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HEALTH AND SAFETY COMMISSION

Proposals for the Control of Major Accident Hazards (Amendment) Regulations

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Cleared by Jonathan Rees on 16 February 2005

Issue

1. To agree the submission to the Minister of proposals to make the Control of Major Accident Hazards (Amendment) Regulations 2005 (COMAH). The proposals have been agreed by the Advisory Committee on Dangerous Substances.
2. It is estimated that up to 158 sites will be brought into the scope of COMAH by the proposed changes, increasing the number of sites subject to the Regulations by around 14%. Additionally, between 83 and 91 sites currently subject to the lower tier requirements of the Regulations will move to the top tier.

Timing

3. Agreement at this meeting will enable the Regulations to be submitted to the Minister for signing as soon as possible (bearing in mind the possibility of a general election) so that they can enter into force by 1 July 2005, as required by the Directive.

Recommendation

4. To agree the proposals and their submission to the Minister under cover of the letter in [Annex A](#).

Background

5. The proposals will implement the health, safety and environment aspects of Directive 2003/105/EC which amends Directive 96/82/EC (Seveso II) on the control of major accident hazards involving dangerous substances. Background to the proposals, including a copy of the Directive and HSC involvement, is in [Annex B](#).
6. As land-use planning is a devolved matter, associated changes to land-use planning legislation necessitated by the new Directive are being implemented separately by the Office of the Deputy Prime Minister, the Scottish Executive and the National Assembly for Wales who have all been kept informed of developments.

Argument – outcome of consultation

7. Responses to the 12-week consultation show a marked degree of coherence. The key results are summarised below. Further details, including a list of respondents, are in [Annex C](#).
8. Most proposals received almost unanimous support. These include the way the Regulations would implement the new Directive and the minor changes to COMAH

requested by the competent authority (CA)¹. Consultation identified the need to modify two areas of the proposals as described below.

Changes to the draft regulations following consultation

9. Only one issue necessitates any significant change. Recital 7 of the Directive is intended to exclude from Seveso II end-users of ammonium nitrate (AN) fertilisers if they temporarily have AN that had on delivery conformed to the specification in the Directive but subsequently degrades or becomes contaminated. Consultation identified that this appeared to have only been given partial effect in the Directive and farm premises, as end-users, could still be within scope. HSE has confirmed with the EC that this was not intended.

10. It is therefore proposed to insert an additional provision into the Regulations to give full effect to recital 7². This is supported by Defra, and other key stakeholders have been consulted. HSE's solicitor advises that the intention of the recital is clear and that we would be unlikely to be challenged by the EC over its inclusion, and that any claim for damages based on alleged under-implementation is similarly unlikely. Further information is in paragraphs 15-20 of [Annex C](#).

11. A second issue concerning AN does not require a regulatory change but highlighted a need to examine the practical arrangements for dealing with AN in the 'off-spec'/reject category. This is explained in paragraphs 21-27 of [Annex C](#).

12. A set of final draft regulations is in [Annex D](#). A summary of the changes made since consultation is in [Annex E](#).

Changes to the Regulatory Impact Assessment (RIA) following consultation

13. Only 45% of respondents thought the RIA was adequate. All responder groups considered that costs had been under-estimated and that the benefits were not clear. Responses are discussed in greater detail in paragraphs 42-45 of [Annex C](#). The RIA ([Annex F](#)) has been considerably revised to address the points raised.

Guide to COMAH

14. HSE is revising the guide to COMAH. It was not ready in time to be included in the CD but was subject to consultation over the internet between 6 December 2004 and 18 February 2005. It will be published when Regulations come into force.

Consultation

15. HSE wrote to over 2500 stakeholders with an interest in chemical safety prior to consultation to alert them to the proposals. Separately, we have discussed the proposals with TUC, local authority, emergency services, industry and other government department representatives through a variety of forums including the Chemical and Downstream Oil Industries Forum and the Chemical and Pipelines Emergency Planning Liaison Group.

16. ACDS and its Major Hazards Subcommittee support the revised proposals, having been consulted through correspondence between 5 and 26 January 2005, and we specifically brought the final proposals to the attention of certain stakeholders including trade union contacts and the CIA (see paragraphs 9-12 of [Annex C](#)).

¹ the Health and Safety Executive and the Environment Agency in England and HSE and the Scottish Environment Protection Agency in Scotland.

² Annex B – Schedule 1, Part 2, Note 4(b)

Presentation

17. There are no special or unusual presentational or enforcement issues arising from the proposals. The Regulations provide a period of time for sites affected by the changes to comply with key duties, e.g. notification and preparation of a safety report. The CA has a reasonable appreciation of the types of sectors/sites likely to be affected (such as the paint coatings sector, agricultural industries, and power generation) and discussions with these are on-going. The CA is also using a variety of liaison meetings with other groups, such as those formed under the Pollution Prevention and Control regime, to reach other stakeholders who may be affected.

18. A press notice will be issued to announce the coming into force of the Regulations and the publication of the updated guide to COMAH.

Costs and benefits

19. The final RIA in Annex F has been revised to reflect a range of cost/benefit information provided by consultees. The annual costs to society, including additional safety changes, range from £11.6 – 13.2m. While the total annual risk addressed by the proposals is estimated at between £9.2 and £18.9m, it has not been possible to quantify how far this would be reduced by them. Therefore, it cannot be said unambiguously that their benefits outweigh their costs.

Financial/resource implications for HSE

20. Government requires the CA to recover the cost of regulatory activities for COMAH from operators. HSE will also incur costs of around £40,000 in connection with revising the COMAH guide, and approximately £45,000 policy development costs.

Environmental implications

21. The RIA estimates that between 26 and 32 sites will become subject to COMAH because of lower thresholds for substances dangerous for the environment, and a further 21-25 will move from the lower to the top tier. The environmental implications are expected to be positive, but the RIA notes uncertainty over the source of the data.

Other implications

22. Local authorities – Just over 100 establishments will become subject to the top tier requirements of COMAH thus needing off-site emergency plans.

23. Devolution – officials in Scotland and Wales have been consulted on the proposals (see paragraph 6 for changes to land-use planning legislation).

24. Small and medium-sized enterprises – a very small number (if any) of top tier sites is likely to be operated by small companies. The RIA notes that costs may be disproportionately higher for sites operated by small/medium-sized companies.

Action

25. To agree the submission of the proposals to the Minister.