

# Partnership on Health And Safety in Scotland

## HSE Scotland Director's report

### Issue

1. To update members on developments in Scotland since their last meeting. This report is longer than usual as it covers a full five months. A new feature at Annex 1 alerts members to recent publications of interest. We would encourage members to subscribe to free HSE eBulletins online for a more comprehensive update.
2. HSE has dealt with three MPs', four MSPs' letters during the period and two official letters as well 53 FOI cases and 410 DPA requests from 1st March 2009 to 30th June 2009.
3. There have been 12 fatalities in Scotland since the last PHASS meeting. Brief details are at Annex 2. The names of the deceased and brief details of the incident are now published on HSE's website as they are reported. But each case has not necessarily been verified as being work-related.

### Educational and promotional work

4. The annual HSE exhibition at Royal Highland Agricultural Show, 24 - 26 June, promoted '*Farmwise*' – a free comprehensive guide for farmers of practical advice on reducing the risk of death, injury and ill health in agriculture. Judith Donovan HSE's Board level agriculture champion attended the show this year. Visitors to the HSE stand also saw a demonstration from Lantra trainers about the safe use of power take off shafts.
5. A fish farming safety and health awareness day (SHAD) was held on July 7 in Shetland attended by 80 industry representatives. Several organisations were involved in this event including: HSE, the Maritime and Coastguard Agency (MCA), the Northern Lighthouse Board, RNLI, the Shetland Islands Council, NAFC, and Shetland Aquaculture and its members. The day consisted of practical demonstrations from HSE Inspectors, qualified instructors and industry experts, and provided the opportunity for those present to share experiences.
6. During the period inspectors have given presentations to safety representatives at a training course in Stevenson College Edinburgh and similarly to safety representatives in the public services sector. An inspector gave a presentation to members of the Arboriculture Association covering the application of the Work at Height Regulations 2005 to tree work.
7. Health and Safety Awareness Officers (HSAOs) continue to be involved in promoting HSE and health and safety requirements to SMEs at visits and business start-up events.
8. Construction Division in Scotland in partnership with the Working Well Together (WWT) group organised a Safety & Health Awareness Day (SHAD) at Broadwood Football Stadium in Cumbernauld. Delegates saw for themselves how to deal safely with asbestos, electricity, work at height, handling heavy items and using respiratory protective equipment. Feedback from delegates is strongly supportive of these events.

9. In April a SHAD targeted at tackling issues of ill health amongst stoneworkers was organised by HSE, Construction Skills, the Scottish Lime Centre Trust and the Scottish Stone Liaison Group. It was sponsored by Edinburgh City Council.

### **Proactive inspection**

10. Specific inspection initiatives have highlighted continuing concerns:

(i) The safe interventions initiative - designed to pick up unsafe systems of work.

Inspectors are finding that many employers still fail to provide acceptable standards of machinery guarding and do not properly consider isolation and lock off procedures when accessing machinery for repair, breakdown and maintenance. Employers involved with entry into confined spaces are commonly failing to establish proper rescue procedures. This latter issue has led to many multiple fatal accidents in the UK.

(ii) The long latency disease programme - designed to look at disease reduction and in particular the provision of proper LEV for appropriate processes

Inspectors continue to have considerable concerns over the design, suitability and maintenance of LEV.

(iii) The benchmarking project – looking at standards across a random selection of duty-holders.

Inspectors have noted during benchmarking that a high proportion of employers still do not have access to competent health and safety assistance required by the Management Regulations. This has led to 5 Improvement Notices being served.

11. An inspector is leading an audit programme of inspections at Scotland's semi-conductor manufacturing plants as part of a GB-wide project this year following a successful pilot at one of Scotland's five plants last year. An inspection team including occupational health inspectors and representatives from HSE's Manufacturing Sector have four audits to complete this year and have completed two in the period covered by the PHASS meeting. The audit is an in-depth single-issue inspection focussing on COSHH compliance and follows concern amongst those who work in the industry, about exposure to substances hazardous to health. The single workplace study of cancers amongst workers at NSUK Greenock is continuing to see whether any further evidence can be gained about work-related causes (as distinct from other factors).

12. During May inspections were carried out at Aberdeen and Inverness airports examining risks from baggage handling by an inspector and an HSE ergonomist with substantial experience of similar work at major UK airports. As well as airport operators, 6 handling companies were involved. The inspection identified scope for improvement in layout and the availability of modern equipment. So far, the response of employers has been positive. There has been close liaison with HSE policy people to ensure consistency of approach as well as networking with colleagues in other parts of the UK who deal with the same businesses. HSE is considering whether to extend this work to the smaller airports in Scotland.

13. A fairground in Kirkcaldy was recently inspected for ride safety issues and inspectors have attended a multi agency meeting about fairground safety.

14. There have been several visits to care homes and premises employing vulnerable workers during the past few months.

15. In June HSE Scotland welcomed six new construction inspectors into our teams, appointed for a two year fixed term contract. The new inspectors have been recruited straight from the construction industry and bring with them a wealth of knowledge of the sector. Once established our new colleagues will be ideally placed to support HSE's heavy construction workload and a new project to reach out to many small construction firms across the country and who need help understanding and preventing health and safety risks.

### **Enforcement action and investigation**

16. East Dunbartonshire Council was fined £13,500 at Glasgow Sheriff Court in April, 2009 after pleading guilty to a charge under Section 2 (1) of the Health and Safety at Work (etc) Act. This followed an incident when an employee, who was working as a waste recycling collector, was run over by the council's waste recycling lorry during a reversing manoeuvre. The accident happened on a dull and frosty morning about 8.45 am in a cul-de-sac.

17. Blueparrot Production & Events Ltd, Edinburgh was fined £2,000 for breach of the Work at Height Regulations 2005, Reg 10(1) – failure to prevent the fall of an object: a heavy lighting rig used at children's music show at Portobello Town Hall fell from balcony into auditorium, hit a pushchair and slightly injured child in June 2007. This could have been fatal.

18. Thomas Thomson (Blairgowrie) Ltd and Managing Director was prosecuted in May following a fatal injury to migrant Polish worker in July 2006. The worker was electrocuted whilst helping to erect the metal framework for a polytunnel beneath an 11KV overhead power line at a soft fruit farm in Blairgowrie, near Perth. Guilty pleas resulted in reduced fines of £9,000 and £1,800.

19. R & J MacDonald, a farming partnership based at Kelloe Mains Farm near Duns, Scottish Borders. were fined £6650 at Jedburgh Sheriff Court on 5 June 2009, under Section 2(1) HSW following a fatal accident to employee on 14 June 2007. The man had been employed by the partnership for only three days, and had no previous experience in agriculture or in driving quad bikes when the quad bike he was riding whilst assisting in herding of cattle crashed into a tree. He sustained serious head injuries.

20. Sacone Environmental Ltd was fined £12,000 on 26/6/2009 for a breach of HSWs3 as a result of an incident that resulted in two workers being hospitalised due to exposure to hydrogen sulphide. The company operates an animal waste handling facility near Brechin. The incident occurred on 17 June 2007 at a waste pit intake area that has an "airlock" to control nuisance odours.

21. These cases illustrate the length of time cases take to get to Court. Inspectors also follow up after prosecutions. A recent meeting with the senior management of two companies recently prosecuted discussed their ambitious proposals to improve standards.

22. HSE has issued a Crown censure of the Scottish Prison Service over two incidents involving prisoners at HM Prison Barlinnie, Glasgow. The incidents occurred 11 days apart in August 2008, and involved prisoners' fingers becoming trapped in a

vibrating mould table in the prison's concrete workshop. The two prisoners suffered entrapment crushing injuries to their fingers and have since recovered. One had bruises only, the other had separation of the bones at the joints.

23. On-going investigations include:

- Jointly with the Police and Strathclyde Fire and Rescue concerning the death of a fire fighter in Lothian and Borders Fire Service
- A double fatality involving access into a confined space on a moored barge at a fish farm
- Fatal electrocution to a two year old boy following electrical installation work at a domestic premises
- Fatal injury to a local authority employee who fell from a scissor lift during maintenance work at a school
- Fatal injury to a worker who was electrocuted when taking a portacabin from a flat bed lorry
- Fatal injury to a person crushed when working underneath a commercial coach.
- Ongoing investigation into the adequacy of the management of violence to staff at a secure unit for children
- LPG explosion at Auchinblae – investigation continues. The explosion resulted in serious injuries to a gas fitter, barmaid and member of the public. The hotel was rendered structurally unsound and had to be demolished. This is a complex investigation involving multiple duty holders.
- Fatality involving work with a lathe
- Near fatal transport accident involving pedestrian worker and articulated lorry – an Improvement Notice has been served on transport arrangements
- Two gas explosions, one LPG, one natural gas – a Prohibition Notice has been served on an untrained installer
- A petrol fire incident
- One hot substance/water explosion
- A fatal high fall and several ladder incidents that could have been fatal
- A worker crushed during lifting operations in manufacturing and engineering.
- Incidents in the education sector to staff and pupils. (Inspectors are reviewing local authorities' reporting arrangements in education establishments).
- Health risks concerns reported by employees in the utilities sector (sewage).
- An amputation, involving wood working machinery
- Inspectors in Edinburgh are working with the Lothian and Borders police in accordance with the Work-Related Deaths Protocol following a fatal accident to a member of the public who was run over in April 2009 by a reversing delivery van at a hospital site operated by NHS Lothian.

24. The HSE investigation into the *C difficile* deaths at the Vale of Leven has now been completed. 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, COPFS have decided that there will be no criminal proceedings. HSE will however be working closely with Greater Glasgow and Clyde Health Board to address some issues identified during the investigation.

25. A small sample of notices issued during this period highlights problems with workplace transport, work at height, waste recycling site standards, protection of the public, lifting and slinging and machinery safeguarding, statutory inspection of LEV, design of LEV, competence/safety management systems, health surveillance regimes

and protecting health. Prohibition Notices and a deferred PN were served in manufacturing sector.

## **Construction**

26. HSE's recent asbestos awareness campaign has highlighted the dangers and raised awareness among workers of disturbing asbestos in buildings but concerns about asbestos exposure continue to be reported. Enforcement action has been taken against East Renfrewshire Council with the serving of two Improvement Notices over failure to comply with asbestos regulations. An asbestos contractor has recently surrendered his licence after poor performance was identified on site. Preventing exposure to harmful asbestos fibres will continue to be a priority for HSE in Scotland and further targeted interventions with clients and contractors are planned.

27. One in five contractors were issued with enforcement notices to stop their unsafe work during the construction refurbishment initiative. A total of 199 sites were visited, 269 contractors spoken to and there were 40 enforcement notices issued, mostly for unsafe work at height. In Edinburgh and Aberdeen HSE staff were accompanied on visits by Environmental Health Officers from both cities. This joined up approach supported and enhanced the partnership between the Health and Safety Executive and Local Authority as regulators.

28. A self employed operator of an excavator was fined £3,500 at Lanark Sheriff Court after a guilty plea to a charge under Section 3(2) of HSWA. The charges follow an incident in which an architect was struck by the digging bucket which had detached from the excavator.

29. Following investigation of a fatal injury to a worker during construction of a wind turbine, HSE questioned the European standard for the testing of fall arrest systems. HSE took the concern to the Department for BERR (Business Enterprise and Regulatory Reform) who have taken it up with EU member states and a consensus has been reached that the standard is deficient and is to be withdrawn. Papers reporting the investigation are with the procurator fiscal.

30. At Dundee Sheriff Court in June a company was fined £5,000 following investigation of a fatal accident to a migrant worker who fell less than 3 metres down a "smoke exhaust shaft" in a block of flats under construction. This resulted from inadequate edge protection arrangements at the entry to the shaft. A director of the company was also found guilty under HSWA s37 and fined £4,000 as he had day to day control of site work activities. This is only second successful S37 case against an individual in Scotland in six years. It is interesting that the Sheriff carefully explained how he reached his sentence on the company by examining the company's financial position and determining that the fine was the maximum he could impose so that they could continue trading.

31. HSE is not just about accidents. Basic welfare is also taken seriously. Small scale and short to medium duration construction work often involves inadequate welfare provision, in particular basic washing facilities to ensure good hygiene. Construction Division in Scotland has been leading discussions with suppliers of portable sanitation equipment to drive up the standard of welfare to meet legal requirements so that workers will have access to hot and cold or warm water for hand washing at or near the toilet. This will involve considerable investment by the supply chain as portable toilets will need water heaters and arrangements for power supply but the industry has responded positively to HSE's intervention and is working actively with us to ensure suppliers and users meet requirements.

32. Regulating public bodies forms a major part of HSE's work and such organisations frequently fall far short of acceptable standards even when dealing with well known hazards that cause public concern. Recently Edinburgh City Council was fined £17,000 for exposure of employees and others to asbestos at Castlebrae school. Contractor, Dalkeith Demolition Ltd, working for the Council, was also fined £11,333 for exposing employees to asbestos and for not having a licence to remove asbestos.

33. In another case, Fife Council were fined £10,000 and their contractor, ECG Building Maintenance Ltd, were fined £3,700, following removal of asbestos water tanks from council property without any precautions. The Sheriff commented that the council were primarily responsible because they had failed to provide information to the contractor.

### **New system for handling complaints about poor health and safety**

34. A new centralised complaints handling procedure for Scotland has been established in HSE's Edinburgh office. The team apply risk-based criteria to determine whether HSE should follow up a complaint about a duty holder and with what priority. This involves careful discussion with the complainant to establish whether people are at immediate risk, how many people are involved and the potential for harm. In its first month's operation 236 complaints were received. In total 142 have been actioned – 10 were treated as a priority, 69 were followed up and 45 were not. Complaints which are not followed up are still examined for useful information and a decision on whether to allocate a visit, for example, by an HSAO.

### **Chemicals Industries**

35. The Chemical Industries Division of HSE have continued to deliver a prioritised programme of planned inspection and safety report assessment of major hazard sites over the last year. In addition we have worked with a range of stakeholders in Scotland to promote joint agendas

#### Working with the Chemical Industries Association in Scotland

36. Hazardous Installations Directorate, Chemical Industries Division (HID CI) has maintained regular contact with Scottish CIA (Chemical Industries Association) and, together, meet national CIA annually to share information on higher level policies and activities. This year our collaboration led to a joint Scottish CIA/HSE seminar for senior managers and H&S managers from the highest risk chemical industry sites in Scotland to promote Process Safety Leadership and the use of key performance indicators in the Major Hazard Chemical sector. The event was used to reinforce HSE's message on leadership taken from our GB-wide Leading from the Top Conference held in London in April 2008. Scottish CIA invited non members from a wide range of COMAH (Control of Major Accident Hazards) operators in Scotland to the event - which became a model for subsequent events in England and Wales. HSE is keen to promote CIA's continuing work on best practice in leadership. HSE staff also attend CIA Responsible Care Cell meetings involving H&S managers and safety representatives, which we believe are unique to Scotland. The safety representative meetings have been useful in sharing good practice across the represented companies.

#### Land Use Planning in the vicinity of major hazard sites

37. HSE's Policy Group and HID CI have been liaising with Scottish Government on matters relating to land use planning in the vicinity of major hazard sites. Scottish Government has implemented a number of changes to planning legislation to streamline the process and allow applications to be processed more quickly than previously. This has and will provide challenges for HSE in providing advice to local planning authorities in the shortened timescales. Formulation of our detailed advice about developments near major hazard sites demands a significant level of specialist analysis and peer review - which takes time. These legislative developments are a precursor to changes that will also be implemented in England and Wales. HID CI and Policy Group are planning to hold a seminar with Senior Planners in Scotland to reinforce HSE's role in the planning process and the underpinning reasons for our advice.

38. In addition, Falkirk Council have been one of three councils who have been working with HSE to trial approaches to inclusion of more detailed societal risk considerations into land use planning decisions.

#### Working with Scottish Environment Protection Agency (SEPA) and the Scottish Government

39. There continues to be a very close working relationship between HID CI and SEPA on COMAH related activities in Scotland as the HSE and SEPA are the joint enforcing authority for COMAH legislation here. Regular managers' meetings are held to align our work and ensure that we are targeting those operators who create the highest risk for both health and safety and environmental reasons in Scotland. This includes working collaboratively to implement outcomes from the Buncefield MIIB (Major Incident and investigation Board) reports in relation to containment of petroleum products at Buncefield-like sites in Scotland. HSE is also working jointly with SEPA and the Scottish Government to implement MIIB recommendations on emergency response.

40. HSE is also working very closely with SEPA on the joint COMAH Remodelling Programme which is seeking to modernise our approaches to COMAH work and to increase our joint impact.

#### **Explosives Inspectorate**

41. HID Specialised Industries Division's Explosives Inspectorate regulates health and safety at sites in Scotland licensed to manufacture, or store large quantities of, explosives under the Manufacture and Storage of Explosives Regulations 2005 (MSER). It also regulates the handling of explosives at Scottish ports licensed under the Dangerous Substances in Harbour Areas Regulations 1987. The Explosives Inspectorate provides advice to Scottish Planning Authorities on proposed developments around licensed sites and maintains routine contact with Police Forces and Local Authorities which have explosives licensing responsibilities under MSER. In addition, the Explosives Inspectorate and Scottish Local Authorities work together through the UK-wide Fireworks Enforcement Liaison Group.

#### **Health and safety strategy – publication and implementation**

42. The final version of the strategy was published in June with a call to organisations to sign the pledge to "be part of the solution". I would like to encourage Scottish organisations and PHASS member organisations to sign up online. HSE has set up strategy action teams looking at work under each of the main themes: strong leadership; worker involvement; building competence; customising support for SMEs etc. HSE's

Advisory Committees are also starting to structure their agendas in this way. PHASS could decide to do the same.

### **Lord Gill's Inquiry Report into the explosion at the ICL Plastics factory in Glasgow in 2004**

43. The report was published on 16 July. HSE will be responding formally. Geoffrey Podger repeated HSE's apologies to the victims and their families that a specific intervention by HSE had not been brought to a successful conclusion. He commended the Inquiry's thorough approach in providing resolution, above all to the families, about how the disaster occurred. Geoffrey also said:

"We recognise that replacing buried LPG pipe work has urgent priority. Much of what we have already done is reflected in the Inquiry recommendations, although we agree with Lord Gill that there is more to be done.

"Lord Gill has made other recommendations, which we are seeing for the first time today and which we must consider and respond to in line with both Governments' expectations and timelines."

44. In Scotland inspection and investigation at other sites since 2004 has already involved HSE in taking action to influence standards amongst users and suppliers of LPG. But a high-level plan for the replacement of underground metallic service pipework carrying liquefied petroleum gas (LPG) in England, Scotland and Wales has also been agreed.

45. Although replacement work has already started, once a survey to prioritise premises is finished, this will be ramped up from October 2009. Businesses with buried metallic service pipework, which can corrode over time, will be required to replace it with more durable materials, such as polyethylene. The oldest buried metallic service pipework in the least well-maintained condition and located in the most corrosive soils will be targeted first. Higher risk pipework is targeted to be replaced by the end of 2013.

### **Working with others**

46. HSE attended the STUC Congress in Perth in April and spoke at an NUJ fringe meeting on work-related stress in the media. The message given was essentially the same as previous PHASS discussion: namely HSE's emphasis is on risk assessment and prevention because enforcement action is likely to be limited in view of the significant challenges in applying health and safety legislation to work-related stress.

47. HSE inspectors and HSAOs continue to consider referring duty-holders to Healthy Working Lives where they lack access to health and safety advice. There is anecdotal evidence that this is increasing and the HSE/HWL work will improve it still further.

### **Responding in Scotland**

48. Lord Calman published his report on Scottish devolution in June. HSE is considering how to respond positively to the main recommendation for HSE which is:

*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*

49. The HSE Executive Board is meeting in our refurbished Edinburgh office on 23<sup>rd</sup> September. There will be a reception held at the Scottish Parliament for MSPs and the health and safety community the previous evening 22<sup>nd</sup> September. PHASS members will be invited.

50. We are currently developing the HSE website's Scotland micro-site to be targeted much more at our partners here. The aim is to increase traffic to the site and encourage visitors to work together and with HSE to be part of the solution. We'll relaunch it in some way once it is up and running.

**Some new Publications and Guidance of interest**

**PHASS members can sign up for free HSE eBulletins on the website**

- 1 Health and Safety guidance to be free on line**  
[www.hse.gov.uk/news/2009/free-guidance.htm](http://www.hse.gov.uk/news/2009/free-guidance.htm)
- 2 From 6 April 2009 HSE will be publishing the names of the deceased and limited details of fatal accidents on the FOI webpages**  
[www.hse.gov.uk/foi/publishedinformation.htm](http://www.hse.gov.uk/foi/publishedinformation.htm)
- 3 New version of health and safety law poster**  
[www.hse.gov.uk/business/law.htm](http://www.hse.gov.uk/business/law.htm)
- 4 NewGASSafetyRegister**  
[www.hse.gov.uk/gas/domestic/gas-safe-register.htm](http://www.hse.gov.uk/gas/domestic/gas-safe-register.htm)
- 5 Relaunch HSE website – new format, new design** [www.hse.gov.uk](http://www.hse.gov.uk)
- 6 Induction pack for smaller construction companies**  
[www.hse.gov.uk/construction/induction.pdf](http://www.hse.gov.uk/construction/induction.pdf)
- 7 Release of HSE fatal statistics July 2009**
- 8 HSE annual report (issued to PHASS members 3 July)**
- 9 HSE business plan (issued to PHASS members 3 July)**
- 10 Public Consultation propose changes to Nuclear Directorate**  
[www.hse.gov.uk/nuclear/ndchnages.htm](http://www.hse.gov.uk/nuclear/ndchnages.htm)