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***‘The story of an accident’* – HSE’s role**

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Why HSE investigates...

- **Since 1975, HSE has regulated health and safety in construction, (and other industries), through the provisions of the Health and Safety at Work etc. Act (1974), and the regulations made under the Act.**
- **HSE investigates incidents and injuries reported to us, (mostly through Riddor), according to a selection criteria, which considers any potential breach of health and safety law, and the seriousness of any injury or health effect caused by a work related incident.**

Why HSE investigates...

- HSE investigates to:
- *establish the causal factors;*
- *share any lessons;*
- *identify what actions a duty holder needs to take to prevent any recurrence;*
- *where relevant, identify breaches of health and safety law and gather evidence to support enforcement action, or a report to the COPFS.*

Work related death protocol



Health and Safety
Executive

Work-related deaths

A protocol for liaison

Foreword

This protocol has been developed through the representative bodies of the undersigned organisations to emphasise the importance of working together to investigate thoroughly work-related deaths in Scotland, and where appropriate, to prosecute.

This is the first version of the protocol and we intend to review its operation and revise it as necessary in the light of experience. The protocol is available to the public and interested organisations and their views and experience of its operation are sought to aid that process. We are conscious of the strength of public feeling about workplace fatalities and of how these tragic incidents devastate peoples' lives.

All four signatory organisations recognise the need for investigatory authorities to talk to each other and to share information and best practice. We appreciate that people want to be confident that we are doing all that we can to co-ordinate our efforts and to co-operate with each other in the best interests of public safety and of those affected by work-related deaths.

We endorse this protocol. We believe that it provides an enhanced framework for liaison, and that its introduction will help ensure that all four signatory organisations work in partnership to deliver the high standard of professionalism that the public requires and deserves.



John Vine
Association of Chief Police
Officers Scotland

Ronald Mellis
British Transport Police



Norman McFadyen
Crown Office and Procurator
Fiscal Service

Stewart Campbell
Health and Safety
Executive



Joint working - WRDP

- Where an incident results in a threat to life, Police Scotland officers will normally attend to make initial enquiries, take initial witness statements, and potentially seize physical or documentary evidence.**
- Police Scotland investigate potential breaches of the Corporate Manslaughter and Corporate Homicide Act 2007. HSE will assist the Police.**
- HSE is not resourced as an emergency service, but will attend on a 'best endeavours' basis to assist Police Scotland at an accident scene.**

Joint working - primacy

- **Police Scotland, under the direction of the COPFS, will lead an investigation where Corporate Homicide, or another serious offence, other than a health and safety offence, is suspected. HSE will assist through joint working with the Police under the WRDP.**
- **Where the enquiries conclude that there is insufficient evidence of another serious offence, and through agreement with the Police and COPFS, HSE will assume primacy.**

The accident scene...initial considerations

- **What happened?**
- **Where did the incident happen?**
- **Who has been affected or injured?**
- **What was the work activity/process being carried out before the accident?**
- **Who are the witnesses to the facts of what happened?**
- **What on site documentation is available, (RAMS, phase plan, training records)?**

The accident scene...initial considerations

- **Which companies/organisations are in control of the work activity, and the site?**
- **What work equipment/plant, if any, was involved in the incident?**
- **Is there an ongoing, unacceptable level of risk from the work taking place on site?**
- **What is the status of the injured person, (employee, nominally self employed contractor)?**
- **What is the project being undertaken?**

The accident scene...initial legal considerations

- The Health and Safety at Work etc. Act (1974).
- Sections 2,3 and 7.
- *‘It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees’.*
- *‘It shall be the duty of every employee while at work to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work...’*

The accident scene...initial legal considerations

- **The Construction (Design and Management) Regulations 2015**
- **Regulation 27(1):**
- ***‘A construction site must be organised in such a way that, so far as is reasonably practicable, pedestrians and vehicles can move without risks to health or safety’.***

The accident scene...initial legal considerations

- **The Construction (Design and Management) Regulations 2015**
- **Regulation 28(4):**
- ***‘A person must not ride, or be required or permitted to ride, on any vehicle being used for the purposes of construction work otherwise than in a safe place in that vehicle provided for that purpose’.***

The accident scene...initial legal considerations

- **The Construction (Design and Management) Regulations 2015**
- **Regulations 13(1):**
- ***‘The principal contractor must plan, manage and monitor the construction phase and coordinate matters relating to health and safety during the construction phase to ensure that, so far as is reasonably practicable, construction work is carried out without risks to health or safety’.***

The accident scene... initial legal considerations

- **The Construction (Design and Management) Regulations 2015**
- **Regulation 15(2):**
- ***‘A contractor must plan, manage and monitor construction work carried out either by the contractor or by workers under the contractor’s control, to ensure that, so far as is reasonably practicable, it is carried out without risks to health and safety’.***

The accident scene...initial legal considerations

- The Provision and Use of Work Equipment Regulations 1998
- Regulation 5(1):
- *‘Every employer shall ensure that work equipment is maintained in an efficient state, in efficient working order and in good repair’.*

The accident scenario...initial legal considerations...

- The Provision and Use of Work Equipment Regulations 1998,
- Regulation 9:
- *‘Every employer shall ensure that all persons who use work equipment have received adequate training for the purposes of health and safety, including training in the methods which may be adopted when using the work equipment, any risks which such use may entail and the precautions to be taken’.*

The accident scene...

- **The action taken at a scene will depend on the circumstances of an incident. An HSE Inspector may, (depending on the circumstances) carry out any of the following:**
- **enter the premises at any reasonable time;**
- **prohibit ongoing work, or work liable to be taking place, which they consider creates a risk of serious personal injury or a serious health effect;**

The accident scene...

- **take measurements, samples or photographs;**
- **direct that a scene is left undisturbed;**
- **take into possession and detain any relevant work equipment or materials for further examination;**
- **to require the production of, inspect, and take copies of entries in books or documents;**

The accident scene...

- **to require any person whom an Inspector has reasonable cause to believe to be able to provide any relevant information, to answer questions and sign a declaration of the truth of the answers;**
- **to make such examination and investigation as may be necessary;**

The accident scene...

- **any other power which is necessary for the purpose of carrying into effect any of the relevant statutory provisions within the field of responsibility of the enforcing authority which appointed them...**
- **The Health and Safety at Work etc. Act (1974), Section 33:**
- **It is an offence for a person intentionally to obstruct an inspector in the exercise or performance of his powers or duties.**

Lines of enquiry...

- **HSE Inspectors in Scotland have a duty to follow all relevant and reasonable lines of enquiry, and disclose all material and relevant information to the COPFS.**
- **This includes any information which may point away from the guilt of any accused.**
- **Lines of enquiry identified at the start of an investigation may change, on the basis of witness and documentary evidence obtained.**

Obtaining further evidence...

- **Following the initial witness statements recorded on site at the accident scene, it is likely that further interviews will be carried out with eye witnesses and others.**
- **Further documentary evidence from the companies involved may be relevant and required.**
- **The specialist examination of any work equipment taken into possession may highlight defects, which could be relevant.**

Witness interviews and statements...

- *Voluntary interviews and statements*
- *Compelled or 'Section 20' interviews and statements*
- *Interviews under caution*
- *Order of interviews/statements*
- *Interviewing Kenny, the dumper driver*

Conclusions and enforcement...

- ***Enforcement Policy Statement***
- ***Enforcement Management Model***
- ***Letters/Notifications of Contravention***
- ***Improvement Notices***
- ***Prohibition Notices***
- ***Reporting of the circumstances to the Crown Office and Procurator Fiscal Service, Health and Safety Division, with a recommendation to consider legal proceedings.***

Questions?

