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Exemptions:			

Health and Safety Commission

Minutes of a meeting of the Health and Safety Commission, held on 11 October 2005 in the Globe Room, 2 Southwark Bridge, London, SE1 9HS

Present

Bill Callaghan – Chair
Margaret Burns
Danny Carrigan
Judith Donovan
Joyce Edmond-Smith
Sayeed Khan
Hugh Robertson
Judith Hackitt
John Longworth
Elizabeth Snape

Officials Present

Justin McCracken
 Jonathan Rees
 Julian Shellard
 Colin Douglas
 Vivienne Dews
 Susan Mawer
 Paul Nicholson
 Neal Stone

Apologies:

Alex Brett-Holt (Julian Shellard deputising)

1 Minutes of the meeting held on 6 September 2005 (HSC/M07/2005)

1.1 The minutes were agreed.

2 There was no urgent business

3 Chief Executive’s Report

3.1 Introducing his report Justin McCracken focused on two items: the information on staff numbers provided at the request of the Commission, and the item on REACH.

Table 1 of Annex A showed that numbers of visiting staff, who were predominantly inspectors, engaged in the day today work of visiting sites, employers and workers, had increased steadily. Table 2 showed the deployment of visiting staff and the use, since 2004, of staff in addition to inspectors who visited to provide information and advice but undertook no enforcement.

The Commission had discussed REACH in July and expressed a preference for a joined up approach across government and that HSE should be involved. Agreement had now been reached with the Environment Agency (EA) about the best way forward and EA had submitted a business case involving HSE as part of the competent authority.

3.2 The Commission welcomed the report. The staffing figures provided transparency and enabled them to consider the resource being devoted to site visits. It was important that HSE should continue to use consistent terms and definitions when providing information on staffing

	figures. It welcomed the additional resource provided by other visiting staff, which contributed to a more flexible system.
3.3	The Commission agreed that the approach being taken on REACH was the best way forward. HSE had a significant piece of work to do in explaining to industry the fit between REACH and other regulations such as COSHH.
4	Update on Health, Work and Well-being Programme (No paper)
4.1	<p>Jonathan Rees provided a brief update on this major new programme, which was to be announced in October (19th October). HSC's Strategy had highlighted the need to do more on health, to work in partnership and to strengthen the role of health and safety in getting people back to work through rehabilitation. All of these would be taken forward through HSC/E's involvement in the joint programme involving for the first time DH, DWP and HSE working together. The planned work would build on the work already being done on stress, muscular skeletal disorders and workplace health direct. The initiative, with its high profile and cross government support, would provide a way for HSC/E to better meet its targets on days lost through sickness absence and occupational ill health. There was a risk that we would be drawn into areas outside our remit, so that it would be important to focus on what we could bring to the initiative drawing on those activities we were already planning to do.</p> <p>A fuller report would be provided to the Commission in December.</p>
4.2	<p>The Commission recognised that this was an important initiative, which could bring great benefits. It stressed the importance of putting prevention at the heart of the initiative and recognising that HSC's legitimacy stemmed from health and safety at work.</p> <p>It also wanted to see how Scotland and Wales, who already had initiatives in place, would be factored in, given the complexities over national and devolved issues. Resourcing issues around this would need to be considered. In response Jonathan Rees noted that officials from the Wales Assembly and Scottish Executive were already on the joint senior officials unit, and good links were in place.</p>
4.3	The Chair thanked the presenter for the update. The initiative was an important development and took forward key elements of HSC's Strategy. There were a number of issues around it, which the Commission would want to come back to in detail at a later discussion.
5	Nuclear Safety Programme
5a	NuSAC Reconstitution and Workplan HSC/05/119)
5a.1	<p>Giles Denham introduced the paper, which asked the Commission to: agree the reconstitution, terms of reference, proposed Workplan and note the proposals for reappointment and vacancy filling.</p> <p>Given the recent Government announcements of substantial investment in Atomic Weapons Establishment sites and the review of</p>

	<p>energy supplies (including the role of nuclear power), HSC needed a powerful body to advise it. As HSC's adviser NuSAC's priorities should reflect the Commission's views and its advice should go through the Chair.</p> <p>It was proposed that future appointments would be on Nolan principles: appointment of the best candidates for a limited appointment period.</p>
5a.2	The Chair welcomed Steve Vbranch, Chair of the Nuclear Safety Advisory Committee, who would introduce NuSAC's Workplan.
5a.3	<p>As the new Chair of NuSAC, Steve Vbranch said he had found that it was held in high regard because of its independence and its reputation for good common sense. The Workplan looked tactical but was underpinned by strategic aims. The purpose of NuSAC was to advise the Commission with an emphasis on the safety of people. To do this it identified any threats and opportunities and advised on regulations and policy standards. Key issues were operator arrangements and the regulator – its competency, resourcing and enforcement policy.</p> <p>The plan had been aligned with HSC's strategic goals. He would welcome more interaction with HSC, for instance having NuSAC's external reports issued jointly with HSC and having Commissioners attend its meetings.</p> <p>He described steps being taken to make NuSAC's work more open.</p>
5a.4	<p>The Commission welcomed the paper and thanked NUSAC for the work it did on the Commission's behalf. It welcomed the commitment to produce an annual Report.</p> <p>The Commission's job was to ensure that risks to the public were properly managed. Although the details of the Workplan were good it was difficult to get a strategic overview that would enable it to assess whether there were any gaps.</p> <p>Those Commissioners with responsibility for nuclear welcomed the invitation to attend NuSAC's meetings but wanted to be clear what their role would be and whether their attendance would make the Committee too large. With the forthcoming review of energy the Commission needed to be confident that the right structures were in place so that it would be in a position to be able to respond to requests for advice on whether safety was being properly managed.</p>
5a.5	Steve Vbranch responded that NuSAC considered there were a number of strategic issues it needed to consider in order to advise HSC. These included: competence (of regulation and operators), availability of skills, project control, policy standards and the quality of research.
5a.6	The Chair thanked the presenters. The Commission appreciated that Steve Vbranch had taken on this important role and looked forward to

	<p>working with him and his colleagues. At some stage the Commission would have to advise Ministers and this advice needed to be sound and informed by the independent expertise brought by NuSAC. The two Commissioners assigned to nuclear issues: Margaret Burns and Judith Hackitt, would be in touch to agree the best use that could be made of their time.</p> <p>The Commission agreed the reconstitution, terms of reference, proposed workplan and the proposals for reappointment and vacancy filling.</p> <p>The Commission welcomed what had been said about openness and transparency.</p>
5b	Nuclear Safety Update (No Paper)
5b.1	<p>Dr Mike Weightman, Chief Inspector Nuclear Installations, Nuclear Safety Directorate, provided an overview of the Nuclear Safety Programme and key issues (presentation attached at Annex A). The environment in which they were operating was one of increasing international involvement, increasing pace of change in the industry, the structure of the industry fragmenting, ageing plant and facilities and changes in society particularly in the levels of trust in regulators. All of these posed challenges.</p> <p>He provided tables showing that for a range of outcomes, including injury rates and reduction in radiation doses, there had been continuing improvement, although some were now beginning to plateau.</p> <p>He also explained the changing intervention strategies that NSD was now using to enhance its leverage and achieve improvements in performance. Industry was improving but had to strive for a vision of sustained excellence.</p>
5b.2	<p>The Commission thanked Mike for an excellent presentation, with exemplary clarity on the role of HSE in a difficult area of debate. It found the data on improvements in exposure and on how the inspectorate did its work very interesting; further work was still at hand in this area.</p> <p>It asked whether HSE was confident that it had sufficient expertise in the inspectorate and were informed that this was continually under review to try and manage. NSD's impact was dependent on the expertise and maturity of its staff.</p> <p>The Commission felt that if a decision was made to proceed with a new nuclear power programme HSE would need to look at how it engaged with stakeholders. Its approach should be one of openness and transparency.</p>
5b.3	<p>The Chair thanked Mike Weightman for the presentation and the information on outcomes. The Commission would want to be kept in</p>

	touch on developments.
6	Proposals to consult on revised Asbestos Regulations and an Approved Code of Practice (HSC/05/103)
6.1	<p>Kevin Walkin presented the paper, which sought the Commission's agreement to the publication of a Consultation Document on revised asbestos Regulations and an Approved Code of Practice (ACoP).</p> <p>Asbestos remained a serious workplace risk to health and proper management and controls were essential to protect workers and prevent work-related ill health in the future. The proposals in the CD would further tighten standards of protection and had been broadly supported during informal consultation with stakeholders. However, the proposal to take asbestos containing textured decorative coatings such as ARTEX (TCs) out of the licensing regime had raised concern.</p> <p>At present work with TCs that took more than two hours required a licence. New evidence had shown the risk to be much lower than previously thought, and lower than that for asbestos cement which was an unlicensed material. Work with TCs still needed proper control measures but not such stringent controls as required for licensed work.</p> <p>A summary of the findings of the research was given to the Commission.</p>
6.2	<p>The Commission thought the consultation should go ahead. It questioned whether the research reflected the reality of the way work with TCs was carried out but consultees could comment on this. It wanted to be confident that there was a clear regime of controls to be followed if TCs were not licensed.</p> <p>The Commission wanted to ensure there would be sufficient time to consider the results of the consultation and resolve any issues.</p> <p>The Commission also commented on:</p> <ul style="list-style-type: none"> • the need for clarity on what was meant by chest examinations • whether accreditation of surveyors should be mentioned • implications for domestic premises.
6.3	<p>The Chair thanked the presenter. The Commission agreed:</p> <ul style="list-style-type: none"> • the consultation should go ahead • it was more important to get the right decision than to meet implementation deadlines • the summary of the research was useful and should be incorporated within the document • it's comments on chest examinations and surveyors should be taken on board and the position on accrediting surveyors was noted • the issue of extending the duty to domestic premises should be brought back to the Commission at a later stage.

7	Civil Liabilities on employees created by the Management of Health and Safety at Work and Fire Precautions (Workplace) (Amendment Regulations 2003:Progress Report
7.1	The paper was brought above the line at the request of the Commission. It wanted to clarify the timescale for amending the law to remove the possibility of employees being open to civil claims by third parties.
7.2	The Commission agreed the proposal to amend the law should be taken forward as quickly as possible. It accepted the timetable in the paper and looked forward to seeing the proposals at the January meeting.
	Closed Session Paras 8.1-8.3 are fully closed
→8	Offences and Penalties Report (HSC/05/116)
8.1	<p>Sandra Caldwell presented the paper which provided the Commission with advance sight of the 204/2005 Offences and Penalties Report (O&P) which would be published on the website on 20 October 2005. The report gave HSE figures only and did not include local authorities.</p> <p>The report showed a fall in the numbers of prosecutions taken and notices served and the presentation examined possible reasons for the fall.</p> <p>Prosecutions</p> <ul style="list-style-type: none"> • 90-95% of prosecutions followed investigations • the number of RIDDOR reportable accidents was falling and evidence indicated this was not due to underreporting • HSC's incident selection criteria was being followed • A pilot audit indicated the decision making model was being followed • The amount of resources going into this kind of enforcement work had not dropped • Conservatively 10% of this effort went to joint manslaughter investigations with the police, and subsequent prosecutions by CPS were not included in the figures • The legal process took longer <p>Notices</p> <ul style="list-style-type: none"> • Construction was traditionally a major area for prosecutions and notices. This output declined by 30% at the same time as it started programme work such as working with the supply chain and designers • More notices per contact indicating that the right risk areas were being targeted • Focus on preventative work on issues such as stress and MSD where there were not the same clear benchmarks for judging when notices were needed • More time being spent on contacts, reflecting problem solving approach <p>The conclusion was that HSE was not going soft on enforcement, and</p>

	<p>there were reasons for the reduction but that more needed to be done to explore this and increase efficiency, which was being taken forward by the enforcement programme.</p>
8.2	<p>The Chair reminded the Commission that following criticism by the Select Committee they had increased the proportion of reactive work to 50/50. Following advice from HSE this had been reduced to 60/40.</p> <p>Debating the report the Commission made the following points:</p> <ul style="list-style-type: none"> ○ Including LA figures would give HSC a better understanding of the situation – this was planned for next year ○ Enforcement was not the only tool available to achieve compliance – there were others. Better data to enable benchmarking of different interventions was needed ○ The impact of the changing shape of industry ○ The extent to which the November statistics would show whether the strategy was working ○ However presented it was a major reduction in enforcement – which was not the aim of the strategy ○ A need to find ways of making enforcement more effective e.g. through better targeting or use of administrative penalties ○ Research showed that the prospect of enforcement was a key motivator. The scale of the reduction was disturbing and it could be difficult to sustain enforcement as a lever of influence ○ The difficulty of defending the strategy against its critics in the light of the figures ○ Presentation of the figures should not be made too complicated ○ More information and analysis was needed before Commission could fully assess what was happening
8.3	<p>Concluding the debate the Chair said there were positive points to be drawn: the number of RIDDOR accidents was down; HSC took the decision to reduce the proportion of inspector activity going into reactive rather than proactive work. Investigations were taking longer but were more targeted. Each RIDDOR investigation was more likely to lead to a prosecution. A lot more HSE resource was going in to supporting the police, which did not show up on the figures. The number of inspectors was increasing as was the amount of time spent in contact with employers and workers. These were positive points although they did not blunt all the criticism that would arise from a reading of the figures and if the decline continued it would be a matter of serious concern to the Commission.</p> <p>The Commission agreed that HSE should take on board the comments made about how the report should be presented and the further work that needed to be done. It noted Justin McCracken’s offer to provide further information on contact time outside the meeting.</p>
	Below the line Papers
9	Progress on implementing the railway Public Inquiry reports (HSC/05/72)

9.1	The Commission noted the progress reported by industry and agreed that the progress report should be sent to Ministers and made publicly available.
10	HSE's Hampton Merger Programme (HSC/05/121)
10.1	The Commission agreed: <ul style="list-style-type: none"> • The broad approach to corporate governance; • The strategy for benefit realisation; and • The practical steps being taken to prepare for the mergers.
11	HSC's response to proposals for a Better Regulation Bill (HSC/05/120)
11.1	The Commission approved the draft response to John Hutton, Minister for Public Service Reform.
12	"Fit for work, fit for life, fit for tomorrow" strategic delivery programme: The high-level Fit3 Strategic Roadmap 2005/06 – 2007/08(HSC/05/115)
12.1	The Commission noted the good progress made with the fit3 Strategic Delivery Programme.
13	Update on Ministry of Defence progress to eliminate asbestos in materials and acquisitions (HSC/05/11)
13.	The Commission noted the progress towards the elimination of asbestos from the MoD inventory and agreed that the Secretary of State for Defence could reissue exemption certificates where there was no alternative.
14	Communications Update (HSC/05/122)
14.1	The Commission noted the developments set out in the report
15	Response to Home Office consultation on the proposed Immigration, Asylum and Nationality Bill (HSC/05/109)
15.	The Commission noted the response.