

## **SUMMARY OF RESPONSES TO THE CONSULTATIVE DOCUMENT**

Thirty respondents replied to the consultative document:

### Companies (10):

Bluestone plc  
British Airports Authority (BAA)  
F Ball & Co Ltd (F Ball)  
Foungres Services Ltd (Foungres)  
London Underground Ltd (LUL)  
National Grid Transco (NGT)  
Rhodia Pharma Solutions (Rhodia)  
Sealocrete PLA Ltd (Sealocrete)  
Southern Cement  
Wetherby Stone Products Ltd (Wetherby)

### Trade associations (3):

British Adhesives and Sealants Association (BASA)  
British Cement Association (BCA)  
British Coatings Federation (BCF)

### Consultancies (2):

Industrial Health Control (IHC)  
S P Shutler Associates Ltd (Shutler)

### Professional bodies (2):

Faculty and Society of Occupational Medicine (FSOM)  
Lancashire Association of Chief Environmental Health Officers (LACEHO)

### Employee representative organisations (5):

Fire Brigades Union (FBU)  
NUMAST  
Trades Union Congress (TUC)  
UCATT  
UCATT Eastern Region

### Individuals and others (6):

Mr Bourton  
Dr Bowcock  
Mr Lohmann  
Mr Taylor  
Mr Westmoreland  
Warwick University Safety Committee (Warwick)

### Government (2):

Home Office  
Small Business Service (SBS)

The CD posed 5 specific questions which, together with the answers received to them or comments related to them, are set out below.

**Question 1. Do you agree the proposed additions to Schedule 2 to COSHH and Schedule 5 to CHIP that will give effect to the supply and use restriction on cement and cement preparations?**

Answered “**YES**” or otherwise indicated agreement – (18 respondents):  
 Bluestone plc, Mr Bourton, Dr Bowcock, BAA, BCA, FSOM, Foungres, IHC, LACEHO, Mr Lohman, LUL, Rhodia, SBS, Shutler, TUC, UCATT, Warwick, Mr Westmoreland

Answered “**NO**” or otherwise indicated disagreement – (4 respondents):  
 Wetherby, BASA, Sealocrete, F Ball

Made **no comment** - (8 respondents): BCF, FBU, Home Office, NGT, NUMAST, Southern Cement, Mr Taylor, UCATT Eastern Region

<i>Summary of respondent's comments</i>	<i>HSE response/comments</i>
<p><b>Wetherby</b> – We make cement preparations, eg tile adhesives. The new legislation leads to unfeasibly short shelf lives because (by measuring Cr VI concentration with respect to weight of cement rather than weight of the preparation as a whole) it ties the compliance life of the product to that of the cement contained in it, which, according to the manufacturers, will be no more than 2 months. A 2-month shelf-life is unacceptable to our customers, as is the more than 50% price rise which would result if we reformulate with low Cr VI cements, not affected by the new legislation. It seems illogical, and without health protection justification, to assess cement preparations, but not cements, in a way that overstates their Cr VI concentration.</p>	<p>HSE accepts that there are challenges for formulators, especially in relation to shelf life. Additional dosing by the formulator will be needed to extend the shelf life of the product beyond the 2-month shelf life of its cement constituent. The amount of such dosing is very likely increased by the Directive's specification of Cr VI concentration with respect to weight of cement rather than overall weight of preparation. However, HSE has received no convincing evidence that the proposals are actually unworkable and for that reason is not recommending under-implementation.</p>
<p><b>BASA</b> – The legislation uses the ambiguous term “cement”. In preparations, this is a loose description for the binder, which may be cement and other materials that set following hydration. Consequently, Cr VI concentration of the “cement” part of the preparation will depend on whether these other materials are counted as part of it. Shelf-life difficulties for makers of preparations will be eased if the</p>	<p>The Directive does not define “cement “ and neither does the proposed implementing legislation. HSE has no objection to dutyholders interpreting “cement” in line with established practice.</p>

<i>Summary of respondent's comments</i>	<i>HSE response/comments</i>
wider interpretation of "cement" is adopted.	
<b>Sealocrete</b> – Similar comments to BASA and Wetherby.	See responses to BASA and Wetherby.
<b>F Ball</b> – An anomalous situation will occur when a cement preparation exceeds its compliance life. The prohibition on supply and use of non-compliant materials will prevent reworking or disposal; and the package labelling will be illegal since it will lack the statutory warning phrase for high Cr (VI) cement preparations. Suggest that dry product be exempted from the supply and use prohibition and the existing high Cr (VI) labelling phrase for the purposes of reworking or disposal, as there is no risk until hydration.	HSE intends to take a flexible approach to enforcement for the first several months at least. This will particularly be the case in situations where a shortcoming is not due to any fault of the dutyholder and where there is no risk.
<b>BCA</b> – Oil-well cements must meet specifications which preclude additives, eg reducing agents such as ferrous sulfate. It will not be possible to supply/use these cements unless they are exempted from the proposals. (Subsequently BCA requested exemption (by way of exemption certificate) for oil-well cement from the proposed legislation.)	Due to the safety critical nature of oil-well cement and the unknown effect on it of dosing, HSE is considering the case for issuing a certificate of exemption. The certificate will impose conditions to protect health and apply for a limited period.

**Question 2. Do you have any comments in relation to costs and benefits of the restriction on cement and cement preparations?**

Answered "YES" – (13 respondents): BASA, BCA, FSOM, Fougres, IHC, Mr Lohmann, Rhodia, Sealocrete, SBS, TUC, UCATT, Warwick, Wetherby

Answered "NO" or otherwise made no comment – (17 respondents): Bluestone plc, Mr Bourton, Dr Bowcock, BAA, BCF, F Ball, FBU, Home Office, LACEHO, LUL, NGT, NUMAST, Southern Cement, Shutler, Mr Taylor, UCATT Eastern Region, Mr Westmoreland

<i>Respondent's comment</i>	<i>HSE response/comment</i>
<b>BASA</b> – The estimated costs in the RIA are too low. No account has been taken of downstream blenders.	The final RIA takes account of detailed information from BASA and others.
<b>BCA</b> – The costs to industry are likely to be higher than estimated in the RIA.	New figures sought from BCA and considered for inclusion in the final RIA.
<b>FSOM</b> – The human health benefits and consequent financial savings estimated in the RIA are very persuasive for the proposal.	
<b>Fougres</b> – On the basis of experience with dosing and metering equipment, the capital	This information taken into account when finalising RIA.

<i>Respondent's comment</i>	<i>HSE response/comment</i>
equipment costs estimated in the RIA seem too high. No credence should be given to claims that ferrous sulfate may be difficult to source or be expensive. Although not much is produced in GB, it is available in large quantities in Europe, easily sufficient to meet the needs of UK cement manufacturers.	
<b>IHC</b> – RIA appears to overestimate costs (eg of capital equipment and ferrous sulfate) and underestimate value of benefits.	This information taken into account when finalising RIA.
<b>Mr Lohmann</b> – RIA appears to overestimate costs. For example, existing material handling equipment reduces the need to acquire new capital equipment. Price of ferrous sulfate is a major part of recurring costs but it should be possible to reduce this cost.	This information taken into account when finalising RIA.
<b>Rhodia</b> – The proposal should provide a good level of protection of workers' health.	
<p><b>Sealocrete</b> – The RIA does not reflect that cement preparation manufacturers will incur costs associated with materials, machinery, development, product labelling and testing.</p> <p>As for testing, SMEs may not be able to afford equipment and expertise for in-house testing or the services of an external laboratory. Suggest that, in lieu of testing, compliance assurance be based on certificates of analysis supplied by cement manufacturers and typical formulation type testing.</p> <p>Dosing of cement with ferrous sulfate may cause iron discolouration of some products.</p>	<p>This information taken into account when finalising RIA.</p> <p>HSE has indicated its agreement to initial testing of representative products to determine necessary levels of dosing, followed by use of systems (whether managerial or engineering based) to assure that this level of dosing is maintained in future production batches. There is no need for expensive testing of every production batch.</p> <p>Evidence has emerged that this will affect some preparations and that use of a more expensive reducing agent will be needed to avoid it. Cost impact taken on board in RIA.</p>
<b>Small business service</b> – Reduced storage times for cement-based products may be problematic for the building industry.	The indications are that manufacturers will seek to maintain shelf lives by the addition of reducing agents at that stage.
<b>TUC</b> – Hopefully the proposal will reduce	

<i>Respondent's comment</i>	<i>HSE response/comment</i>
dermatitis within construction industry which should lead to significant cost benefits.	
<b>UCATT</b> – We consider that the benefits far outweigh the costs.	
<b>Warwick</b> – It is difficult to estimate the cost/benefit to the University. Our direct labour force may be exposed to Cr VI in cement but we have no recorded cases of allergic contact dermatitis.	

**Question 3. Do you agree the proposed amendment to regulation 3(3) of COSHH and CLAW that will give effect to the enforcement demarcation between ship and shore work agreed by HSE and MCA?**

Answered “**YES**” or otherwise indicated agreement – (10 respondents):  
Mr Bourton, Dr Bowcock, FSOM, LACEHO, Mr Lohmann, Rhodia, Shutler, Warwick

Answered “**NO**” or otherwise indicated disagreement – (0 respondents):  
No respondents

Made **no comment** - (20 respondents): Bluestone plc, BASA, BAA, BCA, BCF, F Ball, FBU, Foungres, Home Office, IHC, LUL, NGT, NUMAST, Sealocrete, Southern Cement, Mr Taylor, UCATT, UCATT Eastern Region, Mr Westmoreland, Wetherby

<i>Respondent's comment</i>	<i>HSE response/comment</i>
<b>Mr Lohmann</b> – Consistency should be sought but safety should not be compromised.	HSE considers that the proposal does not compromise standards of protection. Any legislative gap will be met by the MCA.
<b>NUMAST</b> – No substantive comment. Suggest the final Regulations are conveyed to the Maritime and Coastguard Agency.	HSE has kept, and will keep, MCA informed of the nature and progress of the proposals.
<b>Southern Cement and Mr Taylor</b>	These respondents asked for and received clarification of the proposals.
<b>Mr Westmoreland</b> – Will any small vessels remain under COSHH?	Small (ie non-sea-going) ships will be assimilated into the existing regime for sea-going ships. That is, COSHH will apply to them when work is being done which poses risks to non-crew members (eg loading, refitting, etc), otherwise marine legislation will apply. COSHH will continue to apply to all Royal Navy vessels in all circumstances.

**Question 4. Do you have any comments in relation to costs and benefits of the amendment to regulation 3(3) of COSHH and CLAW?**

Answered “**NO**” or made no comment – (All 30 respondents):

**Question 5. Do you agree the proposed revision of the wording of regulation 9(1) of COSHH and regulation 8(1) of CLAW and the related changes to the COSHH and CLAW ACOPs?**

Answered “**YES**” or otherwise indicated agreement – (17 respondents):  
Mr Bourton, Dr Bowcock, BAA, BCA, BCF, FSOM, FBU, LACEHO, Mr Lohmann, LUL, NGT, Rhodia, SBS, Shutler, TUC, Warwick, Mr Westmoreland

Answered “**NO**” or otherwise indicated disagreement – (0 respondents):

Made **no comment** – (13 respondents): Bluestone plc, BASA, F Ball, Fongres, Home Office, IHC, NUMAST, Sealocrete, Southern Cement, Mr Taylor, UCATT, UCATT Eastern Region, Wetherby

<i>Respondent’s comment</i>	<i>HSE response/comment</i>
<b>BCF</b> – In the revised COSHH ACOP, guidance that maintenance is not required when a process is shut down has been deleted.	This deletion was inadvertent and the original wording has been reinstated.
In paragraph 168 of the revised COSHH ACOP why has the qualification “but no more extensive than is necessary” been removed?	HSE considers that these words are unnecessary given the use of the words “should be sufficient”.
<b>FBU</b> – Significant improvement – should not be watered down.	

**Any other comments?**

<i>Respondent’s comment</i>	<i>HSE response/comment</i>
<b>Dr Bourton</b> – Agree clarification of the duty in CLAW to maintain exposure controls, as high blood lead levels may be due to individual behaviours.	
<b>IHC</b> – HSC/E has failed in its duty to protect construction workers by waiting for a Directive banning high Cr (VI) cement, instead of being proactive like, eg, Denmark.	HSC/E policy was for cement users to make full use of personal protective equipment. Once a Directive was under negotiation, there was little to be gained in pre-empting it. It may be noted that the Directive, as adopted, <u>forbids member States from applying its provisions before a specified date.</u>

<i>Respondent's comment</i>	<i>HSE response/comment</i>
Is a threshold of 2 ppm Cr (VI) low enough? No evidence is presented to justify this figure.	2 ppm chosen as a practicable value that aligns with the limit in Denmark which has shown good health results.
<b>Mr Lohmann</b> – The new provision requiring review of systems of work and supervision says review should be at suitable intervals. It should specify that reviews occur at least once a year and after any incident.	HSE believes that it is better to leave the frequency of review to be determined by each dutyholder in the light of their particular circumstances.
<b>Mr Westmoreland</b> – The cost of purchasing the new edition of the ACOP is not insignificant and should be considered in the RIA.	This view taken into account when finalising RIA.