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ADVISORY COMMITTEE ON DANGEROUS SUBSTANCES (ACDS)

59th meeting of ACDS at 10.30 am on Tuesday 8 October 2002 in the Globe conference room, Rose Court.

Members

Nick Starling	Chair
Dr Chris Beaton	CBI
Ian McPherson	CBI
Dr Tom Smith	CBI
Jim O'Sullivan	CBI observer
Tom Mellish	TUC
Alun Owen	TUC
Leonie Wingrove	TUC observer
Dr Tony Cox	Independent
Dr Mike Hogh	Independent
Prof. Philip Nolan	Independent
Dr Gordon Walker	Independent
John Brazendale	Secretary
Janet Savin	Secretariat

Apologies

Prof. Barbara Mawer	LGA
Maurice Healy	Consumer representative
Susan Murray	TUC
Dave Patton	TUC
Jeff Hart	Dept. for Transport
Col. Des Townsend	MOD

Presenters

Chris Raymond	Item 5.1
Brian Etheridge	Item 5.2
Kevin Allars	Item 5.3
John Brazendale	Items 5.4, & 7
Neil Morton	Items 6, 8, & 10

Government Representatives

Jane Cockerill	Dept for Transport
Nick Lawton	Ministry of Defence
John Wright	N.I. Health and Safety Executive

HSE Representatives

Neil Morton	Hazardous Installations Directorate
Keith Wilson	Technical Services Division
John Worth	Field Operations Directorate

1 Introductions and apologies

1.1 The Chair introduced Leonie Wingrove, (nominated as a replacement for Dave Patton, who stood down from the Committee recently), attending as a TUC observer, Jim O'Sullivan, (nominated as a replacement for Stuart Anderson who had recently retired from Transco), attending as a CBI observer, John Worth, Field Operations Directorate, and Jane Cockerill, Dept for Transport. He thanked members who had resigned from the Committee for their contribution to work of ACDS.

1.2 Apologies had been received from a number of members/representatives - see list above for details.

2 Minutes of previous meeting

2.1 Minutes of the 58th meeting, held on 12 June 2002, were agreed and would be placed on the Internet.

3 Matters arising

Code of Practice for members of advisory committees

3.1 As agreed at the previous meeting, the Secretariat had sent a reminder to some members to provide their details for inclusion in the Members' Register of Interests. New members were also asked to send the Secretariat their details. **Action: Members/HSE**

HSE's Advisory Committees : science and health issues forward look

3.2 This work had been delayed whilst HSE sought funding. However, it had not been approved as a research project, and the Secretariat had subsequently asked colleagues in HID and FOD to prepare a draft paper on anticipated trends which would be circulated to members for comment shortly. In the interim, members were asked to submit one suggestion for possible trends each.

Action: Members/HSE

4 Chair's update

4.1 HSE sponsorship

4.1.1 Following a change in departmental sponsorship for HSC/E Nick Brown, Minister of State for Work and Pensions, now had responsibility for health and safety. HSE were also considering seeking a representative from the Department of the Environment, Food and Rural Affairs (DEFRA) on ACDS.

4.2 Consultation on HSC's draft policy statement on Review of Permissioning Regimes

4.2.1 Copies of the consultation documents, which explain the circumstances under which HSC will introduce permissioning regimes, why they are needed, what they are intended to achieve, and how they will achieve it, had been sent to members for comment.

4.3 Appointment of New Chief Scientist

4.3.1 Paul Davies, who had previously had joint responsibility as HSE's Chief Scientist and as Head of the Hazardous Installations Directorate had recently been appointed as Head of the Chief Scientist Unit. This appointment reflected the government's focus on the importance of scientific advice.

4.4 HSE's management of change project

4.4.1 HSE was reviewing the way its Divisions/ Directorates operate to try to achieve better integration of policy and operational work. This could affect HSC's Advisory Committees (A/Cs), as under the review HSE's Board would consider the work of individual A/Cs, whether their continued existence was justified, and, if so, whether regular formal meetings were necessary, or whether the work could be handled in a more flexible way. ACDS would need to consider these issues in due course. Members agreed that closer links between some A/Cs might be helpful e.g. ACDS and ACTS, as there could be occasions when A/Cs were working in parallel. It was agreed that the Secretariat would investigate whether there was a map listing the various A/Cs and their responsibilities.

Action: HSE

4.5 Fire fighters dispute

4.4.1 HSE noted that it was involved in preparing contingency plans in the light of possible industrial action by fire fighters.

5 Subcommittee reports

5.1 Explosives Subcommittee

5.1.1 HSE presented paper ACDS/081002/48, which reported progress on the proposals to revise the Manufacture and Storage of Explosives Regulations (MSER). Overall, responses to the CD had been positive, indicating that the general principles proposed were correct. A number of issues still needed to be resolved, e.g. separation distances for small quantities of high explosives, shooters powders, and fireworks; the manufacture and storage of ammonium nitrate emulsions; some aspects of the assent process; and public right of access to information on the storage of explosives including fireworks. These issues would be considered at the Explosives S/C meeting on 22 November. HSE intended to submit revised draft regulations and guidance to ACDS for approval at their meeting in February 2003.

Action: HSE

5.1.2 Members noted the report. Queries raised included the implementation date for the new regulations, possible transitional arrangements, and the definition of the term "firework season" in the CD. HSE confirmed that the proposed timetable of laying the regulations in mid-2003, with them coming into force in early 2004 was unchanged. Transitional would need to take account of a number of issues to enable a smooth transition to the regulations, and it would be important to avoid "dual-running". The term "firework season" was based on industry's Code of Practice for the sale of

fireworks (DTI had the policy lead on retail issues for fireworks), which stated that they should not be on overt sale more than 3 weeks prior to 5 November, and a few days beyond.

Update on classification of explosives database

5.1.3 At the previous meeting members had expressed concern about the lack of progress on the proposed IT project for the classification of explosives. HSE confirmed that the current database would continue to be used whilst the Invest to Save bid was still being pursued; other options were also being considered. Members noted the progress report.

5.2 Gas Safety Subcommittee (GS S/C)

5.2.1 HSE presented paper ACDS/081002/49, which provided an update on progress to implement the recommendations from the review. Despite relatively slow progress so far, HSE still aimed to go out for public consultation on proposed revisions to both the Gas Safety (Installation and Use) Regulations (GS(IU)R) and the Gas Safety (Management) Regulations (GS(M)R) next spring, aiming to implement the new regulations at the end of 2003.

5.2.2 Members noted the report, commenting on the lack of industry support for the proposed levy for funding safety research and the consumer representatives' disappointment at continued reliance on a voluntary approach. They urged HSE to encourage the 5 Working Groups (WGs) taking forward the review recommendations to reach a consensus if possible.

5.2.3 HSE confirmed that it aimed to work by consensus, although that often proved difficult. Consumer groups had suggested a Private Members' Bill as a possible way forward on the levy proposal. HSE agreed to provide members with an updated timetable for the WGs following the next round of WG meetings.

Action: HSE

5.3 Major Hazards Subcommittee (MH S/C)

5.3.1 HSE presented paper ACDS/081002/50. The MH S/C had not met since the previous ACDS meeting; however, meetings had been arranged for 31 October and 4 December primarily to allow members to consider HSE's revised proposals following the end of the consultations on the Notification of Installations Handling Hazardous Substances Regulations (NIHHS) and the Pipeline Safety Regulations (PSR).

NIHHS - The consultation had ended on 24 October. 24 responses had been received, only 2 of which did not fully support the proposals. HSE aimed to implement the new regulations at the end of November.

PSR - The consultation was in progress, and HSE would meet representatives from industry (Transco) on 21 October to discuss the proposed amendments as part of the consultation process.

Pipelines WG - A progress report would be considered by MH S/C on 31 October.

Amendments to Seveso II - these had largely been agreed, and were likely to be formally adopted at a Council meeting on 17 October.

5.3.2 Members noted the report, and asked whether they would be given the opportunity to consider the risk assessment criteria being looked at by the Pipelines WG. The Chair of the Pipelines WG explained that the WG was more involved in highlighting differences in methodology, sharing data and perspectives and models being used, rather than risk criteria as such. HSE confirmed that a detailed report would be considered by the MH S/C, and feedback could be provided at the next ACDS meeting if required.

5.3.3 Members wanted to know whether new sites identified under the amendments to Seveso II would have to comply with the new Regulations on the proposed implementation date of September 2004, or whether there would be a transition period after that date. HSE agreed to inform members of the position.

(Post meeting note: The amendment of the Seveso Directive (96/82/EC) provides for transition periods for some activities when they fall under the scope of then Regulations. The changes are:

- Notifications under article 6(1) to be made within 3 months;
- Drawing up of a Major Accident Prevention Policy (Article 7) to be drawn up within 3 months;
- Drawing up a Safety Report (Article 9) within one year; and
- Producing Emergency Plans (Article 11) within one year.)

Negotiations were undertaken by the Environment Minister, although the Minister responsible for health and safety would implement the regulations; that was one of the reasons why HSE considered it would be useful to have a representative from DEFRA on the Advisory Committee.

Action: HSE

5.4 Flammable Substances Subcommittee (FS S/C)

5.4.1 Although the FS S/C had not met since the ACDS meeting in June, members had been kept fully informed of developments with the DSEAR package, and, like members of ACDS, had been given the opportunity to comment on the draft HSC papers. They would also be asked to assist in developing the guidance and ACOPs for DSEAR, which would be reflected in the new work programme for the S/C. Members noted the report.

6 Update from Operational Directorates

6.1 The Chair confirmed that he would appreciate continued representation from the Operational Directorates to provide a flavour of key issues being handled by the enforcement/operational side of HSE.

6.2 COMAH (Control of Major Accident Hazards) safety reports

6.2.1 Approximately 370 establishments were required to provide safety reports under COMAH, with some 60-80 new establishments in the explosives and pharmaceutical industries and some storage sites being required to prepare safety reports for the first time by February 2002. HSE's assessment procedures had been revised in April, to speed up and simplify the identification of inadequate safety reports. A new screening procedure had been introduced to scan the reports to try to identify any weaknesses at an early stage. Further guidance had also been placed on the Internet to assist industry. (Previously, about 16% of the reports had needed to be resubmitted, and Improvement Notices might have been issued).

6.2.2 Members thought that a possible weakness stemmed from a language problem with industry having difficulty in fully understanding the concept of as low as reasonably practicable (ALARP). HSE considered that one of the difficulties stemmed from industry's inability to clearly describe the risks and what the control methods were, and how/whether ALARP had been achieved; the effectiveness of the additional guidance in overcoming this difficulty would be monitored. HSE agreed to send members details of the new guidance.

Action: HSE

6.3 Impact evaluation of COMAH

6.3.1 HSE's policy was to conduct a detailed evaluation of the impact of all major policy and operational programmes and projects, and COMAH was an early topic for evaluation. HSE wanted to identify what difference had been made by preparing safety reports; whether there were any consequent improvements in understanding and performance, using the new entrants for the evaluation and 2 control groups, consisting of existing top-tier COMAH sites and lower-tier sites. Final responses were required by December, and HSE aimed to prepare initial findings early next year. The results would be considered by the HSE Evaluation Committee, who would try to identify what worked, and what improvements needed to be made.

6.3.2 Members noted the report, but suggested that it might be better to spend more time on inspection, rather than safety reports. Queries raised included whether ex-CIMAH (Chemical Installations Major Accident Hazards) sites would be included in the evaluation, what HSE was looking for, whether any new scientific trends/ need for further research had been identified, and to what extent the safety reports were seen as indicating the effectiveness of the safety regime.

6.3.3 HSE did not consider it feasible to include ex-CIMAH sites, because of the difficulty in constructing retrospective baselines. An alternative might be to the two control groups viz existing top-tier sites and lower-tier ones. HSE wanted to see whether the level of knowledge was changing, within the context of a changing business and economic environment. Identifying new scientific trends from safety reports would be difficult in view of the variety of report formats the scale of the exercise when the priority was to complete the assessment and move onto inspection. Staff in HSE's Hazardous Installations Directorate (HID) were speaking to industry to try to ensure that the impact assessment evaluation met their needs. In view of members' interest in the evaluation and the effectiveness of the safety report regime, it was agreed that they would receive a further report at a future meeting.

Action: HSE

7 Update on the Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR)

7.1 HSE presented papers ACDS/081002/52, which reported on the HSC meeting on 3 September, and contained the current draft of the DSEAR Regulations. Members will receive a copy of the final version of the regulations in due course. The paper should have been classified as partially closed → ← ***This section has been removed under Exemption 2 of the Code of Practice on Access to Government information***

Members had been offered the opportunity to comment on the draft papers for the HSC meetings on 16 July and 3 September, and were informed of the outcome of those meetings. All of ACDS's recommendations had been accepted by HSC with the exception of the 5 employee limit for the risk assessment report. HSC had decided to keep DSEAR in line with the Management of Health and Safety at Work Regulations. Members were thanked for their valuable contribution to this project. HSE were awaiting the Ministers views on the draft regulations.

7.2 The Chair and members thanked John Brazendale and his team for the enormous amount of work involved in implementing the safety aspects of CAD and ATEX. Copies of the draft leaflet for small and medium sized businesses had been sent to members for comment. HSE were also seeking suggestions for a "snappy" title for the leaflet. The regulations would be submitted to the Minister in a couple of days. HSC's covering letter acknowledged that although a large amount of work had been involved in implementing CAD and ATEX, it had little direct safety impact. Instead it was regarded as a better regulation exercise in that it enabled HSE to remove a lot of obsolete legislation.

8 Land Use Planning (LUP)

8.1 HSE presented paper HSC/081002/47, which reported progress on the first 6 months of the project to implement the recommendations of the land use planning review. HSE provided advice to LPAs (Local Planning Authorities) on all proposed new developments in the vicinity of major hazard sites. However, one of the main recommendations of the review - listed in paragraph 4 of the paper - was to simplify and codify the planning advice usually given by HSE, this would enable LPAs to process applications faster, providing transparent and accurate advice without detailed individual assessments or generally referring to HSE.

8.2 Members noted the report, but expressed some concern that the principle of codifying LUP could lead to possible cost increases to industry if LPAs applied the precautionary principle to developments when they were uncertain how to assess the risks. HSE pointed out that LPAs would get the same advice, with no more uncertainty than at present. At present, HSE they had to examine every case individually, whereas codifying the advice would enable LPAs to make decisions in a fraction of the time. Moreover, it was only advice; LPAs were not obliged to follow that advice. HSE fully appreciated industry's concerns and the need to evaluate the codification and see whether it was working. HSE were trying to involve a very wide range of stakeholders, and would provide regular reports to the MH S/C. They would inform keep ACDS informed of key developments, roughly annually.

9 Transport of Dangerous Goods

9.1 HSE presented paper HSC/081002/53, which provided an update on the legislative programme and related issues concerning the transport of dangerous goods. The main change in the way this was being handled was that the new carriage of dangerous goods regulations would directly reference to ADR and RID. HSE's experience in updating the regulations for carriage by rail had already shown that this was not an easy exercise. HSE aimed to implement the 2001 and 2003 ADR texts simultaneously, and were working closely with the Department for Transport (DfT) to ensure that the new regulations would be implemented as soon as possible. Other EU states largely replicated the ADR/RID agreements.

9.2 Members noted the report. They had been concerned that although transport issues were within the remit of the Committee, new regulations were being developed without them being consulted, and wondered where they fitted in. They also wanted to know what their future involvement in transport issues would be in the new system.

9.3 DfT, who had the policy lead and negotiated with the EU on these issues, confirmed that they consulted widely before each international meeting to obtain stakeholders' views, and that consultation process was working effectively. The relevant documents were issued to members of the DfT's consultative group, and were also available on the DfT web site. Whilst HSE would be happy to keep the Committee informed of issues of strategic importance, it would not wish to create a separate duplicate consultative group. Members agreed although that they would not wish to second-guess other consultative processes, whilst HSE still maintained an interest in transport issues, including dangerous substances, they would wish to be kept informed of developments. HSE suggested that once the first set of direct-referencing regulations had been implemented, it might be possible to review the current arrangements.

10 Management of research projects

10.1 HSE provided a presentation on the new arrangements for the management of research projects, including the timetable and procedures for influencing science and innovation priorities. The main changes were that previously HSE research projects had been commissioned and managed by Divisions/Directorates and tended to be industry/topic focussed, whereas under the new system projects were focussed on HSE's programmes and managed independently. The programmes consisted of 4 blocks of work: Priority Programmes, Major Hazards, Compliance and Mandatory/Cross-cutting issues.

10.2 Members noted the clear exposition of HSE's new research strategy. They asked how they might influence HSE's current Strategic Research Outlook (SRO) and about the interface with other research. HSE confirmed that the SRO for 2003 would be placed on the Internet for consultation the following week. It was anticipated that the new Chief Scientist Unit would influence HSE's thinking, and bring in views from outside HSE.

11 Update on Chemical Essentials

11.1 At the ACDS meeting in February, members agreed to support a new project which aimed to provide a single reference point for chemical health, safety and environmental information, via an interactive Technical Working Group to advise the Project Board and Project Team. The Group also has members from the Advisory Committee on Toxic Substances and the Environmental Agency.

11.2 The first WG meeting had been held on 25 July. Members had agreed the terms of reference and discussed key issues for the development of the package. There had been concerns about possible conflict between environmental advice and health and safety advice, and the need for common approaches in an integrated system. The Environment Agency had set up their own Working Group, and the Chemical Essentials WG wanted assurance that they would be kept informed of progress on the environment side, and would have the opportunity to comment.

11.3 Other issues included the exclusion of the application of pesticides and off-site transport; concerns about the impact of COMAH; the integration of guidance; safety factors e.g. the effect of combinations of physical conditions such as heat and pressure; and the incompatibility in storage of certain types of chemical and chemical reaction hazards. Some members were also worried about the complexity of environmental legislative lists and issues surrounding disposal of waste. The Project Team were now modifying the risk assessment framework to address the WG concerns, and were drafting a first set of control sheets on storage. The next WG meeting would be held on Thursday 28 November to review progress.

11.4 Members noted the report. They considered that providing the WG achieved the right balance of providing simple clear information, the package could be a very useful tool. A similar package had already been developed by the petrol industry; the Secretary would provide the WG with a contact.

Action: HSE

12 ACDS Open meeting - feedback and next steps

12.1 The first ACDS Open meeting held on 14 February had been attended by 35 members of the public. Feedback on the meeting, which consisted of a series of presentations on the work of ACDS followed by a question and answer session, had been quite positive. Issues raised included consumer

representation; how local community groups could obtain meaningful information about dangerous substances and major hazards; the balance of representation; perception that ACDS was more process than outcome-driven; perception that ACDS should be more involved in sponsoring and developing research into risks/hazards arising from dangerous substances; perception that the Committee needed to take greater account of difficulties/ lack of resources affecting small businesses. The Committee needed to consider the date and format for another Open meeting.

12.2 Members agreed that another Open meeting would be arranged next June. The format could include a brief summary of ACDS and its work, but possibly focus mainly on different aspects of work undertaken by the Subcommittees e.g. the DSEAR project, how it arose, and how the work was handled, allowing plenty of time for audience participation. The Secretariat would consider the use of a facilitator, wider advertising, and possible alternative venues (within ACDS's limited budget).

Action: HSE

13 Any other business

13.1 Consultation on fire regime

13.1.1 Members had been sent copies of a CD issued by the Office of the Deputy Prime Minister (ODPM) which sought views on proposals to revise the current fire legislation. The closing date for responses was 22 November. HSE had a strong interest in this subject, and would appreciate a copy of any members' comments to ODPM.

14 Date of next meeting : The Chair confirmed that the next meeting would be held on Thursday 13 February 2003, and thanked members for attending.

Dates of meetings next year - Thursday 13 February, Thursday 12 June and Thursday 9 October.