

Health and Safety Executive Board		HSE/11/69	
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Implementation of the 3rd Indicative Occupational Exposure Limit Values (IOELV) Directive (2009/1611/EU)

Purpose of the paper

1. To advise the Board of the outcome of the public consultation on the implementation of the 3rd Indicative Occupational Exposure Limit Values (IOELV) Directive and to seek Board agreement for HSE to publish an updated version of the publication "EH40/2005 Workplace Exposure Limits" which will implement the Directive in the UK.

Background

2. The 3rd IOELV Directive lists 19 chemical substances, with an indicative occupational exposure limit being provided for each one. This is the third list of IOELVs established under the Chemical Agents Directive (CAD) (98/24/EC) - two previous IOELV Directives were implemented in 2001 and 2007 respectively.
3. The 3rd IOELV Directive was adopted by the Commission on 17 December 2009, and Member States have until 18 December 2011 to introduce national implementing measures. Member States are required to introduce national limits for these substances, taking into account the EU limit. Failure to implement the Directive fully by the required date may result in infraction proceedings against the UK.
4. In Great Britain, these EU limits are implemented as Workplace Exposure Limits (WELs), approved by the HSE Board and subsequently published in the HSE publication "EH40/2005 Workplace Exposure Limits".
5. Agreement for a public consultation on the proposed new Workplace Exposure Limits was obtained from the Reducing Regulation Committee (RRC) on 1 June 2011. The consultation on the proposed limits began on 2 June 2011 and ended on 4 August 2011.

Argument

6. EU exposure limits are recommended by the European Commission's Scientific Committee on Occupational Exposure Limits. Their inclusion in a Directive is considered by the tripartite Working Party on Chemicals which advises the Advisory Committee on Safety and Health at Work.
7. HSE's public consultation on the proposed limits was publicised via the HSE COSHH e-bulletin, which has over 5,000 subscribers, and on the HSE website. HSE web statistics show that over 6,000 copies of the consultation

were downloaded. However, only eight responses were received, and these were broadly positive. A report on these comments is at Annex 1.

8. The Regulatory Policy Committee (RPC) advised that a revised impact assessment should be provided following the public consultation, with further information on the costs and benefits to industry. Comments received during the consultation were taken into account and the impact assessment updated accordingly. The revised impact assessment was cleared by the Regulatory Policy Committee at the end of September 2011, and is available on request.
9. Publication of a revised version of “EH40 Workplace Exposure Limits” is the usual method of implementation for IOELV Directives. An updated version of the publication is proposed, which will be available on the implementation date of 18 December 2011. A draft of the revised publication “EH40/2005 Workplace Exposure Limits” is available on request. Industry is familiar with this method of implementation, so familiarisation costs are minimal.
10. HSE’s consultation relates to implementation of the Directive in Great Britain. The Health and Safety Executive for Northern Ireland (HSENI) carried out a separate consultation exercise - drawing extensively on the document prepared by HSE. The consultation ended on 19th August. The consultation in Northern Ireland received four responses and no issues were raised.
11. Implementation in Gibraltar is achieved when the Government of Gibraltar amends the Schedule to the Factories (Control of Chemical Agents at Work) Regulations 2003.

Action

12. The Board is invited to note the outcome of the consultation, and approve the update of “EH40/2005 Workplace Exposure Limits”.

Paper clearance

13. The paper has been cleared by Jane Willis.

A report on the results from the public consultation on the 3rd Indicative Occupational Exposure Limit Values (IOELV) Directive**Background**

The formal public consultation on the 3rd IOELV Directive ran from 2 June 2011 to 4 August 2011.

It was publicised on the HSE website and in the Control of Substances Hazardous to Health e-bulletin, which has over 5,000 subscribers. A total of 277 companies and government departments were notified of the consultation by email, and a further 33 companies and government departments were sent letters of notification.

HSE web statistics show that 6,045 copies of the consultation document were downloaded; this prompted eight responses which are summarised below. Two of the respondents asked that their responses are not made public. Two responses were received after the consultation ended and have been included in the results.

Profile of respondents

Size of organisation	Numbers of responses	Type of organisation	Number of responses	Respondent Position within organisation	Number of responses
1000+	4	Trade Association	2	Employer	2
250 to 1000 employees	1	Other	2	Trade union official	1
50 to 249 employees		Trade Union	1	Training provider	
10 to 49 employees		National government	2	Employee	3
1 to 9 employees		Industry	1	Safety Representative	
Self employed				Other	2
Not applicable	3				
Total	8		8		8

Responses to the consultation document

Question 1: Do you agree that new and revised Workplace Exposure Limits should be established for the substances listed in the European Commission's 3rd list of Indicative Occupational Exposure Limit Values to align them with the IOELV's?

Substances

One respondent raised concerns about sulphuric acid mist, 1,4 Dioxane and tertiary-butyl-methyl-ether. One further respondent also commented on 1,4 Dioxane. Two respondents made comments about Mercury. One respondent supplied information on the measurement of sulphuric acid mist.

Comments

Mercury

Two respondents advised that they had kept the previous national WEL in place and that the new limit relating to Mercury posed no issue for them. However, one respondent mentioned a decommissioning process, which may cause some difficulties with compliance. They also commented that they found urinary measurement a more effective occupational hygiene tool.

HSE has taken the information provided into account. The respondents' information on the minimal impact of the introduction of the WEL for Mercury has been noted.

1,4 Dioxane

Two respondents raised concerns about 1,4-Dioxane, relating to the removal of the STEL, and a perceived reduction in worker protection.

HSE has noted these concerns. The hazards to human health of each substance in the Directive, and the level of exposure at which each could cause harm to health, have been examined by the European Commission's Scientific Committee on Occupational Exposure Limits (SCOEL), a body of experts drawn from throughout the European Union, including from the UK. The IOELVs proposed by SCOEL are health-based, and are set at a level at which no harmful effects would be predicted to occur to workers or to their progeny as a result of repeated exposure throughout their working lifetime.

Sulphuric acid mist

One respondent raised concerns about setting a limit for Sulphuric acid mist, due to its carcinogenic classification. A further respondent provided information on the measurement of sulphuric acid mist.

The specification of the 'thoracic fraction' in the sulphuric acid (mist) IOELV was the result of an industry proposal to the Commission. The absence of a reliable and validated measurement method for this fraction was known to industry and the Commission when the proposal was made - it was not considered to be sufficiently problematic that the Directive be delayed, or that the limit for Sulphuric Acid (mist) should be removed or applied without specifying the thoracic fraction. Authorities across the EU and industry are together making progress in establishing a validated method for measuring this fraction.

Tertiary-Butyl-Methyl-Ether

One respondent raised a concern about the increase in the WEL for tertiary-butyl-methyl-ether, and the perceived reduction in worker protection.

HSE has noted these concerns. The hazards to human health of each substance in the Directive, and the level of exposure at which each could cause harm to health, have been examined by the European Commission's Scientific Committee on Occupational Exposure Limits (SCOEL), a body of experts drawn from throughout the European Union, including from the UK. The IOELVs proposed by SCOEL are health-based, and are set at a level at which no harmful effects would be predicted to occur to workers or to their progeny as a result of repeated exposure throughout their working lifetime.

Question 2: In your view, how does this consultation document present the different policy issues involved in this matter? Please tick one box.

Very well	1
Well	6
Not Well	
Poorly	
One respondent did not complete the template.	

Question 3: Is there anything you particularly liked or disliked about this consultation?

One respondent completed this question; they liked the clarity of the proposal for change.

Question 4: Are there any further comments you would like to make on the issues raised in this consultation document that you have not already responded to in this questionnaire?

One respondent stated that suppliers should be "required to provide the most up to date safety data sheets that would take into account changes that affect this current list of substances". The Registration, Evaluation, Authorisation and restriction of Chemicals Regulations state that suppliers of chemicals must provide an up to date safety data sheet if a substance is dangerous for supply.

Conclusion

All the comments have been considered. As there were no significant issues of concern, HSE will proceed to implement the 3rd IOELV Directive by December 2011 and will produce an updated version of the HSE publication 'EH40/2005 Workplace Exposure Limits.'

Gill Smart
COSHH & chemical carcinogens team
Health and Safety Executive

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