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Target Audience:
All HSE Inspectors

ENFORCEMENT PROCEDURES FOR CROWN BODIES

This SIM informs inspectors about the issue of a Personnel Information Note (PIN) by the Cabinet Office dealing with enforcement procedures for Crown bodies, including Crown censures. A copy of the PIN is given at the [appendix](#) .

BACKGROUND

- 1 Although the provisions of the Health and Safety at Work etc Act 1974 (HSW Act) apply to the Crown, including departments and agencies, Crown bodies are immune from statutory enforcement of health and safety legislation by virtue of HSW Act s.48(1).
- 2 Whilst proceedings may not be taken against the Crown, administrative procedures known as Crown censures have been developed for use in circumstances where it is HSE's opinion that, but for Crown immunity, there would have been sufficient evidence to provide a realistic prospect of conviction in the courts.
- 3 Since 1988, there have been 25 Crown censures, but the absence of an agreed, documented procedure has led to some difficulties in recent years. Accordingly, following extensive consultation with HSE, Crown employers and the Council of Civil Service Unions, the Cabinet Office issued a Personnel Information Note setting out an agreed procedure on 13 June 2001 (see [appendix](#) ). The appendix does not include annexes A-C containing the Health and Safety Commission's *Enforcement Policy Statement* and Crown enforcement notices.

CROWN CENSURE PROCEDURE

4 Inspectors who are familiar with the existing censure procedure will note the following changes introduced in the PIN:

- 1) Paragraph 17 - HSE is responsible for inviting the relevant trade union or other safety representative(s) to observe the hearing, and will either do so directly or agree that the Crown body concerned should extend the

invitation; and

2) Paragraph 22 - If, after considering the HSE inspector's response to any representations, the Crown body's officials do not accept there is sufficient evidence to have provided a realistic prospect of conviction, HSE will invite them to make further representations to the head of the appropriate HSE operating directorate or division, who will review the case. If the Crown body decides not to make such representations, HSE will record the censure without further discussion.

5 Inspectors will be aware that HSE's report *Health and Safety Offences and Penalties* included a list of Crown bodies which had been censured during the year 1999/2000, and similar information was published on HSE's Internet website.

Date first issued: 10 July 2001

TOP A

APPENDIX
(para 3)

PIN 45

INFORMATION NOTE FOR PERSONNEL MANAGERS

**PROCEDURES FOR ENFORCING HEALTH AND SAFETY
REQUIREMENTS IN CROWN BODIES**

These notes are circulated to central personnel staff in departments, agencies and relevant NDPBs, and are generally copied to the CCSU. **They do not occasion any change in contractual terms and conditions for civil servants.**

1. Chapter 3 of the Civil Service Management Code draws attention to the Health and Safety at Work etc. Act 1974 (HSW Act) and to other health and safety requirements. This note describes the:

- system of health and safety enforcement notices for Crown bodies;
- system of censure hearings for Crown bodies;
- provision for High Court declarations on Crown bodies under the Working Time Regulations 1998.

2. Non-statutory enforcement procedures for Crown bodies were introduced in 1978. They were then made known by General Circular GC/163 issued by the Civil Service Department on 25 May 1978. That series of notices was later abolished. The Health and Safety Executive (HSE) issued a circular letter on 20 March 1986 about the introduction of modifications to those procedures to ensure that health and safety problems identified in Crown bodies receive the same priority as they would in the private sector. This note replaces those circulars.

3. The only new procedure for Crown bodies introduced by this note is the opening of Crown censure hearings to attendance by the relevant trade union or other safety representatives¹, who will be able to observe what is said and receive a copy of the minutes.

¹ Where no safety representatives are appointed by recognised trade unions, the Health and Safety (Consultation with Employees) Regulations 1996 now require employers to consult employees about health and safety matters either directly or through elected representatives.

Background

4. Crown bodies must comply with the requirements of the HSW Act and relevant statutory provisions. They are, however, excluded from the provisions for statutory enforcement, including prosecution and penalties. Effective administrative Crown enforcement procedures are therefore vital to maintaining employee and public confidence in the health and safety regulation of Crown bodies.

5. HSE alone enforces health and safety legislation, and the Working Time Regulations 1998, in relation to Crown bodies.

6. HSE makes decisions on the inspection of Crown bodies, and any enforcement action, using the same criteria as for non-Crown employers. HSE inspectors seek to ensure that the law is complied with and that Crown employers meet the standards of good practice found elsewhere. HSE inspectors act in accordance with the Health and Safety Commission (HSC) Enforcement Policy Statement (Annex A). That means, for example, that inspection and enforcement is targeted on activities which give rise to the most serious risks, or where hazards are least well controlled.

7. In their work with non-Crown employers, HSE inspectors may give information or advice, give written warnings, issue improvement and prohibition notices, or they may prosecute. The positive approach of most employers means that information and advice is normally sufficient to secure improvements. HSE's experience with the approach of Crown bodies to health and safety is similar to that with other employers. However, HSE inspectors take formal action when it is appropriate.

8. HSE inspectors keep the relevant trade union or other safety representatives informed of matters affecting employees' health and safety or of any enforcement action proposed or taken, as required under Section 28(8) of the HSW Act. This may include meeting safety representatives when visiting sites and copying to them, as appropriate, letters, notices or other documents sent to employers.

Crown Enforcement Notices

9. Formal action against Crown bodies by HSE inspectors may include issuing Crown improvement and prohibition notices². Although such notices are non-statutory, the procedures involved are very similar to those for statutory notices. Blank copies of Crown improvement and prohibition notices are at Annexes B and C respectively.

10. If a HSE inspector intends to issue an improvement notice, the inspector will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why, and by when. Prohibition notices include an explanation of why remedial action is necessary. When they visit, HSE inspectors issue a HSC leaflet, "What to expect when a health and safety inspector calls", which explains their approach.

11. If a Crown body considers that it has grounds to challenge the basis on which an enforcement notice has been issued, it may appeal to the inspector's line manager and, finally,

² Crown "prohibition notices" are titled: "Notice that work should be stopped (risk of serious injury) for Crown Employers".

to the Director General of the HSE. These appeal arrangements are in line with HSE's Service First commitments.

12. As with statutory notices, information about a Crown enforcement notice is available to the public under the Code of Practice on Access to Government Information. In general, HSE will disclose information from the front page of the notice, subject to consideration of any written representation that disclosure would harm national security or defence, or that the information was commercially confidential.

13. The instructions to HSE inspectors require them to give the same priority to a health and safety problem found in a Crown body as they would to one found in a private sector organisation. Allowances of time to do remedial work in a Crown body will be no more generous than they would be for a private employer and the same sense of urgency will be expected in making improvements which are required.

Crown censures

14. A "Crown censure" is the term given to the formal recording of a decision by HSE that, but for Crown immunity, the evidence of a Crown body's failure to comply with health and safety law would have been sufficient to provide a realistic prospect of conviction in the courts (in line with the Code of Crown Prosecutors). Circumstances that could lead to a censure would include a failure to comply with a Crown enforcement notice in the time allowed. In the past the number of censures that take place each year has been reported in the HSC annual report. From 1999/2000, a HSE annual report has named businesses and individuals who have been convicted of health and safety offences during the year. The HSE report includes a list of Crown bodies that have been censured with the date, location of the incident, and the alleged breach. Similar information on Crown censures is also published on HSE's Internet website. The release of further information will be subject to the exemptions of the Code of Practice on Access to Government Information, Section 28 of the HSW Act, the Environmental Information Regulations 1992, the Safety Representatives and Safety Committees Regulations 1977, the Health and Safety (Consultation with Employees) Regulations 1996, the Data Protection Act 1998 and, when brought into force, the provisions of the Freedom of Information Act 2000.

15. Where HSE considers that a failure to comply with health and safety law would normally justify prosecution, HSE will first notify the Crown body concerned at a senior level that it intends to begin the censure procedure. The HSE investigating inspector will then initiate a formal meeting ('hearing') between a senior HSE inspector and a member of the senior management of the Crown body involved by writing to the Crown body in the format in Annex D.

16. Although a censure is not in any sense a trial, HSE will give the Crown body advance information setting out its 'case' in the same way as to a non-Crown body which was to be prosecuted in a magistrates' court. The Crown body has the opportunity to provide a written response in advance of the hearing though HSE will not enter into any further correspondence prior to the hearing. No witnesses are called.

17. HSE is responsible for inviting the relevant trade union or other safety representative(s) to observe the hearing, and will either do so direct or agree that the Crown body concerned should extend the invitation. In situations where public discussion of any

aspects of an incident or possible breach of health and safety law would harm national security or defence, or refer to information that relates specifically to an individual (unless that individual has explicitly consented to such information being disclosed), or relate to any other circumstances where there is a prohibition on the disclosure of information under any enactment, rule of law or non-statutory code, consideration must be given to excluding trade union or other safety representatives from that part of the hearing. Subject to these same provisos, when HSE provides the Crown body, at the hearing, with further information designed to clarify proceedings, such as diagrams or photographs, a copy of the information will also be given to observers.

18. No persons other than officials and trade union or other safety representatives may be allowed to attend a censure hearing except at the discretion of the Crown body: every effort is made during a hearing to ensure fair consideration of the matters at issue, but it is not possible for a censure hearing to have all the checks and balances of a court and wider public attendance is not generally appropriate. Under HSW Act section 28 inspectors may, depending on the facts of a particular case, release information to advise the public of risks and to reassure them about health and safety measures.

19. The hearing will be chaired by a senior HSE inspector. HSE will minute the meeting and, on its completion, produce an agreed note of the meeting that will be copied to the relevant trade union or other safety representatives. The agreed minute can be distributed more widely subject to the restrictions on the disclosure of information (paras 14 and 17 refer).

20. The aim of the hearing is to seek acknowledgement of the problem and to obtain an undertaking to improve standards of health and safety. The hearing is therefore commenced by the HSE investigating inspector explaining the circumstances of the case and why it would justify prosecution, but for Crown immunity. The Crown body is then given the opportunity to make any representations or arguments in defence or mitigation.

21. If in the course of the formal hearing the Crown body agrees with HSE's view that the evidence would be sufficient to provide a realistic prospect of conviction in the courts, HSE will notify the headquarters of the Department. The Department will subsequently advise the relevant Minister having first consulted HSE on their submission, and copying to HSE their final submission. The fact that a censure has taken place becomes a matter of public record, through listing in a HSE annual report supplement (paragraph 14 above).

22. If, after considering the HSE inspector's response to any representations, the Crown body's officials do not accept there is sufficient evidence to have provided a realistic prospect of conviction, HSE will invite them to make further representations to the head of the appropriate HSE operating directorate or division who will review the case. This is in accordance with the HSE Service First commitments. If the Crown body decides not to make such representations, HSE will record the censure without further discussion.

23. Where, despite representations, HSE remains confident that a decision to prosecute would have been justified, HSE's Director General will write as appropriate to the Permanent Secretary responsible for the Crown body to seek agreement to recording the censure.

Individual Crown servants

24. Under Section 48(2) of the HSW Act, persons in the service of the Crown may be prosecuted for health and safety offences, and, if convicted, fined, or for certain offences imprisoned. Managers, as well as other employees who are personally culpable, should not escape prosecution simply because they are Crown servants. However, the HSE gave assurances in 1975 that an individual Crown servant would be prosecuted only in the same circumstances as an individual in non-Crown employment, for example where there was wilful or reckless disregard of health and safety requirements. There is no question of individuals being prosecuted in substitution for the Crown body, or for honest mistakes, or because of defects in management organisation. It is therefore highly unlikely that civil servants would be prosecuted except, for example, through a deliberate act or omission by them which imperilled their own safety, or the safety of others.

Working Time Regulations 1998

25. HSE also enforces aspects of the Working Time Regulations 1998, under an agency agreement with the Department of Trade and Industry. HSE may use Crown enforcement notices when appropriate but the Crown censure procedure is not followed for breaches under the Working Time Regulations 1998. Instead, these Regulations provide for Crown enforcement in lieu of prosecution to be carried out by HSE applying to the High Court, or in Scotland to the Court Session, for a declaration of non-compliance with the law.

Action for Departments and Agencies

26. Departments and Agencies should make copies of this note available to all other Crown bodies within their area of responsibility and to local representatives of recognised trade unions. Copies of this note have already been sent to the Council of Civil Service Unions.

Enquiries

27. Enquiries about the procedures described in this note should be made to David Humphreys, HSE, General Policy Branch (tel 020-7717 6583 (GTN 3053)).

28. General enquiries on health and safety policy in the Civil Service should go to Phil Greasley, Employment Conditions and Statistics Division, Cabinet Office (tel 020-7276 1638 (GTN 276)).

29. Copies of this Note have been sent to the CCSU.

**Issued by: Cabinet Office
Admiralty Arch
London SW1A 2WH**

June 2001

ANNEX D

Note: Letter to be addressed to name of Crown body and marked 'For the attention of'
[name of relevant official].

Health and Safety at Work etc Act 1974 [sections] and [Regulations]

This letter is to notify you formally of my intention to invoke the procedures which operate between HSE, Government Departments and other Crown bodies for the censure of a Crown body in circumstances which, but for Crown immunity, would have led to criminal prosecution under the above Act. I am writing to arrange a meeting with you for this purpose.

You will be aware that the Crown, as an employer, is bound by the duties imposed by health and safety law, but is not subject to the provisions relating to statutory enforcement because of Crown immunity. Alternative administrative arrangements (including the Crown censure procedure) are described in PIN 45 issued May 2001. Those arrangements include ensuring that health and safety problems identified in Crown bodies receive the same priority as they would in private concerns.

Under the Crown censure procedure, HSE notifies the relevant department or agency at a senior level of any circumstances where, but for Crown immunity, criminal prosecution would have been appropriate. All such decisions are taken in accordance with the Health and Safety Commission's published Enforcement Policy Statement, which applies to all employers and employees.

The censure procedure involves a formal meeting ('hearing') involving a senior HSE inspector and a member of the senior management of the organisation involved. HSE's aim is to seek acknowledgement of the problem and to obtain an undertaking to improve standards of health and safety. At the hearing the investigating inspector will explain that the circumstances of the case would justify prosecution, but for Crown immunity. The senior HSE inspector, who chairs the hearing, will then invite any representations or arguments in defence or mitigation. If the hearing confirms HSE's view that the evidence would be sufficient to provide a realistic prospect of conviction in the courts, HSE notifies the headquarters of the department or agency concerned. The censure becomes a matter of public record.

This procedure has been invoked in the past in relation to a number of government departments and agencies. If you do not accept in the course of the hearing that the evidence we present would be sufficient to provide a realistic prospect of conviction in the courts, you will be given the opportunity to make representations to , Head of [insert relevant Operational Directorate or Division] under our Service First arrangements.

I am enclosing some advance information relating to the breaches alleged in this instance. A suggested agenda for the hearing is also attached. I suggest the following dates for the hearing:

In accordance with my duties under Section 28(8) of the above HSW Act I will also be bringing these matters to the attention of your staff's trade union or other safety representatives.

It would be helpful if you could contact me by to let me know which would be convenient or to offer alternatives and to agree a timescale in which you will be submitting any written response to the documentation enclosed herewith. At the same time, I should be

grateful if you would let me know the names and addresses of the relevant trade union or other safety representatives so that I can invite them to attend as observers, unless you propose to arrange this yourselves (as set out in PIN 45).

PROCEDURE IN LIEU OF LEGAL PROCEEDINGS

INCIDENT:

LOCATION AND DATE:

Agenda

- | | | |
|----|--|-----------|
| 1. | Introductions | HSE/CROWN |
| 2. | Purpose of meeting and censure procedure | HSE |
| 3. | Statement of alleged breaches | HSE |
| 4. | Break, if required | |
| 5. | Response | CROWN |
| 6. | Conclusions | HSE |
| 7. | Remedial and future action | HSE/CROWN |