Briefing note for the meeting of the National Occupational Safety and Health Committee (NOSHC) to be held at 11.00 am on Tuesday 18 June 2013 BDO LLP, 55 Baker Street, London, W1U 7EU

Item one: Welcome

David Rushton, head of Education and Leisure at RoSPA is attending for item six. Paul Cook is attending from HSE for item seven.

- Item two: Apologies for absence (Charlotte Henderson will read out the list)
- Item three: Minutes of the meeting held on 8th February (Previously circulated)
- Item four: Matters arising and review of actions not covered elsewhere (*These will be reviewed by the chair.*)
 - Item 4: Chris Jones to report back on the IoD conference on H&S leadership
 - Item 6: Public Health. All members to feed back ideas.
- Item five: Report from RoSPA (See Annex one which lists my main work items.)
- Item six: RoSPA support for H&S in schools. (David Rushton will make a short presentation and seek questions, views etc – see also RoSPA's schools and colleges safety pages at www.rospa.com/schoolandcollegesafety.)
- Item seven: The new suite of HSE guidance on 'Managing for Health and Safety' (This relates to question circulated to the Committee prior to the meeting:

"What is your opinion of the new suite of guidance (accessible at <u>www.hse.gov.uk/managing/help.htm</u>) which the HSE is producing to replace HSG65, 'Successful Health and Safety Management'?")

Paul Cook will make a short presentation and answer questions. (See also Annex two: initial RoSPA comments sent to HSE.)

- Item eight: The triennial review of HSE (See briefing note at annexe three.)
- Item nine:
 Recent/current HSE consultations

 (Members are invited to share information on their responses to recent and current HSE consultations accessible via

 www.hse.gov.uk/consult/live.htm

 – particularly on the Workplace

 Regs ACOP and the LA Code)
- Item ten: Safety Groups UK HR@W campaign (See www.safetygroupsuk.org.uk/topics/health_risks_at_work.htm Mike Nixon will provide an update.)
- Item eleven: Progress with the 'History of OS&H' project (Sheila and I will provide an update.)
- Item twelve: Reports from members (This an opportunity for members to report on activities not already reported in discussions on the above.)

Item thirteen: Any other business

Item fourteen: Date of next meeting - Wednesday 2nd October, RoSPA, Birmingham

Below the line

'Parting shots':

- February, '*Education, education, education*'. The need for risk education.
- March, '*Guidance not consolidation*'. Arguments against consolidating the MHSW and related H&S regulations
- April, '*Progress?*'. The Government's H&S reform programme
- May, '*True colours*'. Thoughts on conspicuity
- June, 'Don't Walk on by'. Reporting on hazards, making complaints

RoSPA BNFL projects.

RoSPA's Public Health Campaign: See http://www.rospa.com/about/currentcampaigns/publichealth

Annexe one

Report from RoSPA

Public health: Continuing to promote BBAP public health strategy by focusing on 24/7 safety and the contribution of 'higher performers' (in line with my <u>December PS</u>). Working on a new blog to stimulate debate and promote knowledge sharing between higher performing organisations in areas like defence, nuclear, COMAH sites, utilities, quarrying, construction, railways etc. that engage in schools and community safety outreach (SACSO) by employers The idea is to engage sector awards contacts first and then convene a workshop to test appetite for a network of such people longer term.

Education: Still evaluating a potentially successful bids to the current BNFL challenge round related to the efficacy and impact of LASER schemes. Developing RoSPA 'School Safe' and other RoSPA workplace safety services.

Outreach: Several speaking engagements undertaken and several more are in the diary (see below). Mainly using my PSs and blogs to air issues. Recent articles have been Judith Hackitt's recent statements on myths, the Government's OS&H progress report, citizen reporting of safety issues. The July PS will be on the latest triennial review of HSE.

BNFL projects: Successful judging of BNFL entries on judging day, 15th April, has led to a further award of £30k to Puspa Pant for his work on child injury prevention in Nepal. Decisions on a further potentially winning bid are on-going. Last year's winners made excellent reports on progress, including the Greenstreet Berman report on the WAID data.

Other work

- Gave evidence to the triennial review of HSE being led by Martin Temple, EEF
- Participating in OSHCR
- Still facilitating history of OS&H network.
- Planning next A St John Holt lecture.
- Follow up to the 2013 SMEA Trophy made to British Solvents Association
- Awards supporting Dave Rawlins and the Awards team with adjudication, and suggesting ideas for strengthening judging in 2014...
- SGUK, working on further roll out of HR@W. Continuing liaison with Wiltshire, Wessex, Birmingham, Worcester, Somerset and Thames Valley. Charlotte Henderson returned 3rd June. Helping set up new Groups in South Lincolnshire and possibly Essex.

Roger Bibbings

Occupational Safety Adviser	7th June 2013

Annexe two

Initial comments on 'Managing for Health and Safety' Emailed to Paul Cook 7th June 2013

Dear Paul,

Thank you for giving me copies of the new texts that will replace HSG65. I have now had time to read these drafts again and to think about them in more depth. I could make a lot of detailed drafting suggestions but I will restrict my comments to the following:

1) The guidance needs to be presented as an introduction only to the subject i.e. 'level 1' advice on management which then hopefully leads readers on to further detailed advice on various aspects of 'managing for H&S' (MFHS) - a better title than the old HSG65.

2) As a web based text it could usefully be presented Wiki style with links from keys words to 'level 2' HSE texts on issues such as leadership, workforce involvement, competent advice, risk assessment, training, investigation, performance measurement, review and benchmarking etc. There need also to be wiki style links to case studies. And further key guidance such as on human factors, health surveillance or sectoral H&S management guidance etc needs to be clearly brigaded as a third level.

3) HSE needs to present the 'refreshed' HSG65 as its 'capstone' guidance document and ensure that there is a coherent approach to the 'doctrine management' of all subsidiary, related guidance. In this sense it needs to be presented as the 'Highway Code' for managing for H&S. It would be wrong however to assume (or give the impression) that the challenge of understanding and developing a systematic approach to MFHS can be mastered by simply reading a general guide. The new guide therefore needs to give an overview and provide a route map to the various dimensions of this subject.

4) At the very beginning it needs to explain that meeting the challenge of assuring safe and health working is not simply about complying with detailed regulations and codes relating to specific hazards and activities but that it depends on the duty holder organisation having first put in place the policies, people and processes to make sure that hazards are identified consistently, risks are assessed and the right level of precautions are always applied.

5) For those starting out therefore it needs to be read alongside the 'Toolbox' and 'H&S made simple'. And so far as the law is concerned it needs to be stressed that the risk management approach advocated here will help to ensure compliance not just with HSW Act regulations but other safety law relating for example to the road, food, safeguarding etc. as well as with handling wider agendas such as quality, security, environmental protection and indeed corporate risk and resilience generally.

6) The guide needs to communicate at the beginning that it is systems (organisational and individual competence) underpinned by a positive culture of health and safety which will enable businesses to manage their risks proactively and avoid the suffering and loss that will otherwise arise.

7) The shift from POPIMAR to PDCA helps align the approach to management conceptually with other management system approaches that are taught in business education but the key focus on organisation as part of planning must not be lost. Numerous safety and health failures have their roots in poor organisation.

8) The 'What good/bad looks like' boxes are very welcome.

9) The advice is obviously general but it needs to stress that the level of response to the principles which it sets out must not simply relate to the size of an organisation but also its complexity as well as the nature, scale and complexity of hazards and associated risks.

10) The twin emphasises on leadership and on worker consultation are welcome. The guidance should explain however that the latter is not simply about formal representation and consultation but extends to the practical involvement of individuals and groups in day-to-day management.

11) The approach to risk assessment could be clearer: explaining that this technique ranges from generic assessment of risks in a business to help create a risk profile and prioritise effort; to job specific assessment to determine safety and health requirements for particular operations – to dynamic assessment , invariably requiring involvement of those doing work to assess that health and safety requirements are appropriate to the specific requirements of particular operations (e.g. Point-of-Work risk assessments such as 'take 2s', 'seconds out for safety' etc.). Risk assessment needs to be explained as a philosophy or golden thread that informs decisions at every level of an organisation's operations, not a one-off form filling exercise!

12) Assessment of health risks warrants a separate section. Health surveillance needs to address health standards for safety significant work as well as detection of ill health effects caused or made worse by work.

13) Guidance on procurement with H&S in mind needs to go beyond construction and indeed beyond contractors to embrace all services and indeed all equipment, substances etc. Too often organisations 'buy in' their H&S problems due to bad planning.

14) The sections on emergency plans need to link to similar arrangements which organisations will put in place for business continuity generally.

15) Similarly the advice on investigation needs to refer to the arrangements which organisations will have in place for investigating all kinds of unplanned, adverse events, not just H&s failures. In this context, because very serious events are rare (especially in SMEs), it should stress the need for 'organisational readiness' and rehearsal of procedures – just as with fire drills etc. (RoSPA with NRI has developed DORI - - which as good guidance on over 30 key readiness points.)

16) The emphasis on scaling of investigation effort is welcome but the guidance should explain that this should not just be related to seriousness of outcome or level of risk but also by the extent of opportunity for learning. For example, selective but detailed investigation of cases of frequent but moderate outcome events (slips and trips, for example) can often yield important lessons for improvement.

17) The emphasis on learning from incidents and 'near misses' is welcome. Not only is this easier than waiting for events which cause injury (and may lead to enforcement, claims etc)

to occur but an investigation culture in which small problems are reported and remediated builds skills and confidence and also sets the scene for scaling up of investigation effort when more serious incidents occur.

18) Introductory guidance and sample investigation forms are useful but more extensive texts such as HSG 245 should not be withdrawn but brigaded as 'level 2' advice.

I trust you will find these points of value. There should be plenty of opportunity to discuss these and other views/ideas in more detail at NOSHC on the 18th.

Roger Bibbings Occupational safety Adviser

7th June 2013

Annexe three

HSE triennial review. Note for meeting with Martin Temple

Introduction

This note provides background information and views to help RoSPA contribute to the current DWP review of the Health and Safety Executive (HSE). HSE is an executive non-departmental public body (NDPB) responsible for regulating work-related health and safety in Great Britain in partnership with local authorities. Its mission is '*the prevention of death, injury and ill health to those at work and those affected by work activities*'. Ministerial responsibility for HSE rests with the Department for Work and Pensions (DWP).

Background

On 25th April DWP Minister for Employment, Mark Hoban MP, announced the launch of the review as part of the Government's wider programme of triennial reviews of all non-departmental public bodies.

Following an initial review in 2010 which resulted in the reform of 500 public bodies, the Government committed to review all the bodies that remained at least every three years to make sure that their functions remain necessary and are appropriate to be delivered independently of Government. At that time the Government was committed to closing down unnecessary public bodies and to ensure that those that remained were fit to deliver public services efficiently and effectively.

The current review will assess whether there is a continuing need for HSE's functions, as well as whether it is complying with the principles of good governance.

In launching the review Mark Hoban said: "*Routine reviews, such as the one I am launching today, ensure that bodies such as HSE continue to be fit for purpose, and that they are providing the value for money that the taxpayer expects*".

The first stage of the process will identify and examine the key functions of HSE. The review will assess how the functions contribute to the core business of HSE and DWP, and whether these functions are still needed.

If the conclusion is that the functions are still required, the review will then examine whether HSE as currently constituted remains the best way to perform those functions, or if another delivery method might be more appropriate. For a body to remain an (NDPB) it must satisfy at least one of the Government's three tests:

- Does it perform a technical function which needs external expertise?
- Do its activities require political impartiality?
- Does it need to act independently to establish facts?

The review of HSE is being chaired by Martin Temple, Chair of EEF- the Manufacturers Organisation (see annexe one). He is keen to canvas views on the key questions to be addressed by the review.

The size and profile of HSE means that there will also be an independent 'Challenge Group' overseeing the review – their purpose being to rigorously and robustly challenge its findings. (Details of this group have yet to emerge.)

A formal call for evidence will be launched shortly. However, Martin is meeting with key stakeholders. RoSPA representatives are due to meet him at his office in Broadway House, Tothill Street, Westminster from 11.00 am to 12.30 pm on Wednesday 5th June.

Key points RoSPA may wish to make

HSE is a unique, value adding UK asset - a world class and highly valued organisation. As a prime mover in our H&S system it has been responsible for the UK achieving an internationally outstanding level of H&S performance. But there is still much more to be done. While bodies like RoSPA, IOSH the EEF and many others work alongside them to deliver continuous improvement in UK H&S, HSE - even in its currently constrained state - remains the prime mover.

Although reportable fatal and major injuries have reduced in recent years, there are still several major challenges to be addressed:

- high injury rates in some sectors (agriculture and construction) and among SMEs;
- occupational diseases (asbestos, occupational cancer etc) and work-related ill health (MSDs and stress);
- work-related road safety (the biggest single safety issue facing most firms in an increasingly customer facing, service based, road mobile economy);
- risks to the public; and
- the wider health and well-being agenda.

Health rather than just safety is now the big challenge. Reaching and helping SMEs is key - which is one of the reasons why the work of HSE bodies such as the Small Business Trade Association Forum is so vital.

Key facts:

Scale of UK H&S failures (2009/10)

- 152 notified fatal injuries to workers
- 26,061 major injuries, 95,369 over three day injuries
- 100 + members of the public
- 500 800 fatal work related road injuries (?)
- 12,000 + deaths due to work related health damage
- 1 million injuries (all severities)?
- 1.2 million cases of work related ill health

HSE's key functions of research, information, and regulation need to remain firmly united, although to be effective they need to continue to work more effectively in partnership with other players in the health and safety system. HSE's technical expertise is vital in helping the UK to maintain an evidence based approach to H&S risks. Its recent work in 'Myth Busting' is only one small example.

As a unified, cross cutting organisation and a unique bank of hazard knowledge, HSE is able to promote cross fertilisation of approaches between sectors etc. Ideas and solutions developed in

major hazards, for example, have been developed and applied successfully in other areas (for example, from the offshore rig to the hospital ward). HSE's expertise too is vital to the UK internationally, including most obviously in negotiations within the EU. This is vital to UK competiveness and in exercising technical leadership at this level.

On the other hand, against a backdrop in cuts in its resources HSE has become tauter and more heavily focused on reactive enforcement. The vital role it plays in education, awareness raising and promotion of safe and healthy working is now quite constrained. RoSPA has argued consistently that in this situation HSE needs to develop 'a new dynamic' with other parts of the health and safety system, especially in awareness raising and the delivery of advice. Some steps have been taken as, for example, with the setting up of the Occupational Health and Safety Consultants Register. Much more work is needed however to increase the H&S support potential of a wide range of bodies and networks such as trade associations, safety groups, clients and many others who help to deliver positive H&S outcomes. Additional investment in HSE is needed so that it can continue to carry out frontline enforcement but at the same time also play this key role as the 'development agency' for the wider H&S system.

It is important to see funding of HSE is a spend-to-save proposition for UK PLC. Its work not only saves lives, reduces injuries, safeguards health and assures public safety from major hazards but it also helps to save businesses and the wider community £ billions annually. Investing in a strong and effective HSE is of fundamental importance to UK growth and competitiveness. H&S failures cost the UK up to £23 billion annually. Counter-intuitively recession is actually the best time to invest in prevention because losses due to accidents, incidents and health damage cannot be made good through increased sales/turnover. In this sense proper attention to health and safety helps to assure mission success for UK PLC.

While supporting fee-for-intervention as necessary in the short term, RoSPA has also called for this system to be reviewed and for other funding streams to be explore such as a levy on ELCI premia, top slicing common law settlements for work related injury and so on. In the longer term a reworking of the prevention and compensation system (possibly as a government/insurance sector partnership) should not be ruled out.

HSE has a key role to play in helping to focus and develop Local Authority H&S work. Again the challenge is education rather than simply inspection and enforcement. LA inspection has collapsed. We believe HSE could play a key role in contributing to the radical vision which RoSPA is creating for 'Safe Communities' as part of making accident prevention a leading theme in the Government's plans for locally delivered public Health in England and Wales.

HSE however is under a lot of pressure. Besides cuts in their resources, the Government's timetable for regulatory reform and the reshaping of guidance (to reduce regulatory burdens) are themselves imposing operational constraints on HSE as well as burdens on business and their representatives. The pace of regulatory change is becoming worryingly dysfunctional.

Answers to specific questions

Do the functions that HSE performs remain necessary?

Undoubtedly, yes. Despite major progress in H&S, Britain still faces stiff health and safety challenges. The leadership role of HSE remains vital in this context: gathering data; researching hazard, risk and control; overseeing major hazards; engaging stakeholders; regulating; investigating failure; enforcing to secure justice and behaviour change; disseminating information; working with partners, both within and beyond the UK.

While, as a result of developing their expertise and systems, 'higher performers' in business – particularly larger organisations - may require less direct HSE intervention, they still need HSE to act as the standard setter/bearer. And more significantly, the growth in the SME sector of the economy means that HSE outreach and enforcement effort needs constantly to be re-thought, looking for new ways of working with and through others. 'Estates Excellence' (a multi agency initiative, also involving volunteers such as Safety Groups) is just one example.

At the moment an overwhelmingly SME based economy needs a strong, competent, sensitive and dynamic H&S regulator to provide direction, to engage partners and to take action when 'lines in the H&S sand' are crossed.

Would another delivery model offer a more efficient and effective way of delivering HSE's functions?

There is no doubt that HSE's key functions are aided at many points by the work of other bodies: universities, professional bodies, trade associations, unions, major clients, insurers, standard setters, specialist media, and so on. The list of key players is very long but they all depend for their legitimacy and effectiveness on the central role of the regulator. There are many subsidiary regulatory systems but the role of HSE in regulatory scene setting, in promotion, in investigation and in enforcement is crucial. While other models of regulation might be explored: for example, independent certification; insurance based inspection; client based assurance and so on, experience suggests that the commercial basis for these models makes them very prone to over-complication and burdensomeness. In the UK context, as a key regulator directly accountable to Ministers and Parliament, HSE represents not only the best option for an inclusive, honest and competent regulator but the best guarantee that the other semi-regulatory systems can be made to work fairly and effectively.

Does HSE meet the Government's three criteria for non-departmental public bodies i.e. Does HSE perform a technical function which needs external expertise? Do HSE's activities require political impartiality? Does HSE need to act independently to establish facts?

Technical function: The hazard profile of UK PLC is massive and intensely varied. While no single body can ever hope to hold within its borders intimate knowledge about all hazards, risks and control measures, the challenges facing HSE in this regard set them apart from virtually all other safety focused regulators (for example: air, road, rail, medicines, food and so on). As national regulator of a very wide spectrum of industrial hazards that may create risks of injury to the public as well as the workforce and have serious economic consequences, the HSE has to be able to recruit and retain qualified engineers, scientists, health professionals, economic advisers and other experts. This is essential if it is to maintain its capability and competence for expert judgment, policy advice, risk assessment, inspection and proportionate decisions about enforcement, and perform its role properly as an intelligent customer for research. HSE's technical capability helps maintain the credibility of the regulatory system in the eyes of the most technically advanced industrial sectors and enables its challenge function to be properly and fairly performed.

Even if HSE were to be re-configured as a departmentally based procurer of external expertise, the breadth of knowledge necessary to be able to enable such a regulatory model would be immense and out of all proportion to the range of knowledge found in most Government Departments. All the stakeholders in the system benefit from the existence of HSE as a technical knowledge centre and as a filter through which external specialised knowledge about H&S matters can be captured, refined, disseminated and applied. Add to this the immense experience which inspectors and their colleagues inside and outside HSE accumulate and exchange with one another and it soon becomes apparent that such energy, potential and

continuity could not be re-created by simply putting the regulatory role out to tender, for example. Already, rapid staff change, early retirement and stretched responsibilities mean that some HSE corporate memory has been lost and is no longer available to the organisation and its stakeholders.

Political impartiality: Questions of safety and health are located in unique zone where science and politics meet. Safety is a matter of informed social and not purely technical judgement. How hazardous things are, how tightly they need to be controlled, how effective risk management is best achieved - are all questions on which stakeholders (risk creators, risk takers, specialists) have different points of view. But experience has demonstrated that the management of the underpinning science and of different stakeholder agendas is something that can only be achieved in a neutral setting in which the regulator acts as honest broker, free from party political direction and/or constraints. While ministers and parliament have ultimate responsibility for both policy and delivery, the detailed work cannot be undertaken at the political level. This was the reason why the Robens Committee report of 1972 recommended the setting up of a stakeholder based Health and Safety Commission.

Being seen to be politically impartial is essential if a regulator is to be trusted by all sides of industry and by all parties, particularly when giving unbiased policy advice to ministers or enforcing the law of the land. Experience shows that in the past instances of ministerial direction or intervention have been very rare, thanks to the trust which the HSE has earned and the readiness of the (then) independent tripartite Commission to defend the HSE against political pressure. However in the absence of an independent Commission to argue their case, it is now in a weaker position than hitherto. At the moment it seems that the HSE's Executive Board is having to bend further than it would wish to comply with ministers' deregulatory agendas. Thus although, following the winding up of the Commission, the original tripartite composition is still reflected in the HSE Board, RoSPA has argued that there is a need to reinforce the impartiality of HSE, for example, by setting a new H&S stakeholder council as a sounding board that would also help to inform and guide not only HSE officials but ministers and other political representatives.

Independent investigation: Similarly when it comes to establishing the level of risk posed by hazards or the events and conditional factors that have led to accidents both large and small, independent expert investigation is absolutely crucial - both to the delivery of effective risk control and also to the delivery of justice, for example, when duty holders have failed to protect workers and/or members of the public. To enable them to meet their ultimate responsibilities to Parliament for the safety and health of people in the UK, it is vital that ministers have at their disposal the services of an independent, competent, regulator whose expertise and freedom from political or other forms of interference is widely acknowledged. Any replacement of this role on an ad hoc basis by contracted-in or politically appointed services would not only risk the deployment of a lower standard of expertise but an understandable suspicion of bias. Indeed, given their track record, there is much to be said for safeguarding and further developing the HSE as the UK's lead investigator and risk assessor!

Experience demonstrates that it is very helpful to ministers to have an arm's length relationship with a regulatory authority based on mutual respect and understanding of their respective roles. A successful national regulator has to gain and retain public recognition that it is entirely independent both of politicians and the various statutory duty holders that it has to regulate (which may also include Government departments, local authorities and other agencies) so that, when the need arises for investigation of serious incidents or outbreaks of disease, its authority is accepted by all concerned. There are instances of regulatory agencies failing to achieve this recognition and causing political embarrassment for Ministers. However, current public acceptance of HSE as an independent, trusted and competent regulatory authority is evident, for example, in recent high profile investigations such as into the Buncefield disaster.

HSE's reputation has been earned over many years by a good track record of intelligent and sensitive use of the considerable legal powers vested in them under the 1974 Health and Safety at Work Act, e.g. for gathering evidence, holding inquiries, publishing reports, or prosecuting cases where the facts point to a serious breach of the law. Reputations are easily lost; it is vital for good regulation that HSE's reputation is not undermined.

Conclusion

Despite its current constraints and changes HSE is a unique institution, the embodiment of our proven and highly successful approach to assuring absence of harm from work activity and living proof of a key British value that safety and health are cornerstones of a civilised society. It needs to be conserved and further developed as a key regulator, recognising the need for continuing innovation and change, particularly the need to work in closer cooperation with other key organisations in the overall health and safety system.

Roger Bibbings

Occupational Safety Adviser

27th May 2013

Annexe one

Biography of Martin Temple, Director General of EEF, the manufacturers' organisation



Martin Temple has been the Director-General of EEF since May 1999, having had 30 years of previous management experience in industry. Martin Temple was previously Vice President of Avesta-Sheffield AB, a major producer of stainless steel. He has served on the boards of a wide range of companies around the world.

Prior to this, he was Director of Sales and Marketing for British Steel Stainless and a director in the refractories industry. He has extensive experience covering senior roles in production, marketing, operations and strategy in an international context. Martin Temple has also worked closely with many UK Government departments, and in European Business Forums. In addition he has served on the Boards of various Trade Bodies, Regional Chamber of Commerce and Council of the CBI.

Martin is 55 and married with two children.