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## HEALTH AND SAFETY COMMISSION

### A further Consultative Document on proposed Control of Substances Hazardous to Health (Amendment) Regulations 2004

A Paper by Michael J Ryan, PG CFPD2

Advisor(s): Bill Macdonald, PG CFPD2; and Cesare Ferrari, Solicitor's Office

Cleared by Jane Willis, Co-Director PG on 28 January 2004

#### Issue

1. Publication of a Consultative Document (CD) dealing with implementation of an EC Directive on cement and two other matters.

#### Timing

2. Urgent. The cement directive should be transposed by 16 July 2004.

#### Recommendation

3. That you:
  - a) agree publication of the CD (**Annex A**); → ← **Exemption 2 – Internal discussion and advice**

#### Background

4. The Control of Substances Hazardous to Health Regulations 2002 (COSHH) aims to protect people from the harmful health effects of substances used at work. Usually it does this by requiring employers to control the risks to their employees (or others who may be affected) from such substances. However, in a few cases, where risks are high or difficult to control, it imposes restrictions on the supply or use of the substances.
5. Consultative Document 189 (published on 1 October, **HSC/03/15** refers) proposed Control of Substances Hazardous to Health (Amendment) Regulations 2004 (COSHH 2004) to implement a new occupational exposure limit (OEL) framework. The present CD proposes using COSHH 2004 for the following additional matters.

## **Cement**

6. The Marketing and Use Directive (76/769/EEC) and its amendments restrict the marketing and use of specific chemicals in order to protect both human health and the environment. The latest amendment (the 26<sup>th</sup> - see **Appendix 1 to Annex A**) imposes restrictions on high chromium VI cement and nonylphenol. The nonylphenol restriction is environmental and its implementation falls to DEFRA, but the cement restriction is health-related and is the responsibility of HSC/E.
7. The presence of high levels of chromium VI in cement is known to cause allergic contact dermatitis in construction workers exposed to high chromium VI cement. Although a number of initiatives, including enforcement, have been carried out on this issue, they have so far been unsuccessful in reducing significantly the number of workers affected by this condition. The Directive tackles the problem at source by obliging the manufacturer to limit soluble chromium VI content and thereby provide an inherently safer product. In EC countries where this is already done a large reduction in allergic contact dermatitis among construction workers has been observed. The UK supported the Directive strongly during its negotiation.

## ***Ships: disapplication of COSHH and CLAW***

8. Following a review of river safety since the 1989 "Marchioness" disaster, Lord Justice Clarke's Report on the Thames Safety Inquiry called for rationalisation of health and safety legislation in relation to non-sea-going ships. It recommended that health and safety on non-sea-going ships should be regulated by the Maritime and Coastguard Agency's (MCA) merchant shipping legislation in place of HSC/E legislation. HSC and MCA accepted this recommendation and as a consequence all health and safety legislation, including the COSHH Regulations, will need to be amended to reflect the new demarcation line.

## ***Clarification of duty to maintain exposure control measures***

9. Regulation 9(1) of COSHH and regulation 8(1) of the Control of Lead at Work Regulations 2002 (CLAW) require employers to maintain the measures they have taken to control exposure of persons to substances hazardous to health and lead respectively. The aim is to ensure that the effectiveness of exposure controls does not decline over time. HSE occupational hygienists contend that the present wording of these regulations fails to make clear that the duty extends beyond "hardware" exposure controls (eg ventilation systems) to include "non-hardware" controls (eg safe methods of work and effective supervision), and urge that the wording be clarified.

## **Argument**

### ***Cement***

10. The Directive applies to cement and cement preparations (eg concretes, mortars and grouts) containing (when wetted) more than two parts per million (ppm) of soluble chromium VI. It prohibits marketing and use of these products except for use in closed and automated processes where there is no risk of skin contact. In practice, this will be achieved by adding a reducing agent such as ferrous sulphate to the cement to bring

its soluble chromium VI content (when wetted) to under 2 ppm. As the effectiveness of the reducing agent will decrease if the cement is stored too long before use, the Directive also requires that packaging must be marked with a use by date and other relevant information.

11. The ban on supply and use of high chromium VI cement is similar to previous M&U restrictions which have been transposed by way of Schedule 2 to COSHH. The CD proposes, therefore, implementation of that part of the cement restriction by placing it in that Schedule, as described in **Part A of Appendix 2 of Annex A** to this paper. Similarly, the marking requirement for packages of reduced chromium VI cement resembles certain labelling requirements in Schedule 2 Part II B to the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 (CHIP). The CD proposes, therefore, implementation of that aspect of the cement restriction by placing it in that Schedule, as described in **Part A of Appendix 2 of Annex A**

12. → ← **Exemption 2 – Internal discussion and advice**

***Ships: disapplication of COSHH and CLAW***

13. COSHH 2004 offers an opportunity to implement the recommendation of Lord Clarke in respect of COSHH and CLAW. The CD proposes that the text of the existing regulation 3(3) in each of COSHH and CLAW be amended as described in **Part B of Appendix 2 of Annex A** to this paper.

***Clarification of duty to maintain exposure control measures***

14. Additionally, COSHH 2004 can be used to deal with the shortcoming in the wording of regulation 9(1) of COSHH and 8(1) of CLAW identified by HSE occupational hygienists. The CD proposes that the regulations be modified as described in **Part C of Appendix 2 of Annex A** to this paper in order to make clear that the duty to maintain control measures is not limited to “hardware” controls. Some consequential changes to the COSHH and CLAW ACOP material which supports regulations 9(1) and 8(1) are needed and these, together with some other minor improvements to the ACOPs, are set out in **Appendix 4 of Annex A**

**Consultation**

15. The cement restriction was negotiated by HSE officials who liaised closely with the cement Industry and other relevant stakeholders throughout. Following adoption of the Directive on 18 June 2003, HSE has met with Industry representatives to discuss and advise on compliance issues.

16. The Maritime and Coastguard Agency has been kept informed of HSE’s plans to disapply COSHH and CLAW to non-sea-going ships, and has agreed the wording of the regulation.

## **Presentation**

17. A press release will be issued when the CD is published. As mentioned, separate consultation was carried out on the proposal for a new OEL framework. The outcome from that and from the consultation proposed here will be combined into a single set of draft COSHH amendment Regulations.

## **Costs and Benefits**

18. A preliminary regulatory impact assessment on the cement restriction is at **Appendix 5 of Annex A**. It estimates the 10-year cost to industry at £28-29M and the 10-year benefit of the expected reduction in allergic contact dermatitis at £18-53M. No significant costs to dutyholders are associated with the proposals in relation to non-sea-going ships (because this is only a change of regulatory authority and applicable legislation) and maintenance of “non-hardware” control measures (because this is a clarification of an existing duty).

## **Financial/Resource Implications for HSE**

19. Minor costs only from the cement restriction, which are containable within existing provision. No costs from the non-sea-going ships and maintenance of exposure control measures changes.

## **Environmental Implications**

20. Minimal, although use of ferrous sulphate by cement manufacturers to reduce the soluble chromium VI content of their products will have the environmental benefit of lessening the amount of that substance which goes to landfill or is dumped at sea.

## **Other Implications**

21. Local authority – LA inspectors will enforce the high chromium VI cement ban and the reduced chromium VI cement package-marking requirement in retail outlets where they are the enforcing authority.

22. European, devolution, SMEs and other implications: n/a

## **Action**

23. If you agree to publication of the CD we shall:

- a) arrange with DIAS for its publication;
- b) following consultation, return with final proposals for your consideration; and
- c) keep you updated about HSE’s discussions with DEFRA and other government departments on the implementation of Marketing and Use Directives.