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Advisory Committee on Dangerous Substances (ACDS)

60th meeting of ACDS at 10:30 am on Thursday 13 February 2003 in the Globe conference room, Rose Court

Members

Nick Starling Chair
 Dr Tom Smith CBI
 Dr Chris Beaton CBI
 Alan Owen TUC
 Dr Mike Hough Independent
 Dr Gordon Walker Independent
 Professor Barbara Mawer LGA
 Maurice Healy Consumer representative

Apologies

Jim O'Sullivan CBI
 Ian McPherson CBI
 Susan Murray TUC
 Leonie Wingrove TUC
 Tony Cox independent
 Professor Philip Nolan Independent
 John Wright HSE Northern Ireland
 Keith Bradley Maritime Coastguard Agency
 Kevin Allars HSE
 Steve Coldrick HSE

Government representatives

Colonel Des Townsend MOD
 Paul Taylor MOD
 Jeff Hart Dept for Transport
 Lawrence Hanna HSE N.I

HSE representatives

Phil Papard FOD
 Simon Mundy Solicitor's Office
 Janet Savin Secretariat

HSE presenters

John Brazendale Secretary
 David Bosworth Safety Policy Directorate
 Andy Miller Safety Policy Directorate
 Barry Watkinson Safety Policy Directorate
 Keith Wilson HID
 Stuart Bristow Corporate Science and Analytical Services Directorate
 David Pearson Safety Policy Directorate

1 Introductions and apologies

1.1 The Chair welcomed Paul Taylor (MOD), attending as an observer, (who will be replacing Des Townsend when he retires at the end of March), and Lawrence Hanna, HSE Northern Ireland.

1.2 Apologies have had been received from a number of members/representatives - see list above. On behalf of the Committee, the Chair thanked Ian McPherson (who had recently stood down from ACDS), for his work for ACDS.

2 Minutes of the previous meeting

2.1 Minutes of the 59th meeting of ACDS, held on 8 October 2002, were agreed.

2.2 Members considered the work of the Chemical Essentials Working Group extremely valuable, and hoped that funding would continue to enable the WG's recommendations to be made available to industry in a database on the internet.

3 Matters arising

3.1 Code of practice for members of advisory committees

3.1.1 The Secretariat was still awaiting details from the COSLA representative for inclusion in the Members of ACDS Register of Interests. The Secretariat would issue a further reminder.

Action: HSE

3.2 Departmental representatives on ACDS

3.2.1 The Chair was keen to ensure wider representation from government departments with a key interest in the work of ACDS. He had therefore written to both their new sponsor, the Dept. for Work and Pensions (DWP), and to DEFRA seeking observers on the committee.

3.3 ACDS as a scientific advisory committee

3.3.1 A proposed paper asking members to consider whether ACDS should be deemed a scientific committee had been withdrawn, pending further discussions on the likely implications for the work of the committee.

4 Chair's update

4.1 Honours for HSE Commissioners

4.1.1 The Chair noted the CBE's awarded to both Maureen Rooney and Margaret Burns, and the Committee recorded its congratulations.

4.2 Changes in HSE

4.2.1 HSE was going through a Change Programme. Key outcomes of interest to members were:

- A Policy Group was being set up with the aim of integrating health and safety policy, and working more coherently and effectively both internally with staff in the Operational Directorates, and with stakeholders.
- Formation of a new directorate - Corporate Science and Analytical Services (COSAS), headed by Chief Scientist, Paul Davies, which would deal with risk policy, statistical and economic analysis, and medical science.

4.3 Fire-fighters dispute

4.3.1 HSE had prepared a package of advice and guidance for relevant industries, police and emergency services (a copy had been placed on the HSE website).

5 Subcommittee reports

5.1 Explosive Subcommittee

5.1.1 HSE presented paper ACDS/130203/3, which reported progress on the MSER legislative package. HSE aimed to present the final draft proposals to ACDS for approval in June before submitting them to HSC.

5.2 Gas Safety Subcommittee

5.2.1 HSE provided an update on implementation of the recommendations from the fundamental review of gas safety.

Amendments to both to the Gas Safety Regulations, and the Gas Safety Installation and Use Regulations - SPD aimed to submit proposals to the Working Groups in about four weeks time, and aimed to have amending regulations in place by the end of 2003.

NVQ for operatives working on natural gas - New training requirements and assessments had been agreed which are aligned with the accredited certification scheme.

Transfer of enforcement of gas safety issues to LAs - HSE proposed recommending to HSC a staged approach, starting with houses in multiple occupation which are the subject of a proposal for licensing in 2/3 years time. Gas safety may be covered by a licence requirement.

Chair of the Gas Safety S/C - ACDS was asked to approve (in principle) Vic Coleman as the new Chair, subject to HSC agreement. Traditionally this post had been held by the Head of Division (HOD) responsible for gas policy; this work had recently transferred to the Construction and Extractive Industry Division.

Working Groups' programme - the WGs were back on-track. With regard to the one dealing with publicity/awareness, the HSC Chair had agreed in principle that he would write to key stakeholders shortly asking them to fund an agreed campaign over the next few years implementing the proposals.

5.2.2 Members noted the report, and approved the new Chair, subject to confirmation of the Change Programme by the Executive.

Points raised in discussion:

- Members expressed concern about the turnover of the Chair of the Gas Safety S/C - some of the momentum seemed to be lost by the changes. The Chair appreciated members' concern, but confirmed that the changes stemmed from individuals moving to new posts rather than structural changes within HSE. Because gas safety was a very political issue it generated a lot of reactive work, which sometimes prevented staff from progressing policy work as quickly as they wished.
- Members queried the likely implications of both the Safety of Services Directive (SSD), and the Transfer of Qualifications across the EU Directive. HSE thought that the SSD would result in a mapping exercise concerning best practice across Europe, (with the UK likely to be seen as providing best practice). The Transfer of Qualifications across the EU Directive was causing major concern in the UK; however the EU would need to consider whether a national requirement distorted the single market.
- Members were concerned about possible reduced staffing in the gas safety policy team. Whilst HSE could not rule it out, it was considered unlikely during the next 12 months.

5.3 Major Hazards Subcommittee report

5.3.1 HSE presented paper ACDS/130203/5. Meetings of the MH S/C had been held on 31 October and 4 December 2002.

LUP - Implementation of the proposals following the review of LUP remained a priority.

Pipeline safety regulations - comments on the CD had been taken into account in the revised draft proposals submitted to the Minister for approval.

Seveso 2 - proposals would go for a second reading shortly, and were likely to be adopted in December 2003.

Ammonium nitrate - a self-help checklist had been issued. Although notifications were still arriving, most sites had been already been visited by security staff.

COMAH/REPPiR - HSC had written to DWP explaining why it was withdrawing from the proposed consultation exercise. Members had expressed concern about further delays.

Commissioning regime - Members of ACDS and the Major Hazards S/C had been asked to nominate key contacts to attend Workshops to consider what risk/ hazards criteria should apply to LUP. HSE had set up a project to consider this issue in the light of concerns raised when considering societal risk during the LUP review. SPD agreed to let members have further details of the type of background which would be most useful for individuals attending the Workshops.

Action: HSE

5.3.2 Members expressed concern about not being consulted about the DEFRA regulations on ammonium nitrate. The Chair explained that although DEFRA had consulted HSC, in view of the short consultation period, (allowing insufficient time to consult ACDS about the proposals), HSE had decided to advise HSC direct. HSC's reply would reflect members concern about the disposal/removal of ammonium nitrate, and ACDS would be kept informed of the comments received on DEFRA's proposals.

Action: HSE

5.4 Flammable Substances Subcommittee

5.4.1 HSE presented paper ACDS/130203/6.

DSEAR - The Regulations came into force on 9 December.

DSEAR ACOPs - The FS S/C had considered the revised drafts of both the general and the technical ACOPs at their meeting on 3 February: the drafts would be considered under agenda items 8 and 9.

Petrol - Following the major changes in petrol legislation under DSEAR, outlined in Annex 1 of the paper, the Petrol Working Group would progress a review of the remaining areas. Revised proposals for unloading petrol tanks would be circulated to ACDS for comment before submission to HSC. A certificate of exemption was also to be issued to allow the MOD to retain current practice for dispensing fuel.

Cinematographic and celluloid film - A leaflet giving basic advice on safety precautions was being developed for SMEs and the public – copies would be sent to ACDS for comment.

5.4.2 Members noted the report. HSE agreed to include BECTU in the consultation on the celluloid film leaflet.

Action: HSE

6 Update from Operations Directorate

6.1 The project to evaluate the impact of COMAH was on schedule. The emerging findings were positive. A report would be submitted to the Evaluation Committee in March. The results from the Duty Holders Survey would be published on HSE's website, and could be circulated to members if they wished.

6.2 Members noted the report, and confirmed that they wished to receive copies of the survey results.

Action: HSE

7 Reducing risks protecting people (R2P2)

7.1 The main objective of R2P2 was to describe the process/principles in HSE's decision-making, to try to make the process more transparent. HSC considered it was important that key stakeholders such as Advisory Committees (A/Cs) understood how the decision-making framework described in R2P2 worked. HSE staff needed to follow the R2P2 framework when putting proposals to HSC, and Advisory Committees, which were being asked to think more strategically, needed to be aware of the R2P2 framework when making decisions regarding the regulatory framework.

7.2 Members generally considered R2P2 a positive document and supported the process. However, they considered that they had not had a steer from HSC on what tolerable levels of societal concerns were, and public perception of what was tolerable risk was very subjective. Also, whilst they understood the theory behind it, some members considered that the tolerability diagrams did not mean a great deal without numbers across the relevant sectors.

7.3 HSE considered that it was not always possible to quantify this risk. The tolerability criteria had emerged from long-term thinking on what people perceived as tolerable risks and were now prepared to live with. For example, there were different societal concerns for risks from explosives to those from railways or nuclear risks. Stakeholders' views were very helpful in assisting HSC find out what people are prepared to accept. Members agreed that using ALARP/R2P2 would help achieve consistency in assessing disparate risks e.g. statistical fatality arguments i.e. the amount people were prepared to pay to reduce risks. This was always subjective and changed over time. Work was going on in HSE to make the assessment of societal concerns more systematic. Members noted the paper, and expressed interest in work being undertaken by OECD looking at risk in road tunnels using a mathematical model to indicate international perception of tolerability of risks in different cultures.

8 DSEAR General Guidance and ACOP, and the DSEAR Technical ACOP

8.1 Items 8 and 9, papers ACDS/130203/7 and ACDS/130203/8, were taken jointly. HSE had produced regulations, a leaflet and interim guidance on zoning and selection of equipment. DSEAR had removed 20 pieces of legislation; however HSE had been asked to retain the examples of good practice contained in the old regulations in the new ACOPs/guidance. HSE had produced a general guide to the regulations and four technical ACOPs, which had been considered by the FS S/C on 3 February. Members were invited to comment. The next step would be to circulate revised copies of the documents for final comment.

8.2 Members commended the HSE team on the standard of ACOPs, particularly in view of the amount of work involved. However, some members found the structure of paragraphs 34 - 48 in the general ACOP, concerning risk assessment, confusing. It also appeared to overlook the role of the TU representatives in the assessment procedure. HSE agreed to review this section in both ACOPs, and to check whether there were any legal reasons for using the phrase "workers representatives" rather than "TU representatives", whilst ensuring that the phrase also covered non-TU reps.

Action: HSE

8.3 Members asked how the requirements for acetylene would be handled. This issue had been raised at the recent FS S/C meeting. HSE confirmed that generally measures in DSEAR would apply, but for the moment these would run in parallel with the old legislation on Acetylene which was still in place. The next step was to consider how to repeal and modernise the old legislation. Options included either an amendment to DSEAR or a separate set of regulations. Industry would prefer an amendment to DSEAR, rather than separate regulations. HSE needed to consider how best to handle these issues, and would submit their recommendations to ACDS in due course.

10 Amendments to Dangerous Goods in Harbour Areas Regulations (DGHR)

10.1 HSE presented paper ACDS/130203/10. DGHR are intended to replace the Dangerous Substances in Harbour Areas Regulations 1987. The main changes are: the definition of dangerous goods has been changed in line with the definition in IMO Codes and the merchant shipping regulations, packaging and labelling requirements have been removed, and the licensing provisions have been amended to apply to consignments of civilian explosives handled at MOD ports. In the light of concerns expressed by the port industry, HSE had agreed to clarify the guidance and to apply the regulations to fumigant containers, and to give harbour authorities explicit powers to examine transport documents for dangerous goods. Late comments have been received from the MCA concerning the definition of ship stores; further discussions with the MCA and port industry would be required to resolve this issue.

10.2 Points raised in discussion:

- Members expressed concern that the MCA was quoting DGHR to impose requirements on the use of explosives in harbour areas e.g. for firework displays, demolition work etc. which were causing difficulties for industry. The wording of DGHR did not address this issue. HSE agreed to discuss this outside the main meeting.
- Definition of marine pollutants - what are the harbour master's powers to handle this? HSE agreed to check with the MCA. In response to a request from the TGWU, HSE agreed to extend the deadline for comments until the end of February.
- The Regulations did not refer to risk assessments. HSE explained that the regulations were not stand-alone (regulations); the guidance would refer to the more general health and safety regulations. However, HSE agreed to clarify this point in the ACOP, and to include further details in the bibliography.
- HSE would draft the Regulations along similar lines to that adopted in the current version of the Carriage of Dangerous Goods Regulations, so as to avoid having to update the regulations every couple of years in line with changes to ADR/RID and IMDG.

10.3 It was agreed that subject to clarification of issues raised above, and any comments from the TGWU, the revised regulations and ACOP would be cleared via correspondence. However, if any key issues were raised, the revised draft would return to ACDS for further consideration.

Action: HSE

11 Update on ODPM consultation on changes to fire legislation

11.1 HSE presented paper ACDS/130203/11. ODPM had issued a CD in July, which aimed to rationalise fire legislation and to adopt a risk-based approach. HSE had written the to the

ODPM expressing concern about the potential overlap regarding new responsibilities proposed for fire authorities and HSC's existing responsibilities for fire prevention under DSEAR. HSE had also met ODPM officials. They were working on definitions to clarify the respective roles in the ODPM Regulatory Reform Order. HSC had just received the draft regulatory reform order, and would keep ACDS informed of progress.

11.2 Points raised in discussion:

- There was no reference to MSER in the ODPM proposals, although MSER also dealt with fire precautions. HSE agreed to review this, but thought that MSER dealt with process fire risks and means of escape.
- HSC would check whether the MOD was exempt from the Regulatory Reform Order.

Action: HSE

12 ACDS Forward Look

12.1 HSC presented paper ACDS/130203/12. All Advisory Committees had been asked to help identify more strategic issues for inclusion in HSC's forward plan of work. The current paper incorporated ideas from ACDS, although some suggestions had been omitted because they dealt with operational issues. The next step would be to submit the paper to CSASD to incorporate in the paper containing suggestions from all the A/Cs.

12.1 Points raised in discussion:

- Members asked whether the section on waste reclamation was from a published report. HSE explained that it came from an internal report, and referred to sludge digesters which contained highly combustible material. It was agreed that the paper should be more specific about the possibility of new technology also causing new risks/hazards.
- Members stressed the need to clarify the difference between risk and hazard in the section on fireworks.
- Members considered the forward look a useful exercise. The Chair confirmed that the HSC would like A/Cs to undertake a forward look regularly, (but not necessarily every year).

Action HSE

13 Any other business

13.1 No issues were raised.

14 Date of next meeting

14.1 The Chair confirmed that the next meeting would be held on 12 June; an Open meeting was proposed.