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HEALTH AND SAFETY COMMISSION

Agreement to a new OEL framework following consultation (CD189)

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Issue

1 Revision of the COSHH Regulations, Approved Code of Practice (ACoP) and list of occupational exposure limits (OELs) to introduce a new approach to adequate control and OELs under the COSHH Regulations, following publication of proposals in CD 189 (HSC/03/15).

Timing

2 Changes to the COSHH Regulations to implement the new approach and Workplace Exposure Limits will be combined with those needed to implement the Cement Directive in a single set of amended Regulations. But the changes in respect of cement are expected to come in to force on, or before, 17 January 2005 (see HSC/04/89), while the changes relating to OELs and other minor amendments will not come into force until 6 April 2005. The ACoP and list of OELs will also be published on 6 April 2005.

Recommendation

3 The Commission approve the revised COSHH Regulations, ACoP, the list of Workplace Exposure Limits (WELs), their numerical values, definitions and calculation methods (Annexes A – C).

Background

4 Research has identified a need to develop a new approach to OELs that will meet the needs of industry in the 21st century. For over 50 years, OELs have played an important role in the control of dusts, gases and vapours in many industries. However, the industrial scene is now very different from when OELs were first introduced. The specialist knowledge and expertise needed to correctly apply OELs is not widely available across the spectrum of firms, (now over 1.3 million, many

employing fewer than 10 people), that use a wide range of chemicals and chemical products.

5 These proposals provide a new approach that will contribute to health protection by providing a practical, easy to use tool to help dutyholders improve standards of control. They have been developed by a subgroup of the Advisory Committee on Toxic Substances (ACTS) and agreed by the full committee. A discussion document setting out options for a new approach was published in March 2002 and formal proposals in CD 189, published last September. HSE and the ACTS OEL Subgroup worked together to further improve the proposals in the light of responses to the CD. The revised package, Annexes A – C was agreed by ACTS at its July meeting.

Argument

6 The proposals move the focus of adequate control from compliance with an OEL (as in the current COSHH regulations) to applying the principles of good practice for the control of exposure to substances hazardous to health. This has the effect of bringing into the definition of adequate control all substances within the scope of the COSHH regulations, irrespective of whether they have an OEL, and all routes of exposure, inhalation, dermal and ingestion.

7 It is already implicit within the existing COSHH regulations that there is a need to follow good occupational hygiene practice. However since the proposals explicitly link adequate control to good practice, the requirements are drawn together in a new schedule to the COSHH Regulations - the principles of good practice for the control of exposure to substances hazardous to health. General guidance on applying these principles will be included in the COSHH ACoP. In addition, free, practical guidance on control measures will be available electronically via the Internet for many common tasks and processes.

8 CD 189 proposed replacing the present OEL system of occupational exposure standards (OESs) and maximum exposure limits (MELs), with a single limit system. The new limit would be known as a Workplace Exposure Limit (WEL).

Changes to the COSHH Regulations

9 The responses to CD 189 showed strong support for the proposed changes to the COSHH Regulations. The proposals defined adequate control as applying the principles of good practice for the control of exposure to substances hazardous to health, complying with any relevant WEL and for carcinogens and mutagens (substances which carry the risk phrase R45, R46 or R49 or for a substance or process which is listed in Schedule 1 of the COSHH Regulations), reducing the level of exposure so far as is reasonably practicable. In response to the views of consultees the requirement to reduce exposure so far as is reasonably practicable has been widened to include substances that can cause occupational asthma.

10 The consolidated COSHH Regulations to bring into force the changes necessary as a result of the cement Directive (see paragraph 2), and the OEL framework are at Annex A. The Commission is asked to approve the parts that related to the OEL framework (HSC/04/89 invites Commissioners to approve the changes relating to the Cement Directive and attaches a letter for the Chair of HSC

to send to the Minister of State). For ease of reference the OEL framework parts of the regulations have been highlighted in grey in Annex A.

Changes to the COSHH ACoP

11 Some respondents to the CD were concerned that the proposed text of the COSHH ACoP appeared to make it a requirement for employers to use COSHH Essentials guidance to meet the new legal duty. It was never the intention of HSE or the ACTS Working Group to raise the status of COSHH Essentials beyond that of guidance. To address these concerns HSE worked with social partners to redraft the ACoP. This now sets out two route maps as examples of how dutyholders can achieve compliance. They can either use the COSHH Essentials approach/other good practice guidance, or start from first principles. Thus companies that have already developed their own approaches to complying with occupational exposure limits can continue to use their existing good practice, whereas SMEs may prefer to follow the COSHH Essentials route.

12 Annex B contains the revised proposed COSHH ACoP endorsed by ACTS at its July meeting. Changes to the text that appeared in the CD are shown in revision mode.

Integration of existing OELs into the new framework

13 Responses to the CD were split almost 50:50 on the proposal to delete the 322 OESs which ACTS agreed were not soundly based. The revised proposal is to only delete those OESs for which there is some concern about whether human health is protected at the value of the OES. Thus, those OESs for which there is no evidence of concern, although there is insufficient evidence to state they are soundly based, will be transferred into the new system as WELs. This new proposal would result in only 102 OESs being deleted – thus addressing stakeholder concerns that too many OESs were being lost under the proposal in the CD.

14 Annex C lists the 396 MELs and OESs it is proposed to transfer into the new framework as Workplace Exposure Limits. The numerical values of the limits are unchanged. ACTS supported this list and the deletion of 102 OESs. The Commission is asked to approve the list of substances, their numerical values, and the definitions and calculation methods.

Consultation

15 ACTS and the OEL Subgroup have agreed the approach in paragraphs 6 – 14. The Subgroup (membership at Annex D) has been a good example of team working with members working with HSE to develop a new approach that would facilitate improved control of chemicals. HSE members of the OEL Subgroup included staff from FOD; HID; Policy Group, and Solicitor's Office. The team worked together to devise an approach from a blank sheet of paper, and then decided how to graft it into the present system, taking account of the need to remain compliant with the Chemical Agents Directive. Since July 2000 the group has met a total of 13 times.

16 Publicity for the proposals included articles in Safety and Health Practitioner; Occupational Health Review; HSL's Lablink and HSE's website. Members of the

OEL Subgroup have given various presentations on the proposals at events in the UK and overseas.

Presentation

17 The proposals are in keeping with HSC's new strategy for the health and safety system in Great Britain. This recognises the need for the development of effective intervention strategies that will result in a reduction in occupational exposure to chemicals, and a consequent improvement in occupational health.

18 The ACTS OEL Subgroup met on 4 October to consider the respective audiences; messages; and methods of communicating the changes to the OEL framework and employers duties under the COSHH Regulations. A communications strategy will be developed with social partners, HSE Communication Delivery Service and Press Office.

Cost and Benefits

19 The CD contained a Regulatory Impact Assessment (see Annex E). It was announced in the budget on 17 March 2004 that a Panel for Regulatory Accountability would be chaired by the Prime Minister to strengthen the scrutiny of major regulatory proposals. In July, the Panel cleared the new OEL framework.

Financial/Resource Implications for HSE

20 Work on the new framework has been built in to the respective work plans of the HSE members of the OEL Subgroup which includes staff from FOD; HID; Policy Group, and Solicitor's Office.

Environmental implications

21 None. Though in the past Environment Agency have used OELs as a basis for air quality limits.

Other implications

22 The present system of limits frequently results in HSE having to re-examine the data and consult on whether a substance should have an OES or an MEL. These proposals will facilitate the implementation of OELs established by the EU into the COSHH Regulations as WELs.

Action

23 The Commission are invited to approve the revised COSHH Regulations, ACoP, the list of Workplace Exposure Limits (WELs), their numerical values, definitions and calculation methods (Annexes A – C).