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HEALTH AND SAFETY COMMISSION

Consultation on proposals to implement Directive 2003/105/EC amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances

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Issue

1. Approval of a Consultative Document (CD) containing proposals to implement the health, safety and environmental provisions of Directive 2003/105/EC. The proposals are supported by the Advisory Committee on Dangerous Substances (ACDS) and are therefore submitted below the line.

Timing

2. The CD is due to be published on 12 July. Commissioners are asked to forward any comments by 15 June.

Recommendation

3. The Commission is invited to approve the issue of the CD attached at Appendix 1 for a formal 12-week consultation period.

Background

4. Directive 2003/105/EC amends Directive 96/82/EC (the Seveso II Directive) to reflect recent major accidents and the results of EC studies on carcinogens and substances dangerous for the environment. It must be implemented by 1 July 2005. A copy of the Directive is included in the CD at Annex 2.
5. HSC endorsed proposals on 10 February 2004 to implement the Directive through amendments to the Control of Major Accident Hazards Regulations 1999 (COMAH), and to make a small number of other changes to clarify existing provisions in the Regulations (HSC/04/26).

Argument

6. The draft COMAH (Amendment) Regulations (Annex 1 of the CD) are intended to fully implement the health, safety and environmental provisions of the Directive. These are straightforward and the Regulations mirror the Directive as far as possible. Consultees will be invited to comment on the general implementation approach: to assist, the CD includes an implementation table at Annex 3 that identifies how individual provisions are to be transposed.
7. HSC/04/26 explained that the draft regulations would contain a small number of other amendments to clarify or make explicit existing requirements in COMAH and reflect work recently completed by the COMAH competent authority¹ on the review and revision of safety reports. These amendments are discussed in the 'Issues for comment' section of the CD, and consultees will be invited to comment on each issue.
8. The draft regulations do not represent a major revision of COMAH and any other health, safety or environmental issues will be considered when the Regulations are reviewed more fully in future. HSE has largely withdrawn its administrative support to the project to extend the cost recovery provisions for off-site emergency planning to concentrate on the delivery of major hazard programmes. COMAH charging work is now being considered by the Department for Work and Pensions.
9. HSE is separately revising *A guide to the Control of Major Accident Hazards Regulations 1999* (L111) to take account of Directive 2003/105/EC and reflect experience of the operation of COMAH. The guidance is being developed in consultation with ACDS and its Major Hazard Subcommittee and will be published when the COMAH (Amendment) Regulations come into force.
10. Implementation of the Directive will also require changes to land-use planning legislation. Land-use planning is devolved and the Office of the Deputy Prime Minister, the Scottish Executive and the National Assembly for Wales are working on the necessary amendments; it has not been possible to include these in this CD and the Departments will consult on proposals in due course.

Consultation

11. ACDS, its Major Hazards Subcommittee, and internal HSE stake-holders have agreed this package and its submission to HSC.
12. HSE has worked very closely with the Environment Agency and the Scottish Environment Agency to develop these proposals, and also with the ODPM, SE and NAW. The Cabinet Office Regulatory Impact Assessment Unit and the Small Business Service have also been consulted.
13. A list of proposed consultees is included in the CD at Annex 5 (see also paragraph 16 below).

¹ HSE and the Environment Agency in England and Wales, and HSE and the Scottish Environment Protection Agency in Scotland.

Presentation

14. A formal 12-week consultation period between 12 July to 1 October 2004 is proposed. A press release will be issued when the CD is published.
15. During the development of the proposals, industry and local government representatives expressed concern to HSE over the timing and length of consultation. On timing, the Cabinet Office advises Departments to avoid consulting during holiday periods “where possible”. In this case, there is limited scope to move the consultation period: bringing it forward would have allowed insufficient time to develop the proposals, and delaying it could risk late implementation and infraction proceedings. On the length of consultation, 12 weeks is the standard minimum in Cabinet Office guidelines. Given the straightforward and minor nature of the amendments, HSE believes a 12-week period is justified.
16. To assist stakeholders, HSE has widely publicised the consultation arrangements at meetings, through the HSE website, and through intermediaries. We have also written to all prospective consultees to alert them to the forthcoming proposals and to ask whether they would prefer to access the CD through the website or receive a hard copy by post.

Costs and Benefits

17. A partial regulatory impact assessment (RIA) of the COMAH (Amendment) Regulations is included in the CD at Annex 4. Overall, the RIA finds that the benefits will exceed the costs for most values in the estimated benefit range, but points out uncertainties surrounding the estimated costs and benefits. The RIA will be updated as necessary to reflect comments received in response to the CD.

Financial/Resource Implications for HSE

18. Implementation costs to the competent authority are estimated at £133,000 which includes the development of the proposals, publication of the CD, and training and familiarisation for inspectors. HSE costs for additional COMAH activities (which are chargeable) are estimated at £984,000 - £1.3m per year.

Environmental Implications

19. The environmental implications of the proposals are expected to be positive. In particular, the RIA estimates that 52 sites will become subject to COMAH as amended because of lowered threshold limits for substances dangerous for the environment.

Other Implications

20. European – the COMAH (Amendment) Regulations are intended to fully implement the health, safety and environments provisions of Directive 2003/105/EC in Great Britain.

21. Local authorities – emergency planning departments in particular are being alerted to the proposals as the RIA estimates that approximately 117 sites will require emergency plans under the Amendment Regulations.
22. Devolution – the COMAH (Amendment) Regulations will apply throughout Great Britain. The Directive is being implemented separately in N. Ireland and Gibraltar, both of whom have been kept informed of the proposals.
23. Small and medium-sized enterprises – no top tier COMAH sites are likely to be operated by small companies. The RIA identifies that costs may be disproportionately higher for any sites operated by medium-sized companies.

Action

24. The Commission is invited to approve the publication of the CD for a 12-week consultation period. A paper with final proposals will be prepared for HSC to consider in early 2005.