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HEALTH AND SAFETY COMMISSION

CONSULTATION ON IMPLEMENTATION OF THE 2nd EUROPEAN COMMISSION DIRECTIVE ON INDICATIVE OCCUPATIONAL EXPOSURE LIMIT VALUES (IOELVs)

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Issue

1. Health and Safety Commission agreement to the publication of the Consultative Document (CD) attached as an Annex to this paper. This CD seeks views on the proposals contained in the European Commission's 2nd Directive on Indicative Occupational Exposure Limit Values (IOELVs) (2006/15/EC).

Timing

2. Routine. HSC agreement now will permit a three-month consultation period. Subject to the outcome of the consultation, HSE plans to ask the Commission to approve new Workplace Exposure Limits (WELs) and publish them on 6 April 2007, the common commencement date prior to the 1 September 2007 deadline for implementation set out in the Directive.

Recommendation

3. That the Health and Safety Commission agree that the Consultative Document attached as an Annex can be published, for a three-month consultation period.

Background

4. The Chemical Agents Directive (98/24/EC) furnished the European Commission with the scope to propose indicative health-based occupational exposure limit values for hazardous substances by means of Commission Directives. Member States would then be required to set a domestic exposure limit for these substances, taking into account the limit proposed by the European Commission.
5. A draft second IOELV Directive was first published in 1999, and it was adopted by the European Commission on 7 February 2006. A copy of the final adopted Directive, containing exposure limit values for 33 substances, is attached at Appendix 1 of the annexed Consultative Document. Adoption of the Directive was effectively stalled until recently, because of disagreements over a proposed limit for nitrogen monoxide. In

order to resolve this situation, the European Commission removed this proposal from the draft Directive.

Argument

6. The UK is required to implement the Directive or else face infringement proceedings. To implement it HSC will need to approve domestic Workplace Exposure Limits (WELs) for all the 33 substances listed in the Annex to the Directive. There is some scope for deviation from the IOELV, for example if a Member State already has a lower limit, or if it considers that the level is not reasonably practicable for industry to achieve. Any issues of reasonable practicability should emerge during consultation, although initial work carried out in preparation of the Regulatory Impact Assessment has not revealed any major problems.
7. In line with HSC/E's policy, we propose that most of the IOELVs (26 out of 33) will be implemented by a WEL at the same value as the IOELV. However, the Consultative Document includes a number of instances where we are proposing a Workplace Exposure Limit which differs from the level of the IOELV. These are:
 - Chloroethane, chromium metal, chromium (II) compounds, chromium (III) compounds, cyclohexane and monochlorobenzene, where the existing WEL is established at a level which is lower than the level of the IOELV. No changes to the existing British limits are proposed, as industry is already complying with these WELs.
 - Isopentane, neopentane and pentane, where there are no current GB WELs. The Directive requires that exposure limits be set for these substances. It recommends an IOELV set at 1000 ppm (3000 mg.m⁻³). The substances currently attract guidance values of 600 ppm (1800 mg.m⁻³), developed by an ACTS sub-group, which have been in use for over 10 years. The levels derive from a process known as the Reciprocal Calculation Procedure (RCP) for use in setting in-house OELs for mixtures of hydrocarbon solvents. HSE proposes to convert the existing guidance values for the three pentanes into WELs, resulting in limits that are substantially lower than the IOELVs. We anticipate little or no impact on industry because it is already complying with the existing guidance values.
8. In addition to the consultation on the direct implementation of the Directive, the Consultative Document also seeks industry's views on new or revised limits in certain instances where HSE believes it important to enhance worker protection by introducing or reducing the limit. These are:
 - Bromine, which currently has a short-term exposure limit (STEL) set at 0.3 ppm (2 mg.m⁻³). The Directive requires only that an 8-hour time-weighted average (TWA) limit be set, and EH40 already contains an identical 8-hour TWA limit. Data published since the STEL was set (prior to 1988) suggest that 0.3 ppm may be above the irritant threshold for bromine, and does not, therefore, provide an adequate level of protection for the exposed worker. In the light of a recent Expert Panel on Air Quality Standards (EPAQS) review, HSE proposes reducing the STEL from 0.3 ppm to 0.2 ppm.

- Diphosphorus pentasulphide which currently has a STEL set at 3 mg.m⁻³. The Directive requires only that an 8-hour TWA limit be set, and EH40 already contains an identical 8-hour TWA limit. The GB STEL was originally set (prior to 1988) by analogy with the STEL for orthophosphoric acid, because of their similar properties. In 1995, following an ACTS/WATCH review, the STEL for orthophosphoric acid was reduced to 2 mg.m⁻³, but a comparable reduction was not then made to the STEL for phosphorus pentasulphide. HSE therefore proposes reducing the STEL for diphosphorus pentasulphide to align it with the STEL for orthophosphoric acid.
 - Phosphorus pentachloride where no STEL currently exists. The Directive requires only that an 8-hour TWA limit be set, and EH40 already contains an identical 8-hour TWA limit. Phosphorus pentachloride has similar properties to other phosphorus compounds. For consistency with the current STELs for orthophosphoric acid and diphosphorus pentoxide, established in 1995, and with the proposed reduced STEL for diphosphorus pentasulphide, HSE now proposes that a STEL be introduced for phosphorus pentachloride, set at 2 mg.m⁻³.
9. HSE's proposals for implementation of the Directive were considered on 11 November 2005 by the Regulatory Challenge Panel. As a result of this discussion, HSE agreed to defer implementation until the last Common Commencement Date before the final date for implementation required by the Directive.
10. We are required to implement the Directive by September 2007. We therefore aim to ask the Commission to approve the new WELs towards the end of this year, and then to publish the new and revised limits in the HSE publication **EH40 Workplace Exposure Limits** on 6 April 2007.

Consultation

11. This Consultative Document, and the Regulatory Impact Assessment contained within it, have been agreed by other relevant Divisions in HSE, and by the Advisory Committee on Toxic Substances. A full list of intended consultees, including other Government Departments and trade associations, is contained at Appendix 3 of the Consultative Document.

Presentation

12. The Consultative Document will be published on the HSE website, and be announced by means of a letter to the named consultees, and by a Press Release. There will be a limited print run of 500 copies, for those who require a copy in this format. The printing cost is estimated to be £1,200. The Consultative Document will also be promoted through Small Business Policy Team channels, to ensure that small businesses are aware of the exercise and have an opportunity to feed in.
13. The proposals are not expected to provoke much in the way of opposition from stakeholders, as a number of contentious IOELVs have already been removed from the Directive prior to its adoption. There may potentially be some opposition from water utility companies to the proposal to reduce the short-term exposure limit for chlorine, although these companies are already aware of this proposal.

14. It is envisaged that the consultation exercise will clarify the impact of the Directive, and of the other proposed limit revisions on SMEs, as well as on industry as a whole. HSE will then consider appropriate ways of notifying the changes to specially affected groups.

Costs and Benefits

15. A Regulatory Impact Assessment, setting out the costs and benefits of the new and revised occupational exposure limits is attached at Appendix 2 of the Consultative Document. One-off costs of £5.4m are estimated, with further recurring costs of £4.4m over ten years. These costs relate, almost entirely, to the water utility companies and the additional control measures they will need to put in place to comply with a reduced short-term exposure limit for chlorine.

16. It is expected that implementation of IOELVs as WELs will have a positive impact on occupational ill-health where substances do not have an existing exposure limit value, or where the current exposure limits are above those set by the Directive. Implementation of the Directive may contribute to a reduction in respiratory ill-health as a result of reducing exposures to substances that can cause respiratory tract irritation and lung damage. It is not, however, possible to estimate the number of cases of ill-health that might be prevented due to implementation of the Directive.

Financial/Resource Implications for HSE

17. Over the last six years, work by HSE staff on negotiation of the Directive and preparation of the Consultative Document has cost, at present day values, approximately £105,000. There has also been some resource of HSE toxicologists and occupational hygienists, and latterly of an HSE economist. For the future, in addition to the printing costs at paragraph 12, there will be an element of Band 4 time involved in the consideration of responses to the consultation exercise, and the preparation of subsequent ACTS and HSC papers. At present values this will amount to approximately £7,950. Costs will be met from within existing resources.

Other Implications

18. *European:* The European implications of the implementation of this Directive are covered in the Background and Argument sections of this paper.

19. *Small Businesses:* Details of the Small Firms Impact Test, which was conducted during the preparation of the Regulatory Impact Assessment, are included in the Consultative Document. HSE's information is that a relatively small number of substances listed in the Directive are used in SMEs, and initial investigations did not reveal particular compliance difficulties with the proposed new and revised occupational exposure limits. We are working with colleagues in the Small Business Policy Team to ensure that small firms' opportunities to comment during this exercise are maximised, and to raise awareness when the limit revisions are published.

20. There are no specific implications for the environment, local authorities, devolution, or racial equality.

Next steps

21. If the Commission agrees publication of this Consultative Document, action will be put in hand to print the hard copies and to place the text on the HSE website by an agreed publication date.

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