

HSB

Copy to: John Fell

## **HEALTH & SAFETY UP-DATE**

### **Purpose**

1. The purpose of this paper is:

- To inform HSB of the departure of the Agency's Health & Safety Adviser, Liz Crichton
- To provide HSB with background information on the Corporate Manslaughter and Corporate Homicide Act 2007
- To inform HSB that as a result of a discussion at SMT on 21 January regarding the above Act, that a review of our existing Health & Safety Policies and Procedures will be carried out in the near future.

### **Health & Safety Adviser**

2. Liz Crichton has secured another job with a Health & Safety Consultancy in London and left the Agency on 25 January 2008. A recruitment campaign is now underway to appoint a new Health & Safety Adviser and we hope to have a successor in place as soon as possible. In the interim, John Fell, Assistant Health & Safety Adviser, will be the main contact for all health and safety matters. However, given Liz's departure, it will be necessary to re-prioritise some of the health and safety activities we planned to undertake over the next few months and possibly during 2008-09. This will be covered, as necessary, in the Health & Safety Adviser's Report for 2007-08 which we intend to table for discussion at HSB in June this year.

### **Corporate Manslaughter & Corporate Homicide Act 2007**

3. SMT were given a briefing on the above by the Health & Safety Adviser on 21 January. This follows on from an earlier briefing given to the Historic Scotland Corporate Health & Safety Forum in November 2007. Attached as an Annex to this paper is a briefing note that outlines the main provision of the Act and the implications it will have for Historic Scotland. In addition, the Institute of Directors and the Health & Safety Commission have published guidance titled "Leading Health & Safety at Work" which sets out the leadership actions for Directors and Board members. I will hand out copies of this guidance to Non-Executive Directors at HSB on 25/26 February.

### **Review of Health & Safety Policies/ Procedures**

4. In a wide-ranging discussion at SMT on 21 January about the new Corporate Manslaughter & Corporate Homicide Act, as well as the on-going auditing of our health & safety management systems using the recognised RoSPA (The Royal Society for the Prevention of Accidents) QSA (Quality Safety Audit) methodology, it was agreed that there was a need to review some of our current policies to see whether there were any gaps in our

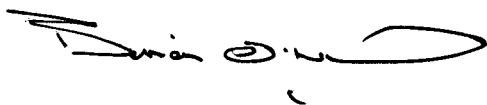
existing policies and the standards set out in the QSA. Furthermore, it was agreed that we should take into account the outcome of the recent audits of HR and the Inspectorate in considering whether some of the standards set out in the QSA were ones which should, in future, feature as part of our health and safety policy or, if not, to explain why we consider they should not be included in future audits. SMT will consider the outcome of this review in due course. Furthermore, we will look at the existing health and safety policy to ensure that it has appropriate reporting mechanisms to ensure that both SMT and HSB are informed of any fatal accidents to our staff at work or visitors on our sites as well as to ensure that we have appropriate guidance in place for our staff on what to do when either the police or Health & Safety Executive arrive following an incident at one of our properties or workplaces. Given it could be some months before we have a new Health & Safety Adviser in place, it may be necessary to commission a suitably qualified Health & Safety consultant to undertake this work.

5. In addition, SMT agreed that it was important all our activities continue to be risk assessed by trained risk assessors; that careful records are maintained of all meetings where health and safety is discussed; and that improving our health and safety culture is important. On the latter point, SMT also agreed to consider following the review of our policies whether an attitude survey should be commissioned on staff views of health & safety as well as their views of management's attitude towards health and safety.

6. Finally, SMT agreed that we needed to improve our guidance regarding the reporting of accidents and near misses and work on this is currently underway. Furthermore, the selection and management of contractors is an important element for Historic Scotland so as to ensure we are not implicated by their failings. New guidance is currently being prepared on this to compliment the CDM and Procurement Guidance already in place.

### **Conclusions and Recommendations**

7. HSB is invited to note the above. It is hoped that some progress on the review of our health and safety policies will either be completed during the remainder of 2007-08, or identified as a priority for 2008-09. This will be covered in the Health & Safety Adviser's Annual Report for 2007-08 which will come to HSB in June.



**BRIAN O'NEIL**  
Director of HR

## The Corporate Manslaughter & Corporate Homicide Act 2007

- The Act comes into effect from 6 April 2008
- Any fatal accidents to our staff at work or visitors on our sites that occur after 6 April 2008 will be investigated by the police. Any investigation by the police will be to determine if there is sufficient evidence to bring charges of corporate homicide against Historic Scotland. Work related road deaths could now be investigated and charges brought under this Act
- Historic Scotland has no immunity from prosecution as a Crown body
- Where a fatality is considered by the majority of jurors to have been caused by a gross breach of our duty of care and the way in which our activities were managed by senior managers was a substantial element in the breach, we will be convicted of the offence
- A gross breach is conduct falling far below what can be expected. This will occur where there has been a failure to comply with health and safety legislation. Where there has been such a failure, the jury will be directed to consider:-
  - How serious the failure was
  - How much of a risk of death there was
  - Was HSE guidance (not just legislation) followed, and
  - Did our attitude, policy systems or accepted practices (ie safety culture) encourage such a failure or produce a tolerance of it?
- Individuals cannot be prosecuted under this new Act. However, the activities of managers will be examined very closely by the police and they will be named on the Indictment. The Act provides for individuals to be charged with and tried for offences under the Health & Safety at Work Act at the same time and for the jury to return a verdict on each charge. The police can also decide to prosecute individuals for culpable homicide
- Individual Crown Servants have never had immunity from prosecution. However, culpable homicide prosecutions in Scotland have, up until now, been rare. This is likely to change as the police focus on the actions of senior managers
- The maximum penalty under the Act is an unlimited fine. In addition, a publicity order can be made requiring us to publicise details of the offence, conviction and fine. Criminal legal costs cannot be recovered even if we successfully defend the case
- Individuals prosecuted under existing health & safety legislation also face unlimited fines and up to 2 years imprisonment. Individuals convicted of culpable homicide would typically face 12-18 months in prison.

## HEALTH & SAFETY ADVISER

January 2007