

**ANNEX G****CROWN CENSURE PROCEDURE**

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**INTRODUCTION**

1 This Annex covers the actions to be taken when the Health and Safety Executive has decided that the Ministry of Defence is in breach of health and safety legislation and, but for Crown Immunity, it would have taken a prosecution in a court. This does not replace the authority vested in the HSE to prosecute MOD individuals if the HSE feel they have been personally negligent of their duty of care, (Section 7 or 8 of the Health and Safety at Work etc Act (HASAWA) 1974) or have by their consent, connivance or neglect allowed an H&S offence to be committed (Section 37 or Section 36 (2) HASAWA).

2 The intention of the proceedings is to enable the HSE to fulfil its enforcement role in relation to Crown bodies. The procedure is accepted by MOD, and included in General Agreement between MOD and the HSE under the section on enforcement.

**HSE CONSIDERATIONS FOR CENSURE**

3 If as a result of an HSE Investigation the field inspector considers that a breach of legislation has taken place, and that they would have considered taking action against a private employer the HSE shall undertake the following checks:

3.1 That the evidence is sound and there has been a breach of H&S Law and the correct sections of law is to be used for the censure.

3.2 That there is no defence in law

3.3 That prosecution would have been in line with current HSE policy

3.4 That had they proceeded to court there was a reasonable chance of achieving a conviction.

**HSE ACTIONS**

4 The HSE shall act in accordance with PIN 45<sup>1</sup>. The HSE shall issue Intent to Proceed and Summons to a Censure to the Senior Officer of the establishment or organisation considered responsible for the breach of duty. The senior officer will be present at the censure.

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<sup>1</sup> Appendix to SIM 7/2001/34. PIN 45 – Information Note for Personnel Managers; Procedures for Enforcing Health and Safety Requirements in Crown Bodies.

5 The HSE will provide the MOD with advance information, in writing, of its case in the same way as a non-Crown body which was to be prosecuted in a Magistrate's Court. This is to be carried out with sufficient time for the MOD to take legal advice from their Service or MOD Legal branch before the censure hearing.

## **MOD ACTIONS**

6 If, upon receipt of the notice of censure the MOD does not accept the basis for the censure it shall notify the HSE as soon as possible with supporting reasons. It is the responsibility of the organisation receiving the censure to develop the relevant briefing material for MOD attendees. Briefing requirements will be tailored to individual censures; however one element is likely to be a statement for the senior MOD representative to respond to the HSE's case. This should set out the MOD's position including any remedial actions taken as a consequence. The individual who prepares the briefing material should maintain close liaison with the HSE inspector who has produced the case against MOD.

## **MOD REPRESENTATION**

7 The MOD representative for the Censure shall be the appropriate senior officer in the management chain or command structure. This will either be the person initially selected by the HSE, and named on the summons, or a more senior officer from the chain of command. TLB Holders and Chief Executives of Trading Fund Agencies should represent the MOD for Censures related to their organisations. Only in exceptional circumstances should the task be delegated, and then not to officers below management board level.

8 The MOD representative and, in addition, the line manager who received the summons if not the same person will attend the censure. Other MOD personnel may attend at the request of the MOD representative, DS&C are to be offered the opportunity to attend, ex officio, in light of any actions that impact on MOD safety policy

9 Official MOD trade union health and safety representatives from the area concerned with the censure may attend as observers

## **Crown Censure Hearing Attendance**

10 The Censure hearing will have participating and non-participating attendees as follows

Participating attendees:

- HSE Side
  - The Chairman a senior HSE official
  - The investigating HSE inspector
  - An HSE Secretary
- MOD Side
  - MOD representative
  - MOD line Manager summoned (if different)
  - MOD Secretary
- In Attendance but Non-Participants, If Requested
  - D S&C
  - HSE advisors
  - MOD advisors
  - Official Trade Union representative from the area concerned

## **NOTE**

Other persons who may have a vested interest in the proceedings will only be permitted to attend with the agreement of the MOD Representative.

**Crown Censure Hearing Proceeding**

11 The HSE inspector who conducted the investigation will detail the law the HSE considers to have been breached, indicating the relevant regulations.

12 The HSE Chairman will request the MOD representative to accept three points in order to record the censure, these being that;

12.1 MOD accept there has been a breach of the stated H&S Law

12.2 That had the offenders not been the Crown they would have been prosecuted.

12.3 That there would have been a reasonable chance that a conviction would have resulted.

13 The MOD representative then has the opportunity to refute the breach with supporting evidence or indicate mitigating circumstance. The MOD representative may also respond to indicate the remedial actions taken since the incident that gave rise to the censure.

14 The MOD representative is then officially requested to either accept or decline the censure, in whole or in part.

15 If the censure is accepted by the MOD representative it is recorded in the minutes of the meeting that a Crown Censure has been actioned.

**APPEAL**

16 If however the MOD Representative declines to accept the Censure, or part of the Censure, The MOD Representative shall make a written representation to the relevant HSE Head of Division after consultation with CESO(MOD). The HSE will also reconsider the evidence and if they consider a breach is still valid, and no written representation having been received by them, they will record the censure without further action.

17 If after representations have been made the HSE remains confident that a decision to prosecute would have been justified the HSE Director General will write to PUS and seek agreement to record the censure.

**RECORDING THE CENSURE**

18 The HSE will produce the minutes of the hearing and forward a copy to the MOD representative for their agreement before publishing.

19 The MOD Representative will ensure that the minutes are a true reflection on the censure proceedings and check that no security problems exist with any subsequent publication of the contents.

20 When agreed by MOD the censure minutes become the record of the censure. A copy will be supplied to the MOD representative. A copy of the minutes is to be supplied to DS&C.

21 The minutes will be held by the HSE as a public record.. The occurrence of the censure will be included in the prosecutions database published on the HSE web-site; the entry having been agreed by the MOD. The Censure will also be recorded in the HSC Annual Report Supplement on Prosecutions.

**NOTIFICATION**

22 The Department shall inform the Minister of any accepted or disputed Censure after first consulting on the submission with the HSE, Crown Fire and Police Division, Principal Inspector.

23 The Censure shall be recorded on a MF 2000 as an enforcement action and forwarded to the MOD accident/incident mainframe for inclusion on the MOD database.

24 A paper detailing the lessons identified as a result of the censure shall be produced by the organisation in receipt of the censure and promulgated widely through the Department.

#### **RELATED INFORMATION**

25 Related information

- HSE/MOD General Agreement
- Inspection of MOD by the HSE and Crown Notices