

Update on HSE Chief Executive's report, HSE business plan and coronavirus guidance

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In advance of the publication of the HSE's Business Plan for 2020/21, we summarise below the report of the HSE's Chief Executive in March which highlights recent HSE activities and provides a valuable insight into the strategies and priorities of the HSE. It also includes some of the key comments of the HSE's Chair and Chief Executive following their first appearance before the new Government's Work and Pensions Select Committee in March.

Coronavirus (COVID-19)

The HSE are continuing to work with Public Health England to ensure that all work related guidance is compatible with health and safety requirements. Advice has been provided for the public and workers in a range of sectors whilst dealing with the risks of spread of coronavirus. The HSE's website contains useful guidance on the following subjects: social distancing; first aid cover; protecting home workers; PPE in health care settings; drivers access to welfare facilities; hand sanitisation; health surveillance and face masks.

Although many organisations are facing unprecedented challenges presented by the Covid-19 pandemic, it is worth highlighting what the HSE's approach is during the outbreak. The HSE have stressed that despite the demanding circumstances, compliance with occupational health and safety legal requirements remains with duty holders and the HSE will continue its regulatory oversight of how duty holders are meeting their responsibilities. The HSE's regulatory approach will take a flexible and proportionate account of the risks and challenges arising from the pandemic. In particular, it is worth noting that:

- The HSE has suspended targeted inspection activity of high-risk industries that are not part of the major hazard sectors, including construction and manufacturing.
- There is a short pause on offshore oil and gas and onshore chemical, explosives and microbiological industry inspection activities.
- Across all sectors, the HSE will continue to investigate work related deaths, the most serious injuries and dangerous occurrences. As much inspection activity as possible will be conducted using technology.
- Regulatory intervention works will be done remotely where possible but the HSE will still mobilise to site where it is necessary to provide public assurance that hazards are being effectively managed.

Since publication of the HSE Chief Executive's report, the HSE has issued details of when and how you should report coronavirus incidents under RIDDOR (the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013). The guidance states that you must only make a report under RIDDOR, relating to coronavirus, when:

- An unintended incident at work has led to someone's possible or actual exposure to coronavirus. This must be reported as a dangerous occurrence. An example of a dangerous occurrence would be a lab worker accidentally smashing a glass vial containing coronavirus, leading to people being exposed.
- A worker has been diagnosed as having COVID-19 and there is reasonable evidence that it was caused by exposure at work. This must be reported as an exposure to a biological agent using the case of disease report. An example of a work-related exposure to coronavirus would be a health care professional who is diagnosed with COVID-19 after treating patients with COVID-19.
- A worker dies as a result of occupational exposure to coronavirus. If someone dies as a result of a work related exposure to coronavirus and this is confirmed as the likely cause of death by a registered medical practitioner then you must report this as soon as is practical and within 10 days of the death.

Welding Fumes

Following the recognition that inhaling mild steel welding fumes gives rise to a risk of developing lung cancer, the HSE produced a safety alert in 2019. Further to this alert, the HSE have been promoting the new welding fumes guidance to relevant employers and from the beginning of this year have undertaken targeted inspections up to the end of March 2020. The results of these inspections will be fully evaluated to allow the HSE to understand the impact of inspection activity.

We have already noticed from the recent experiences of our clients, that the HSE are taking a keen interest in ascertaining what measures employers have in place to control the risks. In particular, if welding cannot be avoided, the HSE will want to

know whether a local exhaust ventilation can be used to take fumes away at source and if not, whether suitable respiratory protective equipment (RPE) is being used to protect workers from inhaling fumes.

Agriculture Sector

In the past quarter the HSE's focus in this sector has been on machinery and transport risks. The HSE have been working in collaboration with key stakeholders including the Farm Safety Partnership, National Farmers Union and Farm Safety Foundation to identify and target key online farming influences and to deliver user led content including the publication "What a Good Farm Looks Like".

Lone Workers

The HSE have been highlighting that lone workers face the same hazards at work as anyone else but there is a risk of those hazards causing harm as they may not have anyone to help or support them if things go wrong. The HSE issued new guidance on 2 March to reflect the changing world of work to help employers manage risks and keep lone workers healthy and safe. It includes a new section on how to protect lone workers from the risk of work related violence, new advice on the impact lone working can have on stress, mental health and wellbeing and more information on how managers should keep in touch with lone workers. The issue of lone working is particularly relevant in the current climate where there are many employees likely to be working alone; it is essential that employers take this guidance into account to ensure that their policies and procedures adequately control the risks to lone workers. Please see our recent alert on this for more information [click here](#).

Chevron Explosion Review Report

The HSE have published a comprehensive overview report on the incident at Chevron's Pembrokeshire refinery on 2 June 2011 when an atmospheric storage tank exploded killing four workers and seriously injuring a fifth. Following the incident, the HSE prosecuted two Defendants, Valero Energy UK Ltd, and B & A Contracts Ltd who pleaded guilty to charges under Sections 2 and 3 of the Health and Safety at Work etc Act 1974. Valero were fined £5 million and ordered to pay costs of £1 million. B & A Contracts were fined £120,000 and ordered to pay costs of £40,000.

The report provides some useful lessons to those working in major hazard industries, but many of these lessons can generally be applied to other industries by way of best practice to help ensure compliance with health and safety law. The HSE made several recommendations which included:

- Companies using contractors should assume the role of an "intelligent customer", rather than relying on the contractor's knowledge and experience.
- They should establish the regulatory and industry standards to which the contractor is expected to conform, and use this information to supervise the contractor's performance and verify the adequacy of the work carried out on its behalf.
- Contractor companies should understand HSE legislation, guidance and industrial standards relevant to their work activities and that technical requirements should form a critical part of safety managements systems.
- Companies should review their systems to ensure they provide training and arrangements for the recording and communication of important safety-critical information.
- Safety management systems are only effective when robustly audited, monitored and enforced. Arrangements that are allowed to degrade over time become weak and ineffective and whilst providing an illusion of safety and risk control are not strong enough to prevent real harm occurring.

If you are interested in hearing more about the management of contractors, we are running a webinar on this topic on 9th June 2020 [click here](#).

HSE's Key Performance Indicators

The HSE expect to achieve their targets for fatal and non-fatal investigations. The current targets are that 80% of all fatal investigations should be completed within 12 months of the HSE assuming primacy and 90% of all non-fatal investigations should be completed within 12 months of the incident.

Parliamentary Activity

In March, the HSE's Chair, Martin Temple and Chief Executive Sarah Albon appeared before the Work and Pensions Select Committee to answer queries about the work and performance of the HSE

They indicated that the HSE's main concerns at this time are risks posed by cyber security, health in the workplace and Brexit. In response to various questions, the HSE's Chair and Chief Executive made the following key points:

Workplace Fatalities

The HSE do not think there is any correlation between a flattening out of workplace fatalities in the country and the decline in funding, in real terms, since 2013/14.

Fee for Intervention

The income from the Fee for Intervention (FFI) scheme is broadly in line with what was anticipated. The biggest element of concern about FFI has been taking out, namely the perception that the HSE was acting as Judge and Jury. The HSE highlighted that changes had been made to the FFI scheme to make the process more independent.

Brexit

Following the UK's departure from the EU, the HSE's biggest challenge is likely to be in the area of chemicals regulation, in particular biocides, pesticides and plant products. The HSE remain of the view that the bedrock of health and safety Law - the Health & Safety at Work etc Act 1974 is a remarkably good Act and is very much about the proportionate management of risk and a duty holder's responsibility in that. The HSE consider that it is much less prescriptive than many regimes around the world and they will be revisiting the science in some cases which has relied on previous guidance on safe working levels from Brussels.

A question was raised about the Working Time Directive following the UK's departure from EU. The HSE reiterated that even if employers are meeting all the requirements of the Working Time Directive they can still be held to account for causing some form of incident or accident because of fatigue in their workforce.

Stress in the Workplace

The HSE's strategy continues to focus on musculoskeletal disorders, occupational lung disease and workplace stress. Stress in the workplace is becoming an increasing priority for the HSE and this is becoming more important as the world is changing. Most of the HSE's work in this area is concentrated on trying to get greater use and take up of the management standards for managing stress. This includes very practical things that employers can do, such as the level of control people have over the way they work and the relationships they have in the workplace. The HSE have undergone a programme of specific targeted inspections to assist employers with managing work related stress well in their organisation.

So far no enforcement action has been taken in relation to stress at work and they accepted that this is a challenge for the HSE going forward. The HSE will need to think about looking at sickness records and other issues that may make the HSE want to enquire and intervene in a business in a slightly different way from the traditional inspection route.

The HSE highlighted that they work with sector bodies such as in construction where there is a high incidence of suicide among young males and they have developed a programme called 'Mates in Mind'. They also work with the National Farmers Union in the agriculture sector where the suicide rate is very high.

The HSE were asked if there were any plans to collect data on suicides as they do in France and the United States in terms of the impact of the workplace on suicide. The HSE said that if a Coroner asked the HSE to go and conduct an investigation into a particular company if there was seen to be a strong causal link between a particular work environment and somebody's suicide then they would undertake such an investigation.

Musculoskeletal Disorders

When asked about plans to tackle the high incidence of musculoskeletal disorders in the workplace, the HSE acknowledged that there has been a gradual move away from issues such as safe lifting and sudden injury from moving heavy loads to issues that are more about employees sitting hunched over their laptops and desktop computers. The HSE indicated that they will continue to have targeted campaigns on various issues and gave the example of what they have done recently in relation to the alert for welding fumes.

Asbestos

The HSE were asked about the recent ResPublica report on asbestos which argues for the reform of the health and safety regime around the management of in-situ asbestos and makes a number of recommendations for managing asbestos. The HSE Chair took the opportunity to clarify the HSE's policy in relation to asbestos which is that providing the asbestos is in a location where it cannot easily be disturbed then it should be left in situ however in premises such as schools consideration needs to be given school, as to whether pupils could easily disturb or interfere with any asbestos present. Asbestos that is properly maintained and separated from being interfered with should not present a health problem but the HSE stress that it is really important to make sure that asbestos is properly managed. The HSE indicated that a series of targeted inspections have raised serious concerns that at least some schools are not properly managing asbestos.

The Committee suggested to the HSE's Chair and Chief Executive that there are tougher regulations on asbestos abroad and asked whether the HSE should be doing more in the regulation of asbestos and its wider management. In response, the HSE said that they are confident that the exposure limits that the HSE set are sufficient to ensure that there should be no detrimental effect to human health providing that asbestos is properly managed.

Sexual Harassment

In response to a question as to whether the HSE should be doing more in terms of investigating incidents of sexual harassment in the workplace, the HSE responded by saying that the Police are better placed to investigate but the HSE recognised that harassment can be a cause of stress and therefore could at least be investigated by the HSE.

Reduction in HSE Prosecutions

The Committee asked the HSE why there had been a reduction in the number of prosecutions brought in recent years. The HSE's Chair made it clear that the HSE have not changed any of the parameters against which they would bring a prosecution. However the number of cases being challenged, because of the change in the sentencing guidelines, has meant that the HSE has had to spend much longer preparing evidence and going backwards and forwards to make sure that each prosecution will be sound. He went on to say that now, reputationally as well as financially, there is a much bigger hit for organisations and so the HSE have to spend a lot more time developing these cases to make sure that they are bringing the right people to account.

The Committee then queried the conviction rate of 92% and whether that meant that the HSE had been going after the easy hits. The HSE's Chair denied this and said that there had been no changes to the rules in relation to prosecution although the

HSE accept that the number of visits they can undertake has reduced. The HSE's Chief Executive reiterated that, in common with all prosecutors, they are governed by the Code for Crown prosecutors which requires a case to be more than 50% likely to be successful at the point that they initiate criminal proceedings and it has to be in the public interest to take the prosecution forward. She gave the example of a farmer who is the head of the family business who suffers fatal injuries in an incident as the kind of case where the HSE have to think very carefully about whether a prosecution is the correct enforcement tool to use.

Local Authority Enforcement

The Committee also raised a point about the fact that enforcement action by Local Authorities is down by 12% and whether the HSE would want to take over the work of Local Authorities in terms of regulation. The HSE's Chair said that it would be difficult at this time to do so. He said that the Local Authorities look at much lower risk businesses and have more knowledge when it comes to some of the small businesses. However, he appreciates that we are in a changing world and there is no doubt that between the HSE and the Local Authority they have to try and work more carefully together in certain aspects.

The Chief Executive's report indicates that the HSE's Business Plan for 2020/21 is likely to be approved in the next few weeks and will be issued in April. We shall report further upon publication of the HSE's new Business Plan.

In the meantime if you have any queries in relation to any of the topics covered in this alert please contact one of our experts in our [regulatory team](#).

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