

Health and Safety Executive Board		Paper No: HSE/09/56	
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<b>IMPLEMENTATION OF THE ARTIFICIAL OPTICAL RADIATION DIRECTIVE</b>			

### Purpose of the paper

1. To update the Board on progress towards implementing the Artificial Optical Radiation Directive (AORD)<sup>1</sup>; for the Board to consider the evidence presented and to agree the proposal for a minimal set of new regulations to go forward to public consultation.

### Background

2. Optical radiation is another term for light. Artificial sources can produce ultraviolet, infrared and laser radiation. The risks from optical radiation depend on the type and intensity of radiation and the parts of the body exposed: the eyes and skin are most at risk.
3. The Directive is one of four on physical agents in the workplace and must be implemented by April 2010. It requires employers, in respect of workers' exposure to AOR to assess the risks, control exposures to below specified Exposure Limit Values (ELVs), and provide appropriate information, training and health surveillance.
4. The original proposal dates from 2004 when the Health and Safety Commission advised Ministers that there was no justification for a Directive on health and safety grounds within the UK, but recognised that new legislation could harmonise standards in other Member States. The original contained provisions for assessing the risks of exposure from natural sources (sunlight) as well as artificial optical radiation. However, the requirements relating to sunlight were removed by the European Parliament at its second reading, an amendment endorsed by the UK, and the Directive was adopted in 2006.

### Argument

5. The Directive is considered to bring no additional benefit to health and safety in the UK because:
  - the risks are well understood and managed in those industries where hazardous sources are used (high powered lasers in medical applications; welding and glass manufacture)

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<sup>1</sup> Directive 2006/25/EC of the European Parliament and of the Council of 5 April 2005 on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation)(19<sup>th</sup> individual Directive within the meaning of Article 16(1) of the Directive 89/391/EEC)

- proportionate regulatory control is provided under the Health and Safety at Work etc Act 1974 (HSWA) and the Management of Health and Safety at Work Regulations 1999 (MHSWR)
  - reports of harm are extremely rare: since 2001 there has only been one RIDDOR<sup>2</sup> report ('arc eye') reliably attributed to AOR
  - the ELVs mirror international guidelines<sup>3</sup> already adopted in practice in UK
6. At the same time, the Government has a legal obligation under the Treaty of Rome to transpose the Directive into domestic law. Taking this as a given, HSE officials have used the time since adoption to assess the different options available for transposition and to undertake extensive stakeholder engagement, both informal written and face-to-face.
  7. The majority of stakeholders have raised no objections to the Directive as they feel it codifies what they already do in practice, a successful outcome of HSE's original negotiations. Concerns have been raised by the EEF, who have lobbied Ministers and senior officials at DWP and HSE. They feel that transposition of the Directive through new Regulations will result in unnecessary risk assessments for non-hazardous sources of AOR, divert resources from more important risks and impose significantly higher costs than estimated in the regulatory impact assessment published by HSE in 2006.
  8. The concern about unintended consequences has guided the exploration of other options for implementation. The 2006 impact assessment estimated the costs to society from implementing the full Directive. Updating to current prices, this predicted costs of £1.5 to £3.2 million in the first year; and £7.2 to £14.5 million at ten-year present value. These comparatively low figures were based on the assumption that the majority of dutyholders with hazardous sources of AOR were already managing the associated risks but would incur costs associated with refreshing documents and processes to ensure continued compliance. The impact assessment will be revised as part of the formal consultation of stakeholders.

### Routes to Implementation

9. Transposing via a copy-out approach was explored initially. However this was not considered desirable as many of the Directive Articles were already enshrined in existing regulations and duplicating them would not be in line with regulatory simplification.
10. Relying on existing legislation, possibly supported by supplementary guidance or an Approved Code of Practice was also fully explored. However this was not considered a viable option for implementing the Directive because a number of

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<sup>2</sup> The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995

<sup>3</sup> International Commission for Non-Ionising Radiation Protection - ICNIRP

the Directive Articles require regulatory provisions in order to be properly implemented. Failure to do this would be contrary to the Government Policy on transposition and likely to incur infraction proceedings.

11. Implementing through a new set of regulations limited to the minimum required to legally transpose the Directive would be in line with regulatory simplification and would also constitute proper transposition. This would involve using the HSWA and the MHSWR as the basis for regulatory control, coupled with other relevant regulations<sup>4</sup> and complemented by new regulations reflecting the legal minimum required by the Directive. The benefits and risks of this route are summarised below:

12. *Benefits*

- Maintains existing level of worker protection
- Constitutes proper transposition.

13. *Risks*

- Reputational: regulating here does not support the sensible risk debate
- Misunderstanding by dutyholders, potentially resulting in unnecessary risk assessments and associated costs
- Challenging timescales, summarised in Annex A

14. This is recommended as the only legally tenable mechanism to implement the Directive in a way other than through more detailed regulations.

15. This option requires that effective arrangements are put in place to communicate with stakeholders and address likely concerns. This plan will be targeted in particular towards SMEs and will make it clear that if they only have non-hazardous sources of AOR (e.g. general office lighting) they will not be expected to do anything extra. Work will also be undertaken with key intermediaries, including the EEF, SBTAF, Federation of Small Businesses etc to ensure this message is well understood by their members. Additionally we will identify other routes of engaging with hard-to-reach SMEs and consultancy providers e.g. trade press and health and safety bodies. HSE does not envisage any change to its enforcement strategy under these new regulations.

16. The risks associated with the timescales are considered acceptable. Every effort will be made to meet the April 2010 implementation deadline.

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<sup>4</sup> The Health and Safety (Safety Signs and Signals) Regulations 1996; the Health and Safety (Consultation with Employees) Regulations 1996 and the Safety Representatives and Safety Committees Regulations 1977

### *Next Steps*

17. Formal consultation of stakeholders will take place over the summer of 2009. The consultation document and associated papers (including a revised impact assessment) will come to the Board for approval in July.

### **Action**

18. The Board is invited to agree the proposal at paragraph 11 and note the proposed handling strategy in paragraph 15.

### **Paper clearance**

19. The Senior Management Team cleared the original paper on 3 June 2009. The Director of Cross Cutting Interventions Directorate cleared the final paper on 18 June 2009.

**Annex A – Timetable for key activities involved in implementing the AORD via new Regulations**

<b>Action</b>	<b>Timing</b>
HSE Board directs on implementation strategy	23 June 2009
HSE Board clears consultation package	July 2009
Stakeholder consultation	August – October 2009
Analysis of consultation feedback	November 2009
HSE Board approves final package	December 2009
Regulations made and laid	January 2010
Regulations come into force	April 2010