

**SHERIFFDOM OF GRAMPIAN, HIGHLAND & ISLANDS AT ABERDEEN**

Court ref: ABE-B474-20

**RESPONSE**

to the

DETERMINATION OF SHERIFF IAN WALLACE

UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS  
ETC. (SCOTLAND) ACT 2016

IN THE

INQUIRY INTO THE DEATH OF PHILIP REID

To: the Scottish Courts and Tribunals Service

1. The Health & Safety Executive being a person to whom a recommendation under section 26(1)(b) was addressed, do respond as follows.
2. The Health and Safety Executive has an interest in the inquiry as the regulator for workplace health and safety in Great Britain and provider of relevant information for the procurator fiscal but was not a participant in the inquiry.
3.
  - i. The recommendation was:  

*That the Health & Safety Executive ensure that sufficient information is available and communicated effectively so that those involved in construction and demolition works in relation to agricultural premises are aware of their duties to take account of health and safety risks in terms of relevant regulations and industry standards, including the requirement to assess and identify exclusion zones.*
  - ii. HSE regulates the health and safety of construction activities in the agricultural sector including the demolition activity underway at the time of the tragic incident on 18 May 2016. The legislation HSE regulates is predominantly goal setting in nature. Anyone undertaking construction works needs to assess the risks involved and take appropriate action to prevent or adequately control any such risks. This regulatory framework has helped achieve a significant decline in

the rate of construction related fatalities over the last 20 years.

- iii. The main piece of legislation that applies in this case is the Construction (Design & Management) Regulations 2015. This legislation contains the principle that, so far as is reasonably practicable, health & safety risks should be eliminated during the planning or design phase of a construction project. Even when action has been taken to eliminate risks through design, there will still be some risks on site. How these risks are managed will depend on site-specific circumstances. This is when dutyholders should consider measures such as exclusion zones.
- iv. One of HSE's functions as defined in Section 11 of the Health and Safety at Work etc Act 1974 is to provide information and advice on health and safety matters to dutyholders, particularly on controlling health and safety risks in a compliant way. This role complements HSE's regulatory functions of inspection, investigation & enforcement. Many different methods have been used to provide information and advice over the past decades. The main communication channel for HSE is now HSE's website. This is the first place anyone should come to be made aware of their duties regarding workplace health and safety and the standards required to comply with legislation.
- v. The website currently has a section dedicated to health and safety in agriculture. This includes a [section on building work](#) which sets out the key principles to follow during demolition and dismantling of structures on farms. The guidance focuses on planning the activity carefully and using a licensed contractor if the demolition involves higher risk asbestos containing materials. Visitors to this page are directed to [guidance on demolition on the construction webpages](#). Here dutyholders are given the following advice:

*Workers and passers-by can be injured by the premature and uncontrolled collapse of structures, and by flying debris.*

*A safe system of work is one that keeps people as far as possible from the risks. This may include:*

- *establishing exclusion zones and hard-hat areas, clearly marked and with barriers or hoardings if necessary*

- vi. HSE's website is also the best place to access other free HSE publications. The most in depth piece of guidance relevant to this case is [HSG 150 'Health & Safety in construction'](#). Paragraphs 382-397 cover demolition & dismantling and emphasise the need to plan all such activities with care including ensuring that people not involved in the work are kept away with suitable exclusion zones. The website also has real life case studies to help dutyholders – including [one on demolishing an agricultural building](#) – to help dutyholders understand the consequences of not following guidance.
- vii. HSE backs up the provision of information on the website with

targeted communication, education, and inspection campaigns. For example, since 2000 HSE organised events for the agricultural industry called Safety and Health Awareness Days (SHADs). These were improved in 2018 and they continue with a focus on preparing farmers for an associated programme of farm inspection visits. Work at height and construction related activities are included so farmers understand their legal obligations. A sample of people who have taken part in the events are visited to check they are complying with law.

- viii. HSE carried out a campaign across the agriculture sector during the winter 2017-18 focusing on building maintenance work. Farms were inspected targeting work at height and management of asbestos, as well as promoting the selection and use of competent contractors. The work was supported with a publicity campaign using social media and articles in the trade press. The overarching objectives of these activities is to drive behaviour change in the industry and improve compliance.
- ix. In addition to the SHADs, HSE's Construction Division support 'Working Well Together' – a programme of health and safety events organised by and for the construction industry. These cover a range of topics including demolition.
- x. HSE has for many years provided guidance to the agricultural industry on safe demolition. This guidance remains freely available to all who work in the sector. We back up the provision of information with targeted communication campaigns and events to facilitate behaviour change in among agricultural workers. Our provision of information and targeted enforcement, where required, highlights the goal-setting nature of health and safety legislation, and the need for careful planning and risk assessment to identify and establish the basis of safe work.

## NOTES

*(Please refer to section 28 of the Act. A person to whom a recommendation has been addressed under section 26(1) of the Act, if they were also a participant in the inquiry, is under a legal duty to respond to those recommendations in writing. Persons who were not participants but to whom recommendations have been directed are encouraged to respond, though they are not obliged to.*

*The response must set out–*

*(a) details of what the respondent has done or proposes to do in response to the recommendation, or*

*(b) if the respondent has not done, and does not intend to do, anything in response to the recommendation, the reasons for that.*

*A response must be given to the Scottish Courts and Tribunals Service within the*

*period of 8 weeks beginning with the day on which the respondent receives a copy of the determination in which the recommendation is made.*

*The response may be published, though you may make representations to SCTS as to the withholding of all or part of the response from publication.*

*A response made under section 28(1) is not admissible in evidence, and may not be founded on, in any judicial proceedings of any nature).*