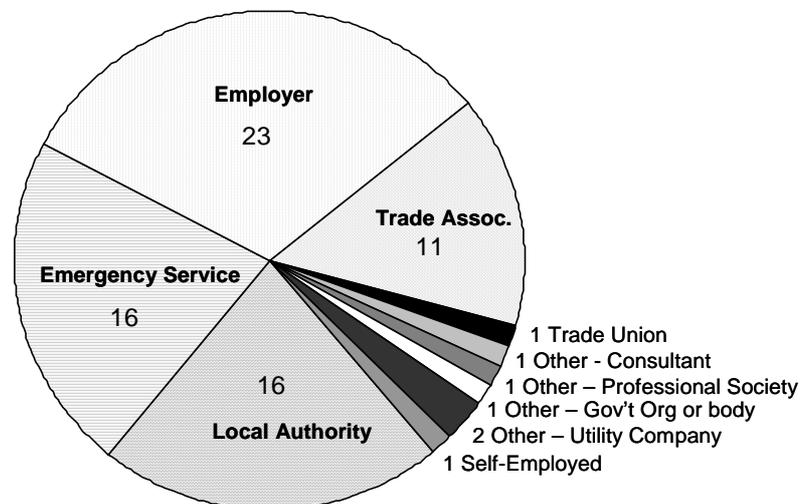


Results of consultation and list of responders

General outcome

1. Consultation ran from 12 July to 1 October 2004. This was largely carried out over the internet, with paper copies being provided on request. During the 12 weeks there were 4402 page requests (hits) on the CD.
2. The consultative document (CD) asked 10 questions, which included two standard questions about the presentation of the policy issues and the consultation exercise itself. We provided a questionnaire which could be downloaded and completed electronically and returned to a dedicated e-mail account.
3. We received 73 responses. Almost a third were from employers/business associations, and replies from local authorities and emergency services/their associations accounted for just over a fifth each as shown in the chart below.



4. Overall, the proposals received widespread support. Post-consultation work focussed on two areas: (i) ammonium nitrate (paragraphs 15-27), and the further work in several areas of the regulatory impact assessment (paragraphs 42-45).
5. A summary of the responses has been placed on the HSE website. All replies were acknowledged, and HSE replied individually to many respondents to provide feedback on their comments and update them on progress with the proposals.

Internet consultation

6. The decision to consult via the internet was discussed at ACDS in February 2004, and advice was sought from HSE's Communications Directorate, but mention of this was inadvertently omitted from HSC/04/46 when HSC was asked to agree to publication of the CD. To facilitate consultation HSE wrote to everyone to whom a paper copy would have been sent to alert them to the consultation. We also discussed the proposals with groups likely to be affected by the changes and arranged for intermediaries to promulgate information about the consultation through their own communication networks.
7. We received five requests for paper copies, including a request from Commissioner Hugh Robertson for 70 copies for TU affiliates who may not have

access to electronic information. This followed an enquiry from Mr Robertson to ask how people without internet access could obtain and respond to the proposals.

8. Feedback from respondents shows that electronic consultation and the facility to download the response form were welcomed and seen as an efficient method of consultation. We believe that the facility to respond electronically led to a greater than anticipated number of responses (78% of replies were received via e-mail).

Respondent groups

9. Respondents were asked to provide information about themselves and, if appropriate, the interests/sectors they represent. Responses showed that consultation reached a wide range of target groups with an interest in chemical safety with replies being received from a number of individual businesses, local authority planning departments, and local emergency services. A number of key representative bodies responded including:

- the Chemical Industries Association (CIA), UK Petroleum Industry Association, the Institute of Directors, the British Chemical Distributors and Traders Association, the Agricultural Industries Confederation (AIC), the Non-Ferrous Alliance, and the UK Cleaning Products Industry Association;
- the Local Government Association;
- the Associations of Chief Police Officers for England/Wales and Scotland, and the Chief Fire Officers' Association; and
- the Emergency Planning Society and the Society of Industrial Emergency Services Officers.

10. As only one respondent indicated that they were replying on behalf of a trade union (the Police Federation of England and Wales), HSE contacted the Transport and General Workers Union and TU representatives on ACDS and the Major Hazards Subcommittee in January to specifically seek their comments on the proposals to ensure that they were content with the final package. No further comments were received. A full list of respondents is at the end of this Annex.

11. In the majority of cases respondents commented on all aspects of the proposals, including those that would not affect them. In considering the comments HSE followed guidance on dealing with responses from individuals, groups, and representative bodies designed to ensure that all responses are dealt with fairly.

12. As responses from all stakeholder groups indicated widespread support for the proposals there were no differences of opinion on which ACDS' advice was needed.

Responses to questions in the CD

13. The following summary follows the order of the questions in the CD.

Q1 Implementation of the Directive

14. Over 90% of those who responded agree with the way the draft regulations would implement the Directive. The following issues were raised.

Ammonium nitrate – two issues raised

(i) Recital 7

15. The Agricultural Industries Confederation (AIC) raised the need to give full effect to recital 7 of Directive 2003/105/EC. This concerns the presence of certain ammonium nitrate (AN) fertiliser at end-user establishments i.e. farms.

16. Directive 2003/105/EC revises Seveso II to include four categories of AN:

Note 1 fertilisers capable of self-sustaining decomposition (5000/10 000¹ tonnes)

Note 2 fertiliser grade (1250/5000 tonnes)

Note 3 technical grade (350/2500 tonnes)

Note 4 “off-spec” AN and fertilisers not fulfilling the detonation test (10/50 tonnes).

17. Certain material covered by Note 1 and all material in Note 2 imported into or manufactured in the EU must have a certificate to show that it fulfils the requirements of the detonation resistance test in Annex II of Directive 80/876/EEC². This test has been incorporated into Defra’s Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003. If a sample subsequently taken in GB under those Regulations fails this test, the material would become subject to the lower thresholds of 10/50 tonnes in Note 4. Defra has advised that there have been four occasions (out of about 100 tests) since May 2003 when imported material has failed a subsequent test. Material is not routinely tested in other EU Member States.

18. Recital 7 was specifically intended to ensure that Note 4 AN at farms does not come within the amended scope of Seveso II. The recital states:

“Directive 96/82/EC should not be applied to sites of end-users where ammonium nitrate and ammonium nitrate-based fertilisers, which on delivery conformed to the specification in that Directive but subsequently have become degraded or contaminated, are temporarily present prior to removal for reprocessing or destruction.”

19. Consultation identified that the way the recital had been incorporated meant that it only had been given effect with regard to material that no longer complies with parts of the specifications in Notes 2 and 3. As a result, farm premises where fertiliser is present temporarily as part of a batch that has failed a detonation resistance test, could become subject to Note 4 of the Directive. The EC has confirmed that this was not intended.

Proposed action

20. It is therefore proposed to amend Schedule 1 Part 2, Note 4(b) of the new Regulations so that end-user establishments with Note 4 material do not come within scope. This is supported by Defra. The exclusion is unlikely to lead to increased safety risks as the safest and most common method of dealing with such material at farms is to spread it onto the land. It is important to note that the exclusion would not place end-users outside the scope of COMAH if they have any other dangerous substances above the qualifying quantities specified in the Regulations. Other stakeholders with a special interest in AN have also been consulted.

(ii) Arrangements for dealing with AN subject to Note 4

21. A second issue has not necessitated a change to the proposed regulations but concerns the practical arrangements for dealing with Note 4 AN.

22. AN that is rejected during manufacture, has become contaminated/degraded, or failed a detonation resistance test will come within the scope of COMAH through the application of Note 4. GB manufacturing plants are already within scope, and blending/recycling plants who accept more than 10/50 tonnes (or less under the

¹ Qualifying quantities for lower/upper tier thresholds.

² This Directive has now been repealed by the EC Fertiliser Refonte, EC Regulation 2003/2003.

aggregation rule) would come within the amended scope. End-user establishments would be fully excluded if the proposals in paragraphs 9-14 above are introduced.

23. Note 4 material may be present elsewhere, for example in storage at port or other premises. The HSE solicitor has advised that 'anticipated presence' in regulation 2(3) of COMAH 1999 does not mean that AN should be treated as being present for the purpose of the Regulations because of a possibility that it may fail a detonation test. In such cases, the competent authority (CA) would expect the operator of the premises to make arrangements to deal with the material (i.e. arrange for its safe disposal or render it safe), thereby dropping outside the scope of COMAH as quickly as possible. If it became apparent that Note 4 material was repeatedly present at premises, such that its presence was actual or could be anticipated, the CA would enforce the requirements of COMAH.

24. Where AN fails a detonation test the High Nitrogen Content Regulations also require the person keeping it to take steps to blend it with suitable material to reduce the risk of detonation; otherwise reduce its risk of detonation; or have another sample tested. They must also notify the enforcing authority and HSE of the measures to be taken.

25. HSE has met Defra and the AIC to discuss the combined effect of the new Note 4 category and the existing requirements of the High Nitrogen Content Regulations. Keepers of Note 4 AN may be unable to send the material for blending/recycling if these plants refuse to accept quantities that would bring them within the scope of COMAH. The keeper of the material will therefore need to make other arrangements to deal with it. The options for dealing with the material are limited but could, for example, include the use of mobile blending/bagging equipment at the storage site. The availability and suitability of such equipment is unknown at this stage, but this is an area the AIC is investigating.

26. The AIC recently published guidance, in consultation with HSE and Defra, on the 'Disposal or utilisation of AN based fertiliser which fails to meet the requirements of the Ammonium Nitrate Safety Regulations 2003'. This will be reviewed to ensure it reflects the implications of the legislative requirements and helps keepers of AN/operators of premises where it may be present to comply with all relevant duties.

27. The industry, HSE and Defra believe that the combined effect of the HSE/Defra legislation and the industry guidance will help to improve controls on Note 4 material and lead to greater awareness of safe methods of treatment and disposal. As with the recital 7 issue, this matter has been brought to the attention of stakeholders with a special interest in AN fertilisers.

Other issues

28. Six respondents did not agree with the way the Regulations would implement the Directive. Two (one consultant and one industry association) would have preferred a complete set of COMAH regulations rather than Amendment Regulations, a point which was addressed in HSC/04/26 when HSC agreed the implementation strategy. This is the first time that COMAH has been amended and, given the straightforward nature of the Directive and the small number of other changes proposed, there are no special considerations that mitigate in favour of consolidating COMAH at this time (as a general rule, consolidating regulations are usually produced when a set of regulations has already been amended three times).

29. Comments from the other respondents related to points of detail concerning:

- substances in the new petroleum products category, and how the Directives on which the Chemicals (Hazard Information and Packaging for Supply) Regulations are referenced in COMAH. These matters do not raise any issues for the Regulations and will be addressed as necessary in guidance;
- the need for the Directive to include a list of high level aquatic toxins (similar to that included for carcinogens) with lower threshold values which would allow for varying degrees of environmental toxicity. Amendments to carcinogens (and substances dangerous for the environment) were based on the results of two EC working groups and are matters for the Directive rather than its implementation. This may be an issue for consideration when Seveso II is next amended; and
- lack of reference in the Directive to safety representatives' involvement in on-site planning – the guide to COMAH already strongly points to the benefits of involving representatives or committees.

Q2 The revocation of regulation 3(4)

30. The existing general provision on timescales for complying with certain duties becomes redundant as provisions are now included under specific regulations on e.g. notification and safety reports. This was unanimously supported.

Q3 The change from 'inform' to 'notify' in regulation 8

31. The proposal to require operators to notify rather than inform the CA of any revisions to the safety report was supported by 94% of respondents. The change would allow the CA to keep a record of any revisions to the safety report, or cases where a report is reviewed but not revised.

32. One industry respondent considered the change unnecessary because it represents a change beyond the Directive. The AIC and another industry respondent were opposed because, when linked to the existing definition of "notify", it appeared to exclude the possibility of notification by electronic means. To address this it is now proposed to amend the definition of 'notify' to include e-mail and other methods allowed by the recipient³ to give greater flexibility.

Q4 Notification when a safety report is reviewed but not revised to be placed on the public register

33. The CD proposed that an operator's notification to the CA where a safety report has been reviewed but not revised should be placed on the public register. This was supported by 90% of respondents.

34. Five industry respondents, including the AIC and the CIA, and one local authority shared similar concerns that:

- the letter should not be placed on the public register if the safety report is not on the register; and
- operators are constantly reviewing safety reports and the requirement could introduce administrative burdens and bureaucracy resulting in additional costs. The CIA therefore asked for guidance, and for a duty to be placed on the CA to respond to and confirm notified changes.

³ Annex D - Regulation 3(b) of the Amendment Regulations.

35. The current Direction from the Secretary of State applies to safety reports and does not extend to other material. The proposed requirement does not alter existing arrangements on when/how to review safety reports, only how they are brought to the attention of the CA. In response to the CIA's additional point about how the CA will deal with cases where a safety report is revised, the CA has recently published new guidance on how the review and revision of safety reports. Notifications will be acknowledged and any assessment will be carried out in accordance with the Safety Report Assessment Manual.

Q5 Agency as consultee on off-site plans

36. There was almost 100% support to the Agency (the Environment Agency and the Scottish Environment Protection Agency) being named as a consultee on off-site emergency plans. The change will differentiate between the Agency's role in the CA and that of an emergency responder. One industry respondent suggested that conflict may arise between agencies and that separate consultations should not be necessary. The Agency's dual role will be explained in the revised guide to COMAH.

Q6 Notification of petroleum products

37. The CD proposed that operators should include in their notification a breakdown of petroleum products using the substance groupings named in the new category. This was supported by 97% of respondents.

38. One large chemical company was concerned about how this would be dealt with in land-use planning legislation and the time an express consent (if necessary) may take. These comments have been passed to the devolved administrations who are responsible for the land-use planning aspects of Directive 2003/105/EC.

Q7 Operator to provide amended safety report if information is excluded from the public register

39. Eighty five percent of respondents agreed that the operator should provide an amended safety report to the CA where information is excluded from the public register. This implements a provision in Seveso II that was omitted from COMAH 1999. The requirement for the reports to be placed on the public register is not new (although the current Direction from the Secretary of State removes all reports from the register), but COMAH does not specify who should provide the amended report. This provision is intended to clarify that the duty rests with the operator.

40. Industry respondents (individual companies and the AIC and CIA) who did not support the proposal had similar reservations. These covered:

- the amount of work involved in producing a public register version, and whether an amended report would need to appear 'seamless';
- the proposed timescale to prepare such a report, and that nine rather than three months would be more reasonable; and
- the value of an amended report.

41. The regulatory impact assessment now better recognises the additional work involved in preparing an amended report. Guidance will encourage operators to identify material for exclusion as the report is drafted/revised, for example by identifying it in the text, or putting it in a separate annex, to facilitate future identification and removal. The amended report is not required to be edited to make it seamless (explanatory text is inserted if information is excluded on the grounds of

confidentiality). The CA has further considered the proposed time period of three months to provide an amended report and believes this to be adequate.

Q8 Adequacy of the Regulatory Impact Assessment (RIA)

42. Only 45% of those who replied thought that the main costs and benefits had been adequately addressed. All comments have been considered by HSE's economists who have prepared a revised assessment to reflect the comments made.

43. **Industry** (individuals and associations) expressed the following concerns:

- the CIA reflected the concerns of some individual respondents that companies operating outside the scope of EC legislation have a business advantage due to reduced operating costs. HSE's economic advisers have advised that this is a second order (indirect) effect which is extremely difficult to quantify, and that is not usually addressed unless there is evidence to show that the effects are substantial. The revised assessment discusses this issue;
- the assessment generally under-estimates costs, with examples being given relating to the provision of a map as part of a safety report, and providing an amended safety report if information is excluded from the public register. The assessment has been revised based on information provided by respondents;
- costs arising from changes due in October 2005 to the Chemicals (Hazard Information and Packaging for Supply (CHIP) Regulations 2002. The changes will bring some companies into COMAH because its application is determined by reference to categorisation of substances under CHIP. The current COMAH RIA is only intended to address changes arising directly from the COMAH (Amendment) Regulations. As part of the project to amend CHIP, HSE is attempting for the first time to look at wider consequences for other regulations;
- benefits are over-estimated/insufficient evidence of benefits/information on environmental benefits is out of date. The revised assessment discusses benefits in more detail. The RIA uses a report from Det Norske Veritas completed in 2001 as the basis of environmental information. Although several years old, this is the latest available information and the estimates for certain environmental information are now illustrated as +/- 10% to allow for this.

44. Eleven **LA emergency planning units/associations** commented on the RIA. There were two main areas of concern:

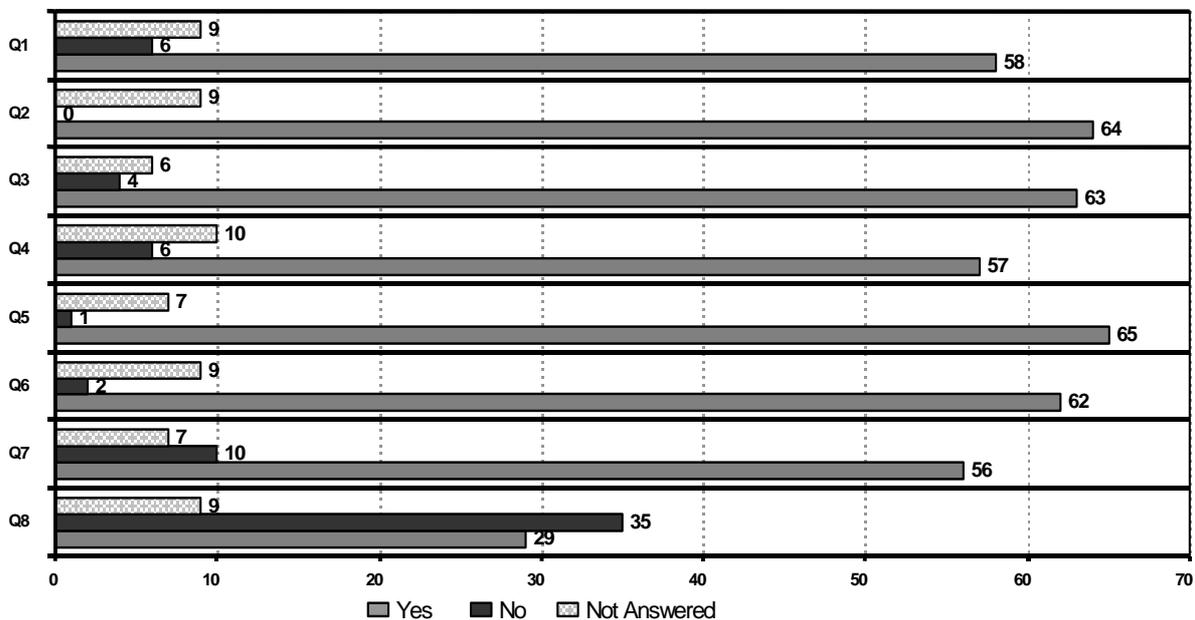
- the assessment does not identify the costs to LAs in terms of off-site plan preparation, review, revision and testing. The RIA has been revised to show estimated costs to LAs, in part using information provided by the Emergency Planning Society (EPS); and
- HSE guidance on the charging provisions explains that LAs can recover costs of the 'time spent' by officers on off-site planning. The EPS asked HSE to change the guidance to enable them to charge for the full costs associated with employing people to carry out this work. The current proposals do not include any change to the current charging provisions. HSE has looked at the wording in the guide to COMAH and considers that it is an accurate interpretation of the current provisions.

45. Seven **emergency services/emergency service associations**, including the Associations of Chief Police Officers (ACPO) in England and Wales and ACPO (Scotland) commented on the RIA. Their main concerns were:

- the assessment does not adequately identify the costs and scope of the emergency services' involvement in off-site planning. Information provided by the fire service and police and the results of a recent survey carried out by ACPO enabled HSE economists to better reflect these costs and explain the role of the emergency services; and
- delays to work to extend the COMAH charging provisions. This work, initiated by Michael Meacher in 1999 as Secretary of State at the Department for the Environment, Transport and the Regions, was looking at extending COMAH to allow the emergency services to charge for their participation in the preparation, review and revision of off-site plans. HSE provided administrative support to the project but withdrew in 2003 to concentrate on HSC/E's strategic aims. It is now being taken forward by the Department for Work and Pensions. Information about the consultation comments has been forwarded to DWP.

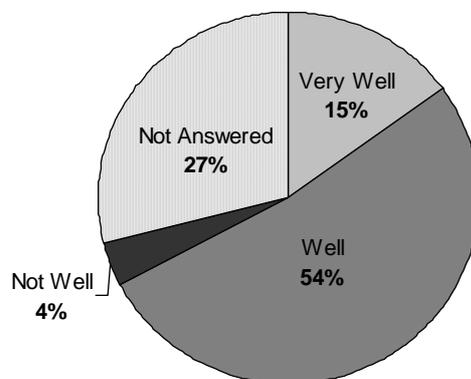
Summary of responses to first eight questions

46. The chart below shows the number of responses to the first eight questions:



Q9 How well the CD represented the different policy issues involved

47. Over 94% of respondents considered that the policy issues covered by the CD had been presented well or very well as shown below.



48. One industry responder considered that the land-use planning requirements would be better implemented through COMAH rather than separate land-use planning legislation. One emergency planning unit felt that the proposals presented issues of interest to operators better than those affecting emergency planners.

Q10 Like/dislike about the consultative document

49. The majority of respondents supported the consultation efforts, welcomed the opportunity to comment, and considered that it was well-planned and publicised.

50. Some respondents would have liked the opportunity to comment on other aspects of COMAH and to see the revised guide issued with the CD. The draft guidance was not ready in time to be included in the published proposals but was available on the HSE website from 6 December for 11 weeks for consultation.

Other information obtained from consultation

51. To assist with the RIA, the CD also sought information from employers on whether or not they would be affected by the new threshold limits for dangerous substances, and if so how. These questions received a disappointing response, eliciting only eight replies, and in some cases it was not clear whether the response covered more than one establishment. They suggested:

- four would enter at lower tier because of changes to substances dangerous for the environment, carcinogens and petroleum products
- three would move from lower to upper tier because of changes to substances dangerous for the environment
- one would enter at upper tier because of the change to carcinogens.

Due to the small number of replies it is not possible to draw any meaningful conclusions.

List of responders

	Name	Organisation
1	R Hughes	Brenntag (UK) Ltd
2	Confidentiality requested	
3	J James	Cornwall County Council
4	S Cook	Nufarm UK Ltd
5	B Cahill	Derbyshire Fire and Rescue Service
6	A Jarman	Black Cat Fireworks Ltd
7	P Pedlingham	Hertfordshire Constabulary
8	A Smith	East Sussex County Council
9	M Dodsworth	AstraZeneca
10	D Ricketts	HM Fire Service Inspectorate
11	I Murphy	Welsh Water
12	J Jones	Peak Associates Environmental Consultants Ltd
13	Confidentiality requested	
14	J Graham	North Ayrshire Council
15	V Bowman	Emergency Planning Society
16	P Lewis	Police Federation of England and Wales
17	S Perrett	Neath Port Talbot and City and County of Swansea Joint EPU
18	P Cummins	West Yorkshire Fire and Rescue Service
19	D King	Buckinghamshire Fire and Rescue Service
20	R Elflett	Norfolk County Council
21	C Bayes	Scottish Environment Protection Agency
22	BT Downie	Highland Council
23	N Rowe	Kent County Council

24	M Wansborough	M Wansborough
25	A Waite	South West Water
26	G Barnes	Scottish and Southern Energy plc
27	T Ritter	Calor Gas Ltd
28	N Macnaughton	BP Grangemouth
29	K Nolan	Chief Fire Officers Association
30	B Dixon	Greater Manchester Fire and Rescue Service
31	M Tait	Leicestershire Fire and Rescue Service
32	P Machin	Machin Consulting
33	G Huckins	Koppers UK Ltd
34	A Goodwin	Association of Chief Police Officers
35	S Gilmour	Scottish Power
36	M Cobb	AWE Plc
37	A Coote	Association of Chief Police Officers (Scotland)
38	V Jenner	Humber Emergency Planning Service
39	F Penketh	Kodak Ltd
40	P Whitehead	Surfachem Ltd
41	J Walsh	Diageo Scotland Ltd
42	R Davy	West Sussex Fire and Rescue Service
43	N Powell	Cheshire CC, Halton and Warrington Unitary Authorities
44	S Williamson	GlaxoSmithKline
45	G Shephard	Cheshire Fire Authority
46	P Bull	Ciba Speciality Chemicals
47	I McPherson	Uk Petroleum Industry Association
48	D Heather	Agricultural Industries Confederation
49	C Gould	British Association for Chemical Specialities
50	C Screen	BAE Systems, Land Systems
51	M Slaney	Staffordshire EPU
52	K Readman	SIESO
53	M Hughes	North Wales Fire & Rescue Service
54	M Buchanan	Shell UK Ltd
55	S Stewart	UK Cleaning Products Industries Association
56	S Dalziel	ConocoPhillips (UK) Ltd
57	D Leech	British Chemical Distributors and Traders
58	N Rowley	Cleveland Potash
59	A Gilbert	Non-Ferrous Alliance
60	G Swanwick	Merseyside Fire and Rescue Service
61	H Pinches	Leeds City Council
62	G Day	Institute of Directors
63	S Power	Local Government Association
64	J Williams	Leicestershire County Council
65	D. George	Dorset County Council EPS
66	C Wise	West Midlands Fire Service EPU
67	N Berentzen	Chemicals Industries Association
68	P Jackson	British Aerosol Manufacturers Association
69	G Dennis	Cleveland Fire Authority
70	A Pritchard	London Fire and Emergency Planning Authority
71	D Stott	Lancashire County Council EPS
72	I Collins	Association of Police Health and Safety Advisors.
73	W Smith	National Grid Transco