

| Health and Safety Executive Board | | HSE/14/74 | |
|-----------------------------------|----------------|-------------|------|
| Meeting Date: | 1 October 2014 | FOI Status: | Open |
| Type of Paper: | Above the Line | Exemptions: | |
| TRIM Reference: | 2014/343767 | | |

Proposed Mines Regulations 2014

Outcome of public consultation

Purpose of the paper

1 To update the Board on the outcome of the consultation on the proposed Mines Regulations 2014, and seek agreement to recommend to the Minister for Disabled People that the proposed Regulations are introduced on 6 April 2015.

Background

2 This is one of the five 'sector' consolidations the Government committed to completing by the end of 2014. The Board approved the public consultation exercise in January (HSE/14/08) and the eight-week public consultation on the proposed Mines Regulations 2014 closed on 1 June.

3 In delivering this major consolidation project, HSE has taken the opportunity to develop for the mining sector bespoke, modern, goal-setting legislation more closely aligned to that which has been successful in regulating other major hazard sectors.

4 The existing deeply prescriptive law (45 sets of regulations and 2 Acts of Parliament, comprising well over a thousand separate provisions) is totally out of step with modern health and safety regulation. Anomalies such as individual mine managers (employees) being legally responsible for safety at mines will be rectified. Whole sets of regulations that have been overtaken by more recent regulatory developments will be revoked, such as The Coal and Other Mines (General Duties and Conduct) Regulations 1956 and The Mines (Manner of Search for Smoking Materials) Regulations 1956, which were rendered unnecessary by the introduction of the Health and Safety at Work etc Act 1974. There are other examples.

5 Total employment in deep coal mines is now below 2,000 (compared to 15,000 at privatisation in the mid-nineties) and could be fewer than 800 by the end of 2015.

6 The mining of other minerals is replacing coal as the main activity. Non-coal mining comprises a large potash mine, a large salt mine, five gypsum mines, and assorted smaller other mineral mines. Total employment is similar to coal today, with the potash mine alone employing around 1,000 people. A proposed major new potash mine potentially employing over 1,000 could be operating in North Yorkshire within five years.

Argument

7 Recognising the scale of the proposed legislative change, the Board recommended in April 2013 (HSE/13/31) that HSE use the maximum time available within the Government's timetable to deliver the work. This would help ensure

industry buy-in and that the new legislation would have a positive effect on safety conditions in the mining industry. Ministers endorsed this and agreed to introduce the regulations as late as possible in this Parliament.

8 HSE has developed a single set of draft Regulations (Annex 1 with the draft Impact Assessment at Annex 2) laying down more goal-setting duties with a very clear focus on assessment and control of the major hazards inherent to deep mining. In doing so they preserve the principles of current legislation developed in the wake of catastrophes. The proposals provide for more flexibility in the way that mine operators deliver safe systems of work, subject to the necessary standards of safety being achieved.

9 HSE recognised that this would represent a significant structural change to the familiar regulatory regime so undertook substantial engagement with mine operators, trade unions and other stakeholders in the 18 months before formal consultation. These discussions fed into the development of the initial proposals, and we have tried to address and assuage concerns where possible.

10 All key stakeholders were alerted to the eight-week formal public consultation (CD267) on HSE's website. There were over 1,100 downloads with 31 responses submitted. The main group of respondents was mine operators (16). Responses were received from three trade unions, two consultancies and eight other organisations.

Responses

11 A detailed summary is included at Annex 3. There was strong support from mine operators, with the numbers agreeing with the main proposals ranging from 10 to 15 out of the 16 respondents. A number of responses provided positive suggestions which have enabled HSE to improve the draft regulations and supporting guidance.

12 There was disagreement to all of the proposals (set out in almost identical responses) from the National Union of Mineworkers (NUM), the National Association of Colliery Overmen, Deputies and Shotfirers (NACODS), Thompsons Solicitors (who work with the NUM) and the Midland Institute of Mining Engineers.

Trade union responses

13 The two coal TUs said there is already a wealth of fit for purpose legislation in place to protect their members. To date, further meetings with them have not resulted in information indicating that either has altered its view.

14 The Union of Democratic Mineworkers (UDM) did not send a formal response but HSE has undertaken significant engagement with them. Their main concern (echoed by the NUM and NACODS) has been to retain the existing worker inspection rights in the Mines and Quarries Act 1954 (MQA). HSE's view is that the Safety Representatives and Safety Committees Regulations 1977 (SRSCR) provide adequate rights for workplace inspections. The UDM has recently indicated that they are content that the supporting guidance will cover both this concern, and the issue of the circumstances in which workers' representatives can send inspection reports to HSE. They would also like the selection of worker inspectors to remain the right of the majority trade union, but we do not propose retaining this.

15 The British Association of Colliery Managers (BACM) did not submit a formal response but have indicated that they are satisfied with the key elements of the proposals. BACM represents mine managers from whom primary duties are being lifted and moved to the operators.

16 Unite represents some workers in non-coal mines. Apart from wishing to retain monthly safety representative inspections, rather than the maximum three month intervals laid down in SRSCR, and a concern about the threshold levels for the application of COSHH to inhalable and respirable dust (which is a much broader issue which HSE is already considering), they presented no objection to the main proposals.

17 The GMB also represents some non-coal mine workers but did not submit a formal response. However at both pre- and post-consultation meetings, GMB representatives were supportive.

Mines rescue

18 Board paper HSE/14/08 explained that the Secretary of State-approved coal mines rescue scheme, established at privatisation when there were more than 30 large deep coal mines, was becoming untenable now there are only a handful. Mines Rescue Service Ltd (MRSL) who run the only approved scheme have said that cannot continue to fund it beyond April 2015. They have been making changes to their business model to ensure that they are still in a position to deliver rescue services in the future to those mines that need them.

19 Even without this reform of mining legislation, some legislative changes would have been necessary to permit alternatives to the current delivery model with so few large coal mines remaining, and the two largest ones scheduled to cease production by the end of 2015. The new regulations will no longer require coal mines to be a member of an approved scheme but instead require all mine operators to have in place effective arrangements for rescue. MRSL's response to the consultation supported these proposals.

Supporting guidance

20 A new guidance document is being produced to support the regulations and advise on how to comply with the key requirements. It is being developed in collaboration with industry stakeholders principally via the Mining Industry Safety Leadership Group (MISLG), which represents the major operators, trade unions and other relevant stakeholders, and will be available when the regulations are made.

21 As the new guidance has developed we have been able to address many issues raised at formal consultation.

Summary

22 The long history and tradition of coal mining makes the position taken by the NUM and NACODS understandable. However, HSE considers that maintaining the status quo is not tenable given the issues identified in paragraph 3 and the on-going change in the industry. Unfortunately there have been no suggestions from either union for alternative ways forward. Plans are being developed by the Mines Inspectorate to assist sector stakeholders in the run up to the new regulations coming into force and for as long as is necessary afterwards. In particular, the Mines Inspectorate will maintain dialogue with the unions at both national and local levels, in order to offer ongoing assurance about maintenance of standards.

23 After the formal consultation period, HSE discussed the broad findings and outline way forward with the MISLG. The Group endorsed the draft regulations subject to some relatively minor amendments which HSE has subsequently made, although the NUM and NACODS (who are members of the Group) retained their opposition.

24 HSE and the majority of industry stakeholders believe that the goal-setting draft regulations represent an improvement to the current legislative landscape, and will ensure the preservation of existing safety standards while allowing adaptation to reflect, for example, technological change. The new regulations will provide a better regulatory environment for the expanding non-coal mineral mining industry, more akin to the goal-setting nature of that covering other major hazard industries.

Devolved Administrations

25 The proposed regulation will apply across GB. There are very few mines in the devolved administrations. Scotland has two small mineral mines and Wales has a handful of coal and other mineral mines. Officials in the Scottish and Welsh Governments have been kept informed of progress and the intended timing for the introduction of the new regulations. No objection has been raised.

26 Northern Ireland has also been kept up to date with progress.

Action

27 The Board is asked to:

- a. note the outcome of the consultation on the proposed Mines Regulations 2014; and
- b. recommend to the Minister for Disabled People that the proposed Regulations are implemented on 6 April 2015.

Paper clearance

28 This paper was cleared by the Regulation Committee on 2 September 2014.