

Advisory Committee on Dangerous Substances Minutes M120602

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ADVISORY COMMITTEE ON DANGEROUS SUBSTANCES (ACDS)

58th meeting of ACDS at 10.30am on Thursday 12 June 2002 in the Globe conference room, Rose Court.

Members

Dr Tony Cox Acting Chair
Dr Chris Beaton CBI
Ian McPherson CBI
Dr Tom Smith CBI
Stuart Anderson CBI
Tom Mellish TUC
Alun Owen TUC
Prof. Barbara Mawer LGA
Dr Mike Hogh Independent
Dr Gordon Walker Independent
Maurice Healy Consumer representative
John Brazendale Secretary
Janet Savin Secretariat

Apologies

Nick Starling Chair
Prof. Philip Nolan Independent
Dave Patton TUC
Lawrence Maguire LGA

Presenters

Andy Miller Item 4.1
Brian Etheridge Item 4.2
Kevin Allars Items 4.3, 8, 9 & 10
John Brazendale Items 5, 6, 7 & 13

Government Representatives

Col. Des Townsend Ministry of Defence
Jim King N.I. Health and Safety Executive

HSE Representatives

Brian Fullam Hazardous Installations Directorate
Norman Swain Field Operations Directorate
John Worth Field Operations Directorate

1 Introductions and apologies

1.1 The Chair welcomed everyone, and explained that he was standing in for Nick Starling, who was unable to attend the meeting, as he was attending a joint Board/HSC residential meeting that day.

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

2 Minutes of previous meeting

2.1 Minutes of the 57th meeting, held on 14 February 200, were agreed and would be placed on the Internet.

3 Matters arising

Code of Practice for members of advisory committees

3.1 A few members had still not given the Secretariat their details for inclusion in the Register of Interests. As this was delaying publication of the Register, it was agreed that the Secretariat would write to the members concerned to remind them that even nil responses were required. **Action: HSE**

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

3.2 The paper had been raised above the line, and would be discussed under AOB.

Management of research projects

3.3 In view of the heavy agenda for the meeting that day, this item would now be carried forward to the next meeting in October.

Chemical Essentials: proposed Working Group

3.4 Nominations had been sought from members. The first meeting would be held in July.

3.5 All other matters arising would be discussed under the relevant agenda item.

4 Subcommittee reports

4.1 Explosives Subcommittee

4.1.1 HSE provided an oral update on the work of the S/C. The CD containing proposals to revise the Manufacture and Storage of Explosives Regulations (MSER) had been issued in March. Although the closing date for comments was 10 June, HSE was still receiving responses, with 100 responses to date. HSE had not had time to analyse the responses in any detail, but a few general points had been identified:

- better linkages with DSEAR were required - HSE recognised this, and would ensure that the necessary amendments were made;
- ammonium nitrate - concern had been expressed about the impact of the health and safety requirements on competition - HSE expected to receive comments from the Office of Fair Trading on competition elements of the proposals;
- fireworks - HSE had received conflicting stakeholders views on the proposals;
- on a proposal to prohibit supply to anyone who could not produce evidence that they had a legal place of keeping;
- keeping small quantities of explosives or black powder - considered high potential risk, although there had been few incidents - HSE encouraged re-enactment societies to keep their supplies in central stores; however, the current proposals could reverse this.

4.1.2 The Explosives S/C had a busy programme ahead, with meetings scheduled for 29 July and in September, as well as bilateral meetings with stakeholders including the LAs concerning fees, and the storage of fireworks in retail outlets. HSE aimed to complete the MSER programme in October, and to present their final recommendations to ACDS in February 2003. **Action : HSE**

4.1.3 Some members expressed concern that the proposed IT project for the classification of explosives had not been progressed (on financial grounds). HSE explained that, unfortunately, there were many IT projects within HSE competing for limited finances, and it had been unsuccessful in the current round. They had proposed a meeting with CBI to discuss this issue. They were considering seeking funding under the Invest to Save budget; however, it could prove difficult to take forward, as all the financial benefits seemed to lie with industry. They would therefore welcome industry's support in preparing a bid for Treasury funding.

4.1.4 A further difficulty for the Explosives S/C taking this forward was that the S/C had been set up to deal with the manufacture and storage of explosives. The classification of explosives and transport issues went beyond the current structure and remit of the S/C. However, one of the members pointed out that there had previously been an ACDS Transport Working Group for Explosives, and MSER relied on classification. Some also regretted that ACDS had not taken a more active role in transport issues during the past few years. The Secretariat said that the issue of forming a possible Transport S/C had been considered a couple of years ago, but had not been pursued. It was agreed that HSE would bring back proposals on the future of the Explosives S/C, and handling issues concerning the transport of explosives and other dangerous goods. **Action: HSE**

4.1.5 HSE's Transport Policy section confirmed their willingness to meet the CBI outside ACDS and the Explosives S/C to discuss an appropriate way forward. They would also prepare a paper on the current position on transport issues, which were EU-led, and largely outside HSE's direct control. Although HSE had responsibility for producing UK legislation, DTLR (now DfT) was responsible for EU negotiations on transport issues. **Action: HSE**

4.2 Gas Safety Subcommittee (GS S/C)

4.2.1 HSE provided an oral update report on the GS S/C. The S/C had not met since the previous ACDS meeting in February when the Gas Safety Policy section had agreed to review the level of consumer representation. The programme for the 5 Working Groups (WGs) had been revised, with 2 consumer representatives nominated for each of the WGs. Only 2 of the WGs had met since then, Installations and Use, and the Publicity/ Awareness WG, and the consumer representatives had attended both meetings.

4.2.2 Members:

(i) Noted that the S/C report confirmed that the consumer representation had been kept under review;

(ii) Queried the current position between HSE and CORGI - HSE said that they had a good relationship with CORGI, and were represented on the CORGI Management Board;

(iii) Requested copies of the revised Gas safety S/C programme - HSE agreed to send a copy. **Action : HSE**

4.3 Major Hazards Subcommittee

4.3.1 HSE provided an oral update. The S/C had not met since the previous ACDS meeting. However:

- The Land Use Planning project (LUP), which had been deferred due to other work commitments now been reactivated, and ACDS would receive a report in due course;
- Proposals for the Notification of Installations Handling Hazardous Substances Regulations had been progressed by correspondence, and would be discussed under agenda item 10.

4.3.2 Members noted the report.

4.4 Flammable Substances Subcommittee (FS S/C)

4.4.1 The work undertaken by the FS S/C would be discussed under agenda items 5-7. HSE confirmed that the timetable for implementing the proposals for the Dangerous Substances and Explosive Atmospheres Regulations (DSEAR), Petrol and Celluloid and Cinematographic Film was tight, and apologised for the short time in which members had to consider the papers on these issues.

4.4.2 HSE had received a number of last minute comments, and still had some difficult issues to resolve; these might need to be taken forward by correspondence. Whilst HSE hoped that the discussions that day would lead to the Committee recommending that the proposals for Petrol and Celluloid film could go forward, the final proposals for DSEAR might not be agreed in time for the HSC meeting on 16 July. HSE had also received a letter about the proposals for Phase I of the petrol review, and the consultation exercise; this would be discussed separately under item 6.

5 Final proposals for the Dangerous Substances and Explosive Atmospheres Regulations (DSEAR)

5.1 HSE presented papers ACDS/120602/38 and ACDS/120602/44. Since the ACDS meeting in February, the CDs had been published, and approximately 500 people had attended Workshops to discuss HSE's proposals for DSEAR and petrol. 3,000 copies of the CD had been distributed, and about a 125 replies had been received on the DSEAR CD., and 106 on the Petrol CD. The responses had raised a number of significant issues, which had been discussed at the FS S/C meeting on 29 May. Page 5 of the ACDS update paper summarised the main issues. HSE now had to make some difficult decisions, and sought the views of the Committee.

5 employee limit for recording of risk assessment findings

5.2 HSE had initially proposed to align both DSEAR and COSHH with the Management of Health and Safety at Work Regulations (MHSW Regs.) on the issue of whether the 5 employee limit for recording risk assessments should be kept, or whether all employers should be required to record the findings of their risk assessments. → ← ***This section has been removed under Exemption 2 of the Code of Practice on Access to Government information***

5.3 However, the consultation for DSEAR had been evenly balanced. For consistency, HSE (SPD) had recommended to Subcommittee members that the 5 employee limit be removed from DSEAR, and that all employers be required to record risk assessment findings, (although HSE recognised that this approach would result in different recording requirements in DSEAR and MHSW, and proposed discussing ways of handling this issue with colleagues in HSE who had responsibility for MHSW). Overall, the FS S/C had supported the proposal to remove the 5 employee limit, but some members were concerned that it could have considerable cost implications. FS S/C members also considered that HSE would need to prepare some clear, simple guidance, possibly including a risk assessment model, specifically aimed at SMEs (small and medium enterprises) who would be affected by the change in recording requirements. Consequently, HSE was now inclined to take a neutral approach in its submission to the HSC.

5.4 Points raised in discussion:

→ ← This section has been removed under Exemption 2 of the Code of Practice on Access to Government information.

- Some members considered that a risk assessment should always be carried out and recorded - it needed to be simple, up to date, and relevant to the business need, and need not have any additional cost implications;
- The proposal would not be a major concern for industry, although it would have resource implications for SMEs;
- Need for greater consistency between the guidance on risk assessments in DSEAR, MSER and COSHH - HSE agreed to aim for a more consistent approach;
- Need for greater consistency between the requirements in DSEAR, MSER and COSHH - HSE agreed to address this and aim for a more consistent approach.

Action: HSE

5.5 After further discussion, members agreed to recommend to the HSC the 5 employee limit for recording the findings from risk assessments be should be removed from DSEAR.

Action: HSE

Zoning

5.6 A number of concerns had been expressed about the proposed zoning (and selection of equipment in those zones) provisions in DSEAR not being sufficiently risk-based. CD respondents and FS S/C members considered that zoning and equipment selection requirements should be linked to the risk assessment process to ensure employers were not required to put in place control measures that were disproportionate to the risk. Parts of industry were very concerned about the potential impact for warehouse and retail storage of aerosols. HSE accepted industry's comments, and were therefore considering how best to ensure that these requirements were clearly risk-based.

5.7 Members agreed that zoning and equipment selection requirements in DSEAR should be linked to a risk assessment approach, and HSE should continue discussing with DTI ways of ensuring that the overlap with the EPS 1996 would not result in disproportionate requirements for employers when selecting equipment to use in zoned areas. **Action: HSE**

Overlap with existing legislation

5.8 HSE had received a number of comments identifying overlaps in DSEAR with requirements in other pieces of health and safety legislation, including offshore safety, gas safety, and transport legislation. The FS S/C had agreed that HSE should review the DSEAR proposals to try to avoid such overlaps, possibly by granting additional exemptions.

5.9 Members were concerned about DSEAR applying to domestic situations. HSE confirmed that the proposals were intended to cover contractors working in domestic situations, but were perhaps less appropriate to domestic situations for gas applications or similar although there was an exemption in the Directives. HSE intended to work closely with the organisations who had identified these overlaps to try to resolve these issues.

Action: HSE

Recording of significant findings

5.10 There were concerns that the requirement to record the findings of a risk assessment at the time the assessment was made could cause difficulties for the emergency services, e.g. where the Fire Brigade needed to assess risk and appropriate action when dealing with fires, etc. The FS S/C had agreed that this requirement should be amended to allow the assessment be recorded "as soon as practicable". However, because COSHH contained a

similar requirement, HSE needed to agree a consistent approach [with their colleagues in the Health Directorate].

5.11 HSE confirmed that they would expect emergency services to conduct generic risk assessments to cover such circumstances, but agreed to consider granting a specific exemption for emergency services in the course of their duties. **Action: HSE**

SME's

5.12 HSE was still committed to ensuring that SME's received appropriate guidance on DSEAR, and proposed to produce a leaflet specifically for SMEs. **Action: HSE**

ACoPs

5.13 The FS S/C had endorsed HSE's proposal to remove the technical ACoP and guidance material from DSEAR, and publish them separately, on the basis that it would allow members more time to consider the material, and businesses would only need to purchase this additional material if it was relevant to their particular sector/activity. However, it meant that the repeal of existing legislation (apart from petrol legislation) would have to be put back (possibly 6 months) until the technical ACoP material was ready for publication.

5.14 Members supported HSE's proposals, subject to the appropriate linkages being developed in time. **Action: HSE**

DSEAR Regulation 6(4)

5.15 S/C members had considered that the priority order of control measures on draft regulation 6(4) required clarification, in order to avoid potential difficulties, possibly leading to an increased overall risk in some cases. HSE had confirmed that control measures were subject to the risk assessment, and the nature of the activity at the undertaking, and this would be explained in the supporting guidance. However, they had agreed to consult HSE's Solicitors to see whether this requirement could be further clarified.

5.16 Members supported this approach. **Action: HSE**

Multi occupancy buildings

5.17 Members of the FS S/C had pointed out that although the analysis of consultation responses to question 23 appeared to indicate that there was support for DSEAR regulation 11 to be extended to cover landlords and multi occupancy buildings, this appeared to have been overlooked in the current proposals. HSE had agreed to review this issue and report back to the FS S/C and ACDS.

5.18 Members supported HSE's approach. **Action: HSE**

Reg. 8 of DSEAR

5.19 Some members queried the passive approach to giving emergency services information. They would prefer to see a more proactive approach. HSE thought that members had agreed not to alter the line taken in the CD i.e. "made available to the fire service". It had subsequently heard from the Fire Brigades Union that they would be seeking an active duty to supply information. HSE agreed to review this issue, and report back to the Committee. **Action: HSE**

5.20 HSE confirmed that they would report back to the Committee, probably by correspondence, on the following issues:

- a. Zoning;
- b. Recording significant findings;
- c. Reg. 6(4);
- d. Multi occupancy buildings; and
- e. Reg. 8.

The other DSEAR issues would be progressed as indicated in the recommendations contained in the paper. Members commended the paper which had helped to focus their views.

Action: HSE

6 Final proposals for Modernising Petrol legislation

6.1 HSE had tabled a copy of the letter received the previous day from members of the petrol industry. The letter was critical of HSE's handling of discussions at the FS S/C concerning the issue of enforcement at retail petrol stations, and the way in which the consultation had been conducted. HSE refuted these points, and would send members a copy of their response in due course.

Action: HSE

6.2 HSE presented papers ACDS/120602/39 and ACDS/120602/46, which summarised discussions at the FS S/C. Members had generally been content with HSE's proposals for updating the petrol legislation following the public consultation on Phase I of the programme. There were 2 remaining issues on which it had not been possible to reach a consensus, and on which HSE sought the views of members of ACDS:

- a. Enforcement at retail petrol filling stations; and
- b. Enforcement at non-retail petrol filling stations.

Enforcement at retail petrol filling stations

6.3 DSEAR implemented the CAD Directive, which required responsibility for enforcement at retail petrol stations to be allocated. HSE considered that as PLAs (Petroleum Licensing Authorities) were already performing this function under the old petrol regime, it would be sensible to allocate this role to them under DSEAR; the alternative would be LA Environmental Health Officers. In the light of discussions at the FS S/C, HSE recommended that enforcement should be allocated to PLAs, but with an assurance that this would not prejudice a full review of this enforcement issue under Phase II of the modernisation of petrol legislation, which would consider the new regime for retail petrol stations.

6.4 The petrol industry was unanimous in wanting rationalisation of the enforcement role in the petrol industry, and whilst the CBI supported the paper, it considered that the issue needed to be dealt with. The CBI also wanted this review to consider enforcement of environmental legislation, ie. vapour recovery systems. HSE pointed out that the environment was beyond its scope, but it was prepared give an undertaking to review the issue of enforcement of DSEAR at retail petrol filling stations, and it would discuss with DEFRA and the Scottish Office environmental issues. However, it would be for DEFRA and Scottish Office to decide on enforcement of environmental legislation.

6.5 The Chair summarised: Stage I, which had to be implemented by DSEAR, overlapping with the old petrol regime. Under Phase II, which would consider the new regime for retail petrol stations, enforcement allocation and rationalisation would be reviewed. HSE confirmed. On that basis, members supported HSE's proposals.

Enforcement at non-retail petrol filling stations

6.6 The CD had proposed that enforcement of DSEAR at non-retail petrol filling stations should fall to HSE or the LA; however, a significant number of respondents were concerned that these installations would not be inspected as frequently as carried out now by PLAs under the licensing regime. HSE confirmed that they would carry out this work in line with its risk assessment based programme. Some respondents pointed to poor standards at non-retail installations. HSE had therefore reviewed this proposal, and had recommended to the FS S/C that enforcement should be allocated to PLAs, who had both the resources, and the expertise in this area. The FS S/C had been unable to reach a consensus on this issue, therefore ACDS had been asked to make a recommendation to the HSC.

6.7 HSE explained that in the revised proposal HSE would enforce at very large installations e.g. MOD and COMAH sites, whereas PLAs would enforce elsewhere. HSE would be prepared to enforce at the smaller sites, but it would not be able to visit the sites at the same frequency of PLAs given the demands on its resources, and the priority in “revitalising” matters. Industry were concerned that if a decision to allocate enforcement of DSEAR at non-retail petrol stations was made now, it would prejudice any review of under Phase II of the petrol legislation review. However, HSE said that re-allocating enforcement of DSEAR for non-retail dispensing could be included under Phase II of the review, and, if necessary, DSEAR could be modified; that would not require new Regulations. TU Side said that if licensing remained, the filling stations would be inspected regularly, but if enforcement was altered and allocated to HSE, limited resources would prevent such frequent inspections.

6.8 On balance, members recognised that in order for the Directives to be implemented, enforcement had to be decided and supported HSE’s recommendation that enforcement of DSEAR at non-retail petrol filling stations should be allocated to PLAs, with the proviso that if there was a change in the role of PLAs for retail dispensing of petrol in the Phase II review, that should be read across in the enforcement allocation for non-retail dispensing.

7 Results of consultation on proposals to remove legislation on Celluloid and Cinematograph film

7.1 HSE presented papers ACDS/120602/40 and ACDS/120602/45. The consultation indicated that there was:

- General support for the old legislation to be repealed;
- A request for suitable modern guidance, giving clear practical advice to be produced;
 - FOD’s Broadcasting and Performing Arts Joint A/Cs had confirmed that they would be happy to prepare guidance; however, they would need some assistance e.g. via a research contract to produce a first draft;
- Celluloid film is still used and stored at non - workplace premises e.g. Film archives, film societies and private cinemas; and
- There is other old legislation controlling celluloid film that may need to be repealed at a later date.

7.2 Some respondents had expressed concern that DSEAR was not an adequate replacement for the old legislation, because it did not cover “ finished film”. They were also concerned about self-employed premises where the Fire Precautions (General Workplace) Regulations do not apply. HSE therefore proposed to fully repeal the old legislation except the Celluloid and Cinematographic Film Act of 1922. The Act would only be disapplied in workplaces where both fire and safety legislation applied, preventing a legal gap.

7.3 Members endorsed HSE's recommendations.

Action: HSE

8 Oral update on the Pipeline Safety Regulations 1990 (PSR)

8.1 The actions agreed at the previous meeting had been discharged. The preface to the PSR CD had been clarified; a meeting with Transco had clarified a number of issues; the CD had been amended to highlight the Transco methodology for establishing priorities in its replacement programme, and members of both ACDS and the MH S/C would receive a copy of the paper being considered at the HSC meeting on 16 July.

8.2 A marked up copy of the revised draft Pipeline Safety Regulations (PSR) was tabled, showing changes since the previous ACDS meeting. A number of amendments had been made to the draft PSR Regulations, including:

- Clarification of the definitions of both "programme" and "pipeline"; and
- "as far as practicable" had been added, (as protection for Transco);
- An explanation that should HSE change the plan/programme, it should consult the operator (often Transco) before implementing changes.

As a result of those changes, HSE now considered the PSR CD ready for submission to HSC.

8.3 Points raised in discussion:

- Initially industry had been concerned whether the new procedures were workable, but now it was satisfied; and
- Why had "reasonably" been removed from the phrase "as far as reasonably practicable"? - HSE confirmed that the standard phrase had been considered too loose to meet the specific PSR requirements.

8.4 Members noted the update from HSE.

9 Update on SEVESO II amendment

9.1 HSE presented paper ACDS/120602/41(REV), which contained 3 minor changes to the original paper:

- The date of the EU Environment meeting had been changed to 18 June;
- Para. 8 now referred to the "assistance of the UK"; and
- The Committee had tabled 6 amendments, not 5.

9.2 HSE pointed out that the EU wished to have common land use planning (LUP) around their sites; however, the UK opposed this on the basis that experience of LUP around major hazards in the EU was too recent to allow minimum safety distances to be determined and applied throughout the EU. Members noted the paper, and agreed that LUP should be more flexible, and localised.

10 Proposal for CD on amendments to Notification of Installations Handling Hazardous Substances Regs. (NIHHS) 1982

→ ← This section has been removed under Exemption 2 of the Code of Practice on Access to Government information.

10.3 Members noted the paper.

11 Any other business

11.1 HSC's Advisory Committees science and health issues forward look

11.1.1 HSE presented the paper ACDS/INF/120602/1. The Chair of HSC had written to members of all A/Cs in November seeking their advice on trends in scientific and health issues. Unfortunately, this had aroused little response, and therefore ACDS, along with other A/Cs, had been asked to look at the issue again, and forward contributions to HSC's forward look/horizon-scanning review of health and science issues over the next 10 years, for possible inclusion in the HSC's Strategic Plan.

11.1.2 Points raised in discussion:

- One researcher/small group could not be expected to identify all the trends; it required a team/ network approach;
- Could consider brainstorming approach;
- Possibly ACDS had already reached its limitations in this area;
- Possibly the research body could speak to all members of ACDS, who would have already had discussions with others in their field/network.

11.1.3 Members noted the paper, and agreed (subject to funding being available) that this project should be handled by a facilitator who would speak to all members of ACDS, (who would have already had discussions with others in their field/network), with the aim of preparing a paper for the next ACDS meeting in October. HSE agreed to investigate possible funding.

Action: HSE/members

12 Date of next meeting: The Chair thanked members for attending, and confirmed that the next meeting would be held on Tuesday 8 October.