

Summary of responses - HSE's consultation on the proposal for new Regulations on Health and Safety in Mines.

Background

The consultative document (CD267) on the consolidation of mining legislation, taking forward one of Professor Löfstedt's recommendations, was published on 7 April 2014. The consultation closed on 1 June 2014.

CD267 invited views on proposals for new regulations on health and safety in mines to replace all the existing legislation. This report summarises the responses received.

A list of publicly available responses can be accessed through HSE's Knowledge Centre by email to: - KnowledgeCentre@hse.gsi.gov.uk or calling direct on 0151 951 4382.

Summary of responses

The consultation document was downloaded 1158 times. HSE received 31 responses, including three in draft form. Two partially completed drafts have been included in the final analysis. Five respondents asked that their responses be withheld from the public, but their comments have been considered in this analysis.

Most respondents replied online, or submitted an equivalent word template. Two respondents provided free-text narrative by e-mail and, where it was clearly appropriate to do so, we have attributed the responses to the appropriate questions. Only one of these responses has been included in the summary, as one provided information not pertinent to the consultation.

Total number of responses received (including drafts) - 31

Total number included in summary (less 1 draft and 1 e-mail response) – 29¹

Who contributed to the public consultation?

- Industry – 16 respondents:
 - 4 mineral extracting companies (5 responses from individuals in one of these 4 companies);
 - 3 from two tourist mines,
 - 2 from one disused ironstone mine;
 - 2 mine development companies;
 - 1 storage mine.
- Trade Unions – 3
- Mining consultancies – 2

¹ Two responses were not included in our analysis as they did not provide information pertinent to the consultation.

- Others – 8 respondents:
 - an awards and skills standard setting body;
 - a mines rescue organisation;
 - a trade association;
 - a public body;
 - two professional membership associations;
 - a rail infrastructure provider; and
 - a firm of solicitors.

Replies were received from

- Employees – 6
- Employers – 8
- Health and Safety Professional – 2
- Trade Union Official – 3
- Training provider – 1
- Not stated – 9

Responses to the questions

HSE asked consultees to consider a number of questions on the proposed regulations and to support their answer with some further explanation. Not all respondents answered every question. Similarly, not all gave comments to support their answer.

The following numerical analysis presents findings with reference to the number of respondents to particular questions, including those where no answer was recorded.

Our analysis includes all 29 responses to each question to determine a response rate. We have also considered every respondent's comments or views.

Numerical analysis of the returned public consultation questionnaires

Scope

Q1. Do you agree or disagree with the proposed scope of the new regulations i.e. that they apply to all mines?

Summary

The analysis of the responses were grouped as follows

- Agree – 18 (11 industry, 2 consultancies, 1 TU, 4 others)
- Disagree - 8 (4 industry, 2 TU, 2 other)
- Not answered – 3 (1 industry, 2 other)

Respondents' comments

Agree

The majority of responses agreed with the proposed scope of the new regulations and accepted the argument for having the same level of controls over mine-specific hazards in all types of mine, eg extracting mines and tourist mines. Others, although agreeing with the proposed scope, believed that this was an opportunity to differentiate between extracting mines and others. One respondent, whilst agreeing with the scope of the proposed Regulations, commented that the requirements of the legislation must be proportionate to the risks involved.

Disagree

Eight respondents disagreed with the proposal with three from the same company saying that demarcation between an above-ground processing plant and the mine is unclear and could mean the former was within scope, which would be an extension of the current position.

Four respondents believed that the current suite of legislation dealt adequately with different types of mines, and the different range of hazards experienced in them.

HSE response

The current legislation applies to all mines to a varying extent, with some applying only to certain types of mine. It does not apply to abandoned mines.

Several respondents questioned whether the new Regulations should only apply to mines where mineral extraction takes place. We did consider limiting the scope to these mines, and sought views from a number of tourist mines who said they would wish to remain in scope.

The new Regulations will apply to all mines but the duty to control certain hazards will only be relevant where such hazards exist. No mine will be subject to more requirements than at present. For example, if a tourist mine presents no likelihood of flammable gases, the mine operator will not need to take any specific action in this respect.

Activities at abandoned mines will, as now, not be subject to mines legislation.

Principal dutyholder

Q2. Do you agree or disagree with the proposal to make the mine operator, i.e. the person or corporate body in control of the operation of the mine, the principal duty holder under the new regulations?

Summary

The analysis of the responses were grouped as follows

- Agree – 20 (13 industry, 2 consultancies, 4 others, 1 TU)
- Disagree – 7 (3 industry, 2 TU, 2 others)
- Not answered – 2 (2 other)

Respondents' comments

Agree

The majority of respondents agreed with the proposal acknowledging that the duties should be on the corporate body or person in overall control of the mine and in line with modern health and safety legislation. One respondent questioned whether the shift of responsibilities from the mine manager to the mine operator/owner would lead to the mine owner appointing colliery managers as mine operators.

Disagree

Two respondents said that there was some confusion between the duties placed on the mine owner and the duties placed on the mine operator. Four respondents believed that the new Regulations would not improve management control. One respondent disagreed but gave no reason.

HSE response

We welcome the strong support for this change which removes the anomaly of individual senior employees having primary legal responsibility for safety in mines. . We will provide guidance on responsibilities of new entity of the mine operator.

Mines rescue

Q3. Do you agree or disagree with our mines rescue proposals as set out in paras 22-26?

Summary

The analysis of the responses were grouped as follows

- Agree – 21 (15 industry, 1 consultancy, 1 TU, 4 others)
- Disagree – 4 (2 TU, 2 others)
- Not answered – 4 (1 industry, 1 consultancy, 2 others)

Respondents' comments

Agree

There was strong support for this proposal, with respondents from across the sector acknowledging that the Secretary of State-approved rescue scheme for coal mines (the Scheme) was no longer viable. Some non-coal respondents said that they had commercial arrangements in place with Mines Rescue Service Ltd (MRSL) (the current provider of the Scheme).

Disagree

Four respondents believed the proposal would do nothing to improve health and safety. They made the point that current prescriptive detail would be lost. They also questioned the lack of any specific future requirement for owners/operators to share resources.

HSE response

We welcome the strong support for the proposals and acknowledge the concerns expressed by the four respondents. The Scheme is no longer viable given the major decline in the number of coal mines. However, MRSL will continue to provide rescue services on a commercial basis (as it does now for some non-coal mines). The new Regulations will require the mine operator to have in place suitable and effective arrangements for escape and rescue. The supporting guidance will provide information for the mine operator about the level of provision that would be appropriate, and HSE's mines inspectors will examine these arrangements as part of their regulatory interventions.

Worker inspections

Q4. Do you agree or disagree that the provisions of section 123 of the Mines and Quarries Act 1954 (MQA) are unnecessary given the provisions in the 1977 Regulations and the proposed regulation 18?

Summary

The analysis of the responses were grouped as follows

- Agree -17 (13 industry, 1 consultancy, 3 others)
- Disagree – 7 (2 industry, 3 TU, 2 other)
- Not answered – 5 (1 industry, 1 consultancy, 3 others)

Respondents' comments

Agree

The majority of respondents agreed that the provisions of s123 MQA were unnecessary, given the proposed regulation 18 and the current requirements of the Safety Representatives and the Safety Committee Regulations 1977 (the 1977 Regulations). Several commented that the 1977 Regulations confer

similar rights, while others welcomed the right of the safety representatives to report concerns regarding imminent risk to HSE, believing that it added a degree of transparency.

Disagree

Five respondents believed that the removal of s123 MQA was a reduction in legal safety standards, and did not agree that the proposal would lead to adequate alternative provisions. They said they would like to see the requirement for monthly inspections and the submission of reports retained. They also believed that any proposals that removed the requirement to use 's123 inspection reports' would not maintain or improve current safety standards.

In contrast, another respondent disagreed with the new provision about reports of serious risk, stating that there should be no need to send reports to the HSE and that an employee could raise concerns about a health or safety related issue at any time.

HSE response

We believe that the 1977 Regulations confer sufficient rights for inspection of the workplace by representatives of the workforce. They also provide for more frequent safety representative inspections 'where there has been a substantial change in the conditions of work ... since the last inspection', which is the case in the dynamic extracting mine and the supporting guidance will encourage the maintenance of monthly inspections where it is appropriate to do so.

The proposed regulation 18 provides a right for safety representatives to make a report in writing to the mine operator about anything that presents an imminent risk of serious personal injury arising from a work activity below ground at a mine, and to send a copy of the report to HSE. This is similar to the provision in s123 MQA.

The proposed regulation 18 (and the 1977 Regulations) concern safety representatives appointed by a recognised trade union. At workplaces that do not have trade union appointed safety representatives, the Health and Safety (Consultation with Employees) Regulations 1996 apply. These Regulations require employers to consult either their employees on matters relating to their health and safety at work directly or representatives elected by their employees. We intend to clarify this in guidance.

Qualifications

Q5. Given the proposed duty on the mine operator to ensure all people are competent for their work, and the existing structure that is in place for gaining appropriate qualifications, do you agree or disagree with the proposal to remove the existing requirements on HSE approval etc of qualifications?

Summary

The analysis of the responses were grouped as follows

- Agree – 18 (15 industry, 1 consultancy, 2 others)
- Disagree – 7 (3 TU, 1 consultancy, 3 others)
- Not answered - 4 (1 industry, 3 others)

Respondents' comments

Agree

The majority of respondents agreed with the proposal and stated that as recognised qualification frameworks were in place, the onus should be on the mine operator to ensure that employees have appropriate qualifications and experience for their specific roles. Others believed that HSE should not have responsibility for approving and accrediting qualifications.

Disagree

Some respondents believed that HSE was distancing itself from any involvement in establishing fundamental safety criteria, eg qualifications for mining activities, and that it should still be HSE's role to agree with trainers etc that courses are appropriate. Further that the definition of competence in the Regulations makes no reference to qualifications.

Some concern was expressed that mine operators would be able to apply their own discretion when deciding whether a person was competent and that HSE should remain actively involved in the approval of qualifications. Some said that recognised qualifications for key roles in the mining industry should be maintained.

HSE response

Ensuring competence of all workers to undertake the tasks allocated to them is clearly the responsibility of their employer. The competence duty in the new Regulations places a further duty on the mine operator to ensure all workers at the mine – whether their employees or not – are competent. This will require the mine operator to exercise oversight to ensure that all employers, contractors etc are ensuring competence. Although we will no longer provide certificates of attestation of qualifications, we will examine a mine operator's arrangements for ensuring competence. The last few years have seen the introduction of new qualification frameworks in GB to which we provide input. Although qualifications alone will usually not demonstrate competence, they will remain a vital element of many jobs.

Notifications and consents

Q6. Do you agree or disagree with the proposal to remove the need for the vast majority of notifications and consents?

Summary

The analysis of the responses were grouped as follows

- Agree – 20 (14 industry, 2 consultancy, 3 others, 1 TU)
- Disagree – 5 (2 TU, 1 industry, 2 others)
- Not answered - 4 (1 industry, 3 others)

Respondents' comments

Agree

The majority of responses agreed with the proposal, stating that some notifications were outdated or served no useful purpose. Some said that the mine operator's safety management system should have documented risk assessments and procedures in place for most of the activities that currently require a notification. One said that the current requirements are bureaucratic, and the fact that something is notified to HSE does not necessarily make it safe.

Disagree

One respondent, while acknowledging that notification to HSE was mainly a paper exercise, believed that the act of thinking something through prior to making the notification served to enhance awareness of the hazard. Others made the point that notifications offer the opportunity for HSE to consider the appropriateness of proposed controls and to intervene if HSE thought it necessary.

HSE response

The strong support confirms that many of the notifications required under the current legislation are not considered to add significantly to health and safety. Under the new Regulations, mine operators will still be required to notify HSE in certain circumstances, such as before beginning or at the end of mining operations, or where a tip is deemed to represent a significant hazard. This will ensure that HSE is aware of mining operations or potential hazards and provides the opportunity for early engagement with the mine operator.

Inhalable dust

Q7. Do you agree or disagree that the proposal set out in paras 35-37 will provide adequate controls on dust in coal mines?

Summary

The analysis of the responses were grouped as follows

- Agree – 13 (10 industry, 3 others)
- Disagree – 7 (3 TU, 1 consultancy, 3 others)
- Not answered - 9 (6 industry, 1 consultancy, 2 others)

Respondents' comments

Agree

Several supported the fact that the proposals maintained the current action levels, with one making the point that it was vitally important to identify and maintain the current level for respirable crystalline silica (RCS) which is achievable in coal mines. Of the ten respondents from industry that agreed with the proposals, two were from the coal sector.

Disagree

Of those respondents that disagreed with the proposals, four did so on the basis that regulations introduced in 2007 were being replaced with regulations made in 2002, ie the Control of Substances Hazardous to Health Regulations 2002 (COSHH), with two of those saying that they did not enhance health and safety. One respondent thought it important to control (minimise) respirable dust in coal mines and felt that specific guidance on sampling should be provided, along with health surveillance for everyone exposed to respirable dust. One respondent believed that whilst it was sensible to bring coal mines within COSHH legislation, it was disappointing that HSE had not taken the opportunity to align the exposure levels, in particular for RCS. One respondent disagreed with the proposals on the basis that they believed the current exposure levels for dust in COSHH and RCS in the proposed Regulations were inadequate and unsafe.

HSE response

The proposed Regulations, which bring coal mines fully into the scope of COSHH, maintain the current requirement to prevent exposure to inhalable dust, or where that is not reasonably practicable to reduce exposure to as low a level as is reasonably practicable. They also maintain the requirements to have arrangements in place to sample the levels of respirable dust and for health surveillance. There should therefore be no change in the way dust is controlled at coal mines in future.

Supporting guidance for dust control, including specific guidance on air sampling, is being produced.

COSHH dust threshold levels were not in scope of this review, the aim of which is to consolidate and modernise legislation. We will, however, consider these comments as part of the current work on dust/COSHH levels.

Supporting guidance

Q8a. Do you agree or disagree with the proposal to produce a single supporting guidance document in place of the current ACOPs?

Summary

The analysis of the responses were grouped as follows

- Agree – 20 (14 industry, 2 consultancy, 3 others, 1 TU)
- Disagree – 5 (1 industry, 2 TU, 2 others)
- Not answered - 4 (1 industry, 3 others)

Respondents' comments

Agree

The majority agreed with the proposal to replace the Approved Codes of Practice (ACOPs) with one single guidance document. Most agreed that having all the information in one place would benefit users. Several said that the guidance must not be used to extend perceived 'good practice' in coal mines to all mines, or to introduce or retain prescriptive measures. One respondent commented that whilst the number of existing ACOPs was confusing, they contained a lot of valuable information, and that it would be sensible to summarise this in the new document, with one believing it should have the same status as the existing ACOPs.

Disagree

Five respondents disagreed with the proposal, four on the basis that they were asked about guidance that had not yet been drafted and was not part of the consultation. There was also concern that removal of 'approved' status from the guidance will result in less compliance with it.

HSE response

Draft guidance was available during consultation and work will continue in collaboration with stakeholders so it can be published before the new Regulations come into force.

Several respondents wanted it to carry the same 'weight as the ACOP'. The purpose of both ACOPs and other HSE guidance is to provide practical advice on how to comply with the law. Neither is mandatory. Inspectors will refer to the guidance when seeking compliance with the law.

The new guidance will provide clear advice on how to comply with the new Regulations

Supporting guidance

Q8b. Do you agree or disagree with the proposal to withdraw the ACOP. 'The use of electricity in mines' and replace it with new guidance on the application of EAW in mines?

Summary

The analysis of the responses were grouped as follows

- Agree – 15 (11 industry, 1 consultancy, 3 others)
- Disagree – 7 (3 TU, 2 industry, 2 others)
- Not answered – 7 (3 industry, 1 consultancy, 3 others)

Respondents' comments

Agree

Of the 22 respondents who answered the question, 15 supported the proposal to withdraw the 'Use of electricity in mines' ACOP and replace it with new guidance. Several thought that the guidance would be helpful to personnel without specific mining experience, for example at non-producing mines, enabling them to familiarise themselves more easily with applicable guidance. One commented that it was better for guidance to be an extension of well known procedures rather than a completely different set of rules.

Disagree

One respondent thought that replacing an ACOP with guidance was a deregulatory step because ACOPs have a different status to guidance. Others saw no use in replacing the ACOP with guidance feeling that the current ACOP was fit for purpose and should remain in force. Two respondents commented that if the ACOP was considered ineffective, there should be a consultation on whether it should be removed. They also queried why it could not just be changed, rather than abolished altogether.

HSE response

The 'Use of electricity in mines' ACOP provides practical guidance on the Electricity at Work Regulations 1989 (EAW) as they apply at mines, including regulations 17 – 28 and Schedule 1 which are specific to mines. HSE proposes to revoke regulations 17- 28 and Schedule 1. This will remove duplication because we consider that the remaining provisions in EAW, along with other health and safety legislation of general application, provide equivalent protection. The ACOP will be replaced by updated guidance on the use of electricity in mines.

HSE does not consider removal of an ACOP and replacing it with guidance as a deregulatory step. The purpose of both ACOPs and other guidance is to provide practical advice on how to comply with the law – and the revised electricity guidance will continue to provide this.

Impact Assessment

Q9. Do you agree or disagree with the initial estimated costs and benefits included in the IA?

Summary

The analysis of the responses were grouped as follows

- Agree – 11 (10 industry, 1 other)
- Disagree – 6 (4 industry, 1 TU, 1 other)
- Not answered – 12 (2 industry, 2 TU, 2 consultancy, 6 others)

Respondents' comments**Agree**

Eleven of the 17 answering this question agreed with the initial estimated costs and benefits included in the impact assessment. Two agreed that the costs and benefits seemed reasonable. One agreed on the proviso that the guidance was concise and reasonable. One commented that the time spent on sorting out the ACOPs and various regulations was very high, and encouraged inefficiency in the regulatory bodies and the commercial operations. They believed that the cost benefit would be positive and simplifying the system would result in better overall safety systems in UK mining.

Disagree

Respondents that disagreed with the costs and benefits included in the Impact Assessment were in the minority. Several provided comprehensive responses, some of which are summarised below.

- Not enough consideration had gone into the effects on non-extracting mines whose budgets were usually very tight and/or run by volunteers.
- There were big issues for large organisations in terms of the creation of a Mine Operator and no real benefits.
- The change for employees and employers from a largely prescriptive legislative framework was going to take some significant familiarisation and training. In larger mines, costs would be significantly greater than indicated in the IA.
- The removal of notifications etc may reduce administrative burdens on HSE, but not operators. They would still need to go through the same administrative processes to ensure and demonstrate safe operations and without the 'back stop' of the HSE specialists - may need to do more.
- Costs should not be calculated over 10-years, as these costs would be met over much shorter periods by the operators. (This is a reference to the expected closure of two deep coal mines by 2015).

- The loss of the Mines Rescue Scheme would have significant cost implications for small mines. Rescue provision was currently affordable through the scheme by total reliance on external provision and mutuality. In future this would be either unavailable or a prohibitive cost meaning small mines would not be able to afford to operate safely.
- Experience of cost benefit assessments in relation to health and safety changes was that the costs are invariably overestimated and the benefits underestimated. Employers and dutyholders rarely had any idea of the potential costs, so tended to come up with wildly exaggerated estimates.
- Virtually every manager's rule - as required by existing legislation would need to be redrafted to remove reference to old legislation with consultation with employees on the changes and any implications for them being required.

HSE response

HSE has considered all of the responses and used the information gathered to inform the post-consultation Impact Assessment. A number of the negative comments were based on the misunderstanding of what is a complicated and technical exercise. Where appropriate, we have amended the Impact Assessment to take account of the points raised.

Impact Assessment

Q10a. Coal mines - as there would be no approved rescue scheme, an estimate is requested of your current costs for rescue provision (scheme fees plus the costs of your own arrangements).

Q10b. Coal mines - as there would be no approved rescue scheme, an estimate is requested of what your costs will be based on the rescue provision you think you will need (your own arrangements plus anything you may need to purchase from MRSL or elsewhere).

Questions 10a and 10b relate only to coal mines, the purpose being to obtain information from stakeholders on the current costs for rescue provision and anticipated costs once the requirement for coal mines to belong to an approved rescue scheme is removed.

Three respondents, a tourist mine, a mine owner and MRSL provided information.

Current costs

Industry costs ranged from £12 000 for rescue provision at a tourist mine to £800 000 for rescue provision at two operational and one non-operational mine. MRSL had operational costs £4.12 million covering a minimum of 36 full time rescue workers, a minimum of 10 suitably qualified and competent rescue officers and 3 Rescue Stations.

Future costs

Both industry respondents said they anticipated paying at least the same in future as they did now, but expected that there would be additional costs, either in the form of commercial costs associated with bought-in rescue provision, or for additional equipment and staff training.

MRSL said they had held preliminary discussions with some coal mine operators about future costs for a mines rescue service following removal of the Scheme. Indications were that most may budget for lesser costs than now, which whilst going some way towards the cost of training and equipment hire, would not meet the cost of 24/7 rescue cover. MRSL believed it would be sensible for mines to provide mutual support in the event of an emergency, if only on a regional basis and this would enable 'cost sharing' arrangements to be put in place. They believed that without agreed mutual support between mines and/or insurance arrangements to cover costs should an emergency requiring the attendance of mines rescue be required it was difficult to envisage small underground mines surviving.

HSE response

Although coal mines will no longer be required to be members of an approved rescue scheme, mine operators will be required to make arrangements for escape and rescue proportionate to the foreseeable emergency situations at their mine. HSE's inspectors will continue to examine these arrangements as part of their regulatory interventions, and mine operators will need to demonstrate that they are adequate. Some respondents believed that MRSL would cease to exist, with one commenting that they anticipated significant costs in providing adequate arrangements in anticipation of MRSL's demise.

MRSL have informed HSE and the mining industry that will continue to provide rescue services on a commercial basis, as it currently does for some non-coal mines, and this will be available to coal mines if they choose.

HSE has considered all of the responses and used the information gathered to inform a post-Consultation Impact Assessment.

Impact Assessment

Q11a. The consolidation of mines legislation into one set of regulations with one supporting guidance document is expected to make it easier to reference both the law and the guidance [IA paras 38 - 39]. To enable us to quantify this, it would be helpful if you could estimate the number of days you or your staff currently spend consulting mining regulations and/or ACOPs annually?

Q11b. Based on the draft regulations and the available draft of the guidance, please estimate (after the initial familiarisation phase) the time you or your staff might spend consulting mining regulations and guidance annually in the future?

The purpose of questions 11a and 11b was to obtain information from stakeholders in order to compare the time spent consulting law and guidance at present to the estimated amount of time they expect to spend consulting law and guidance in future.

Nineteen respondents provided some information or comment on the question, two of whom commented on the consultation exercise in general, but did not address the specific question. Ten did not answer the question or felt that it did not apply to them.

Current

Of those able to quantify the time spent, estimates varied from 1 day a year to 50-100 days per year depending on the type and size of the operation. The management team of a large extracting mine involved in major hazard management would be expected to consult legislation and guidance regularly, whereas the manager or owner of a small non-extracting mine with no significant hazards might consult legislation and guidance much less often.

Future

The vast majority of those responding to the question believed that the time they would spend consulting new Regulations and guidance would be the same or reduced. Several commented that as there was less legislation this should mean that they would spend less time consulting it, whilst others felt that having just one guidance document would remove the need for cross-checking would potentially save time.

The information gathered from the responses to this question has been used to inform the post-consultation Impact Assessment.

Q12. Are there any further comments you would like to make on the issues raised in this consultative document and the draft Regulations?

Respondents made various comments on issues raised in the consultation exercise, both on the proposed Regulations and guidance.

HSE has reviewed all of these comments and addressed all pertinent issues, either by refining the proposed Regulations or by the consideration of further guidance. The latter will be dealt with during the ongoing development of guidance in conjunction with relevant stakeholders.

HSE's conclusions from the public consultation exercise on the proposal for new Regulations on Health and Safety in Mines.

Following analysis of the responses received, HSE has made some minor amendments to the proposed Regulations and the Impact Assessment. No major changes were required as a result of the consultation exercise. Based upon views expressed at pre-consultation meetings and these public

consultation responses the proposal for new Regulations on health and safety in mines is supported by the majority of stakeholders.