tier COMAH sites and 400 other chemical sites in Scotland COMAH work is done jointly with the Scottish Environment Protection Agency (SEPA) who, together with HSE, are the COMAH Competent Authority (CA) in Scotland.

34. Recessionary pressures are hitting the sector, but not as extensively as in some other parts of the UK. Skills shortages and ageing plant are significant issues. However there has also been investment in recent times and Ineos, the single biggest site in Scotland, has brought work back in house that was previously contracted out. The sector has also seen initiation of some new energy technology projects, including proposals for carbon capture and storage, and coal gasification.

35. Priorities in Scotland are: promoting leadership and the effective use of Process Safety Performance Indicators; follow up work after Buncefield MIIB at Scotland's nine Buncefield-like sites; and delivering safety report assessment and a prioritised programme of proactive inspection of major hazard sites.

36. HSE and SEPA have worked together to ensure lessons from the Buncefield incident have been learned and the necessary improvements are being made to on-site controls and emergency arrangements at Buncefield-like sites. This has been done this both on-site in Scotland and within the UK wide Process Safety Leadership Group (PSLG). The COMAH Competent Authority (CA) has published regular progress reports to show how the improvements are being met and PSLG will publish its final report in the autumn to complete the industry's and CA's response to the Buncefield recommendation on the design and operation of fuel storage sites. The CA is taking forward the Buncefield recommendations on emergency preparedness through a Steering Group within the Chemicals & Pipelines–Emergency Planning and Liaison Group (CAP-EPLG). The Scottish Government participates in CAP-EPLG and SEPA will be their link in the Steering Group.

37. The Scottish Chemical Industries Association is a key partner organisation. Work is also undertaken to engage with and influence lower risk companies and HSE delivered a seminar to 50 non-COMAH sites.

38. To improve the effectiveness of the COMAH regime the CA embarked on the Remodelling COMAH programme in 2008. It will strengthen the governance of the CA and modernise our approach to COMAH Regulation (HSE Board paper 08/04 refers).

39. Following a public consultation, HSE is seeking to incorporate societal risk considerations into its land use planning advice and COMAH risk assessments. This includes societal risk trials in three volunteer local authority areas, including one in Scotland. Some of the participating COMAH companies have asked that the identity of the trial areas is not made public for the time being. Societal risk estimates have been made for the Scottish trial area, using both the current population data and estimated data arising from the local development plan. HSE, the Local Authority planning department and representatives of the COMAH companies who operate major hazard sites in the area have discussed the best method of communicating the results. The trial and development phase of the societal risk project is due for completion by autumn 2009 and, subject to Impact Assessment, will be followed by a strategy to inform and engage the public about societal risk. If Ministers and Government Departments agree, implementation is planned for 2010/11.

## **L: Work with Nuclear Industries**

40. On the Policy side, HSE has been working closely with the Department of Energy and Climate Change and DWP, to take forward the Government's intention to change the status of Nuclear Directorate to that of an independent Nuclear Statutory Corporation (NSC), under the auspices of the HSE. HSE is discussing with Scottish Government the implications of these proposals. While the NSC will deal with reserved matters, the importance of establishing effective working relations between the NSC and Scottish Government is recognised. Operationally there are four nuclear power stations regulated by HSE in Scotland, two operational run by British Energy, Hunterston B and Torness, and two operated by Magnox North, Hunterston A and Chapelcross, which are in decommissioning/defueling. There are no particular issues to note.

41. Other involvement in Scotland includes regulation of the Dounreay nuclear licensed site where the main activities are radioactive waste retrieval / treatment and decommissioning. The site is licensed to Dounreay Site Restoration Limited for which the Parent Body Organisation (PBO) is currently the United Kingdom Atomic Energy Authority. In addition to our routine, we will:

- Support the Nuclear Decommissioning Authority's competition to secure a new PBO for the site in accordance with their duties under the Energy Act 2004.
- Advise on a proposal to construct a new low-level waste repository adjacent to the site and prepare to licence the repository should this be deemed necessary, following consultation on our developing strategy in this area, the Scottish government are involved in this process.

42. It should be noted that the Scottish Government is currently in the middle of a major programme to develop a policy for its higher level waste. As regulators for the safety of this waste HSE are heavily involved in commenting upon this policy as it is being formulated and this is involving significant, high level resource.

## **M: Staffing and Office Refurbishment Issues**

43. There has been a co-ordinated campaign over the last year to improve staff morale, reduce stress and tackle sickness absence. Some of these problems are long standing, but improvements in management training, the introduction of a mentoring scheme for junior staff and a higher management visibility have had some effect on improving the situation. The uncertainty generated by the ICL inquiry was not helping and the publication of the report in July has been beneficial in finally settling some of the outstanding issues. The relocation of the Glasgow office to new premises (on Bothwell Street) in August 2008 and the current phased refurbishment of the Edinburgh building (Belford House) have also been positive steps.

**August 2009**

## **Appendix : Further examples of interventions**

### Windfarm and turbine safety

In 2007, the Beinn An Tuirc turbine collapsed. HSE identified that overspeed of the turbine resulted from failure of a lock out on the pitch ram mechanism allied with adverse control system response. Restrictions were imposed on the particular turbine type if located near to built up areas. Some 9,000 similar turbines worldwide required remedial action. There was significant public and Scottish Government interest. Further impact with British Wind Energy Association was achieved on design and standardised rules for the wind industry when HSE investigated a fatal fall to a worker within a turbine tower under construction. This resulted in the withdrawal of an inadequate European Standard for the testing of fall arrest systems. The issue is ongoing.

### LPG

HSE took opportunities to influence LPGA and gas suppliers while awaiting Lord Gill's inquiry report. A domestic gas explosion in Glespin in November 2006, the Auchenblae hotel explosion in 2008, and two Improvement Notices in 2008/9 arising from inspections, identified continuing failures to comply with LPGA Codes of Practice by site dutyholders and suppliers. Standards for the less common buried LPG tanks were influenced via the Auchenblae investigation. Improvements in tanker driver delivery checklists and site assessments were put in place by one of the major gas companies. Lord Gill's Inquiry was kept informed of these incidents and findings.

### Open Cast Coal Sites

Scotland has the majority of open cast coal sites. HSE investigated a double fatality at Pennyvennie in March 2007 where Land Rover occupants were crushed by a massive Terex dump truck. Scottish Coal pled guilty at the hearing in Ayr Sheriff Court on 25 August 2008, and was fined £400k. HSE inspection focused on all the sites operated by Scottish Coal to tackle Director leadership and the specifics of transport management. A follow up meeting with Directors last December resulted in them working with Terex to improve the visual field of their dumper trucks.

### Aquaculture

Another sector predominantly based in Scotland poses significant challenges and risks from adverse weather, drowning during open water crossings and by falling from fish cages traditionally not supplied with adequate walkways. Ownership takeovers from smaller to larger groups offered opportunities to influence. Advice had been given on confined space working, but tragically earlier this year a double fatality from oxygen depletion occurred which is an ongoing investigation. In July HSE, in partnership with MCA, Northern Lighthouse Board, RNLI, Shetland Islands Council, NAFC and Shetland Aquaculture, ran a fish farming SHAD in Shetland attended by 80 industry reps, gaining good media coverage and commitment from the industry to improve.

### Ski Centres and Cable Cars

In July 2006, five members of the public, including a two year old child, sustained serious injuries when a gondola cable car came off the haul/suspension rope. It had been travelling down the hill from the top station on Aonach Mor when it slid, caught

up with and struck the gondola car in front then fell to the ground (some 10 meters below). It was established that the gondola had left the top station unclamped to the haul rope due to a combination of human and procedural failures resulting in a prosecution. Last winter HSE inspected all ski centres in Scotland examining their management arrangements.

### Semi-Conductor Audits

The six manufacturing sites in Scotland pro-rata form the majority of the sector in the UK. In 2009 HSE piloted a multidisciplinary team audit to check COSHH compliance, as a follow up to a past initiative to check potential exposure to carcinogens. The pilot was a successful format for the roll-out of the inspections of all UK semi-conductor facilities in 2009/10. The cancer study at National Semi-Conductor UK in Greenock is still underway to see whether any further evidence can be gained about work related causes of an alleged excess cancer rate in the workforce at that facility and the sector.

### Public Safety – Lifts in Housing Association rented residences

A member of the public fell to her death down a lift shaft in a residential block of flats. Influence on lift safety in this rented sector has been achieved by engaging with the Scottish Housing Regulator. The Regulator, an agency of the Scottish Government, has written in July to Chief Executives of LAs (as Landlords) Registered Social Landlords, COSLA and Scottish Federation of Housing Associations. The letter covers lifts, gas safety and the major fire in Camberwell, London.

### Legionella

In addition to the planned legionella visits in 2009/10, HSE is drawing up a 5 year strategy to ensure all registered cooling towers and condensers at HSE enforced sites are inspected. Priority will be given to those 'cluster' sites and those where there are large populations on or off site or vulnerable populations like hospitals. HSAOs contact sites to check and update LA registration lists and identify any where wet cooling systems have been replaced with dry systems and COIN is annotated to assist inspectors.

### Whisky Industry

Following the issue of a PN to a distillery at the end of 2006 concerning work in confined spaces, HSE has worked with the Scotch Whisky Association (SWA) to produce industry specific guidance and an electronic training package to be used by their members. The guidance was published in 2007 with the training package being launched in April at an SWA event at which HSE were invited to speak about the issues with confined spaces. This event was attended by approximately 90 representatives from the various Whisky Companies. As part of HSE's ongoing work with the sector, inspectors have been asked to examine the arrangements companies have for work in confined spaces as the opportunity arises.

### Overhead Power Lines

In Scotland there is a regular toll of fatal and major industry accidents from contact with overhead power lines. In part this arises because the rural nature of much of the country means that a significant portion of our power is distributed at high voltage using overhead lines rather than underground cables. HSE is working with the electrical supply industry and other stakeholders in the worst affected sectors, mainly

construction and agriculture, to raise awareness both of the risks and the means by which the accident rate can be reduced.

### Electrical Accidents

Following a spate of fatal electrocution accidents involving electricians, HSE engaged with the Scottish Electrical Contractors' Association (SELECT), in an attempt to drive down the accident rate. A joint SELECT/HSE initiative to develop industry-specific guidance backed-up by a series of nationwide roadshows has been well-received by the electrical contracting industry and has already had positive outcomes. The guidance has been widely recognised as representing good practice and is being adopted by trade and professional bodies in England and Wales.

### Asbestos related

In December last year, a company were fined £28K and one of its Directors fined £7K. The prosecution arose following the exposure of a significant number of tradesmen to airborne asbestos fibres over an extended period. Both duty holders failed to establish if asbestos was present in the building undergoing substantial refurbishment despite being informed on a number of occasions that a survey needed to be carried out. Concerns were also voiced by those working in the building but they were ignored. This significant prosecution also secured the first HSWA Section 37 conviction of a director in Scotland for over 5 years. This year, a major local authority was fined £17K and the unlicensed contractor working for them fined £11K for exposing employees to asbestos during refurbishment work at a school. Also this year, a further council were fined £10K and their contractor fined £3.7K following the removal, without any precautions, of water tanks lagged with asbestos in council owned domestic premises. Both workers and members of the public were exposed to airborne asbestos fibres during this refurbishment work.

### Vulnerable people

In June a company was fined £5K following investigation of a fatal accident to a migrant worker who fell less than 3 metres in a block of flats under construction. A director of the Company was also found guilty under section 37 of HSWA and fined £4K. The Sheriff carefully explained how he reached his sentence on the company by examining the company's financial position. He determined the fine was the maximum that he could impose so they could continue trading. The COPFS have subsequently appealed against the sentence imposed in this case. Last year a principal contractor was fined £125K following the death of a Polish worker during demolition work. The Sheriff's criticism of the contractor particularly focussed on a safety measure which had initially been provided but which in a later part of the contract had been withdrawn.

A number of investigations of reported accidents involving elderly members of the public whilst new central heating systems were being installed in their homes resulted in at least three successful prosecutions in 2008/9 of contractors involved in the work. In all cases the elderly person had been injured after they had fallen into an unprotected opening left in the floor of their home. As the vast majority of this work is publicly funded, these investigations were drawn to the notice of the funding body to enable the client to more positively influence health and safety standards achieved when refurbishment work is organised by them on behalf of elderly residents.

### Excavator safety

A self employed operator of an excavator was fined £3.5K. The prosecution followed HSE's investigation of a fatal accident to an architect who was struck by the digging bucket which had become detached from the semi-automatic quick hitch of an excavator when the crucial safety pin was not fitted

### Explosives Inspectorate

The Explosives Inspectorate is responsible for inspection and enforcement at around 170 sites in Scotland. This includes 47 sites licensed under the Manufacture and Storage of Explosives Regulations 2005 and 90 ports licensed under the Dangerous Substances in Harbour Areas Regulations 1987. The Chemring Energetics site in North Ayrshire is undergoing significant redevelopment, as is the land surrounding the site. Specialised Industries Division continues to work with the licensee to minimise offsite impact and advise the Local Planning Authority (North Ayrshire District Council) on the compatibility of the external developer's proposals with the current and proposed explosives operations.

### Gas and Pipelines Unit

The Gas and Pipelines Unit is responsible for the enforcement of health and safety law in relation to upstream natural gas transmission and distribution networks; gas reception and import terminals; gas storage facilities; onshore and offshore major hazard pipelines; Oil and Pipeline Agency COMAH sites; and associated high hazard sites. A major offshore Industry seminar was held in Aberdeen at the end of 2008 to raise awareness on the key emerging issues surrounding the integrity management of unbonded flexible pipelines and risers.

### Biological Agents Unit

There are approximately 95 duty holders in Scotland, ranging from large Universities to NHS Trusts to small biotech companies. Approximately 74 of these fall under the Genetically Modified Organisms (Contained Use) Regulations. There are also 14 duty holders who fall under the Specified Animal Pathogens Order (SAPO).