Post consultation arrangements to take up the REACH derogation for professionals use of paint-strippers containing dichloromethane

Purpose of the paper

1. To inform the Board
   a. Of the outcome of consultation on amending the REACH Enforcement Regulations 2008 to take up a derogation from the restriction on the sale/use of paint-strippers containing dichloromethane (DCM) under the EU Registration, Evaluation, Authorisation and restriction of Chemicals Regulation (REACH) (overview in Annex 1) and
   b. that subject to any steer from the Board, HSE will ask Defra to make the necessary changes to the REACH Enforcement Regulations 2008.

Background

2. A previous Board paper HSE/11/53 set out
   a. The reasons for a REACH restriction on DCM-based paint strippers
   b. The availability of a derogation so that member states can allow professional use provided users are trained and competent

Taking up the DCM-based paint stripper derogation

3. Consultation with UK suppliers and users of paint strippers indicated a need to retain professional use of DCM and a willingness to establish the necessary training courses to benefit from the advantages of DCM compared to the available alternatives in certain situations. For example, the perceived ineffectiveness of alternatives has led to evidence of grinding or burning paint increasing the risk of worker ill health. Furthermore, the ability of DCM to effectively remove paint without damaging the substrate is valuable in the heritage sector, and its ability to remove paint quickly also provides advantages in certain situations.

4. When reasonably practicable alternatives are not available, DCM-based paint strippers can, in HSE’s opinion, be used safely provided basic precautions such as ensuring adequate ventilation and using the correct respiratory protective equipment (RPE) are taken.

5. HSE proposes to give effect to the derogation in line with UK Government policy to take full advantage of available derogations in EU law that benefit UK industry. HSE’s evidence assessment
estimates a net benefit to business of £17.5 million over a 10-year period.

Arrangements to ensure professional users are trained and competent

6. TSoL advised, and the European Commission confirmed, that Member States wishing to take advantage of the derogation must specify the required training and competency arrangements in domestic law. For the UK the appropriate legislative change is an amendment to the Defra-owned REACH Enforcement Regulations 2008 (S.I. 2008/2852).

7. The policy option taken forward to consultation was an open market for the provision of training together with a Government-approved competency assessment. In practice, HSE will issue a certificate of competence to professional users who have completed training and passed a competence-based assessment of the safe use of DCM-based paint strippers. Professionals with a certificate of competence will then be able to purchase and use DCM-based paint strippers.

8. HSE will provide operational guidance for inspectors outlining the expected enforcement action against dutyholders who fail to ensure professional workers have obtained the correct certificate of competence. Inspectors will be able to deal with the matter robustly as the absence of a valid certificate is clear evidence of a legal breach.

9. The proposed amendment to the REACH Enforcement Regulations 2008 has been assessed by Regulatory Policy Committee (RPC) who agreed it was a deregulatory measure that qualifies for the legislative ‘fast track’ route.

10. HSE was granted permission by the Home Affairs Committee and Reducing Regulation sub-Committee for an eight-week consultation which ended on 3rd January 2014.

Argument

Findings of consultation

11. A summary overview of the responses to the consultation is provided in Annex 1 and HSE’s response to the issues raised is in Annex 2.

12. The majority of respondents (27 out of 30) supported taking up the derogation and provided examples where DCM-based products were not only essential for certain stripping tasks, but in many cases safer than alternative procedures. Only two stakeholders (both manufacturers of alternatives to DCM) felt no justification existed for the professional use of DCM-based paint strippers.

13. HSE therefore proposes to work with Defra to move forward with the statutory instrument necessary to take up the DCM-paint strippers derogation.
Action

14. Subject to any steer from the Board, HSE will ask Defra to make the necessary changes to the REACH Enforcement Regulations 2008.

Paper clearance

Jane Willis, Divisional Director Cross Cutting Interventions Directorate (CCID)
Annex 1

DICHLOROMETHANE PAINT-STRIPPERS CONSULTATION OVERVIEW

1. This document provides a summary overview of the results obtained from the Dichloromethane (DCM) paint-strippers consultation carried out by the Health and Safety Executive (HSE) between the 7th November 2013 and 3rd January 2014.

Questions

Q1. Do paragraphs 16-18 fairly reflect the reasons why the derogation for the supply of DCM-based paint strippers to trained and competent users should be adopted in the UK?

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2. Most respondents (77%) felt the consultation document fairly reflected the reasons to take up the derogation.

“The relevant paragraphs give a good summary of the situation.”

“Yes we believe that paragraphs 16-18 do reflect the reasons for derogation to competent and trained users”

“The use of a DCM vapour retarded stripper with the appropriate measures to ensure vapour levels are not above WEL represents an overall safer option for professional contractors than would be the case if alternative chemical or physical methods of coating removal were used”

3. The majority of stakeholders who stated they did not agree that paragraphs 16-18 fairly reflected the reasons to take up the derogation, felt there were additional reasons, beyond those set out in the consultation document, why the derogation should be taken up.

“Epoxy resins cannot be removed mechanically e.g. with a scalpel, without causing physical damage to the substrate of the ceramic object. In my experience, only small quantities of DCM were used at a time in this practice, they could also frequently be used under extraction and therefore risk from the DCM was reduced”

“Without the derogation, the REACH DCM compliance would create an untenable situation for the removal of paint from military aircraft, when conducting tasks away from the dedicated industrial premises. There would not be a reasonably practicable solution to the restriction as airframes cannot always be moved to a dedicated facility or are too large.”

4. Two respondents (both manufacturers of chemical alternatives to DCM-based paint strippers) specifically questioned the justification to take up the derogation.

“Stripping of heritage structures; incorrect we and other manufacturers have removal products which do not do any damage to substrate and are not sensitive to any surrounding materials.”
“To suggest that DCM should be used rather than burning, grinding, or sanding lead paint is to totally ignore a much safer alternative such as a “working wet” system.”

Q2. Are there any overriding reasons why the UK should not adopt the derogation?

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5. A large majority of respondents (90%) supported the UK taking up the derogation.

“It would not be economically or technically viable to ban Methylene Chloride containing paint remover at the present time and therefore the UK has no option than to take up derogation.”

“I can’t see any evidence as to why the UK cannot adopt the derogation when other European member states can. UK businesses need to compete with their European counterparts and gain the same benefits that this derogation will provide.”

“The Derogation offers the professional coatings removal specialist access to the most effective means of coatings removal across the widest range of paint types, i.e. a DCM stripper. Providing competency in both identifying and adopting the required control measures [as] can be shown [by] this derogation allows professional users not engaged in a fixed industrial process the opportunity to conduct their paint stripping activities in-situ at the point of need.”

6. Two manufacturers of alterative paint-strippers did not support the derogation. Both stakeholders felt there were equally effective products available, which in their opinion, carried a lower risk to health than the using DCM.

“It should be unacceptable to send a person out to work, possibly alone, away from his/her place of work, using a known, narcotic, possibly fatally poisonous product when there is an array of non DCM paint remover products in production and for sale in the UK.”

Q3. Do you have any comments on the draft statutory instrument amending the REACH Enforcement Regulations 2008 (S.I. 2008/2852) in Annex 3?

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7. Most of the respondents were content with the draft regulations and did not ask for any changes. Of those respondents who made comments, one
respondent suggested the new statutory instrument placed an undue burden on business.

“COSHH should not be undermined with unnecessary regulations. Professional people nowadays are very likely to have an SSIP Audit on COSHH and Method statements which will make businesses more compliant fulfil their duties with documentation. But assessment on training and refreshers is contentious in burdening smaller businesses with different interpretations.”

8. However two respondents felt the regulatory burden provided in the statutory instrument was not sufficiently rigorous.

“If this derogation is allowed, a stringent licensing system should be required, it is still easy to obtain.”

Q4. Do you agree that a demonstration of competence test should be administered by HSE after industry-led training?

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9. Significant support (63%) for the proposed competence test to be administered by the HSE after industry-led training.

“Yes we believe that the HSE should administer the competence test. We suggest that the HSE keeps a database of those who have passed the test and that distributors, sellers etc. can have access to this database to if necessary check on who they are selling dichloromethane based strippers”

10. Some respondents questioned the need for skilled professional workers to receive additional training / competence assessment, whilst others highlighted that any training must be affordable for SMEs.

“It is not applicable to my field where practitioners are already highly trained and skilled”

“Yes, however, it is important that this should be kept to the minimum required for the derogation as this will impose a business time and budget cost on the business especially where multiple staff need to be trained and where use of DCM is essential but in small quantities and infrequent.”

Q5. Do you have any comments on the proposed competence assessment, including Annex 4?

11. A large majority of respondents agreed with the proposed competence assessment after training.

“I think Annex 4 covers all of the possible scenarios and the online exam under the eye of an authorised invigilator is the best answer”
“The proposed on line test appears the most practical & cost effective solution.”

“An online theory test taken at the end of a training course would be the most practical way to check that the risks of using these products and safe methods of working with them have been understood.”

12. A small number of respondents reiterated the concerns outlined in the consultation document relating to the cost of training / applicability to skilled workers and one stakeholder requested that the HSE ensures that it provides sufficient input into the process.

“We suggest that to support the training, clear guidance should be provided by HSE on when the use of DCM based paint strippers is appropriate, good working practice and control measures. This would form the basis of the learning objectives, course content and the competence assessment.”

Q6. Does the evidence assessment provide a reasonable assessment of the costs and benefits of the proposed measure, specifically:

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13. The majority of respondents felt the evidence assessment provided a reasonable assessment of the costs and benefits of the proposed measure.

“Although I find it very hard to comment on or judge the assessment of cost, the basis of the assessment seems to include fair representations of reality”

14. One respondent however, questioned whether the costs side of the evidence assessment should also include the costs of control measures (LEV etc).

“There appears to have been no account taken of the additional costs which should include air monitoring equipment (to ensure WEL of DCM is not exceeded), portable ventilation systems, and the CORRECT PPE required when using DCM. Ordinary gloves and masks are no protection.”

15. Another respondent questioned whether the costs associated with not taking up the derogation would be higher than predicted

“The inability to use DCM based paint stripper for the NDT of aircraft and components will result in early component rejection and replacement and the subsequent loss of aircraft availability to support operations. This will lead to increased maintenance costs and the additional transport costs associated with the transfer of items between the maintenance organisations and the operators”
Q7. Do you have any other comments or issues arising from this consultation document?

16. The majority of respondents used this opportunity to reaffirm the reasons why they believed the UK should take up the derogation for the professional use of DCM-based paint strippers, with a number of respondents commenting on the relative risks of DCM-based strippers compared to other products.

“The increased health hazards of alternative products currently marketed as replacements for DCM products does not appear to have been taken into account. Specifically that “Nitromors All Purpose Paint; Varnish Remover”; is highly flammable with 60% 1,3-Dioxolane where the DCM based “Nitromors Water Washable” product is not. Also the new product is 10% Methanol, a known toxin and carcinogen. Although the control of DCM has been made with the intention of protecting the health of the general public it appears to have inadvertently brought more dangerous products onto the market.”

“On large aircraft, the use of non DCM paint stripper or abrasive techniques will increase the process time by a factor of at least three. It will also subject workers and the working environment to increased levels of carcinogenic chromate dusts.”

“The absorption, metabolism and excretion of dichloromethane in humans has been studied in detail by many researchers. The use of dichloromethane has also been reviewed by several official bodies. All the evidence is that its use does not present a risk to health when used in well-ventilated conditions.”

17. A small number of respondents used the opportunity to reiterate their concerns over the planned approach

“Having taken part in this debate for over 20 years, the supporters of DCM (which we believe, with respect, includes the HSE) are back on their same old misinformation and arguments for keeping DCM paint strippers in the UK.”

“The complexity of administering the training tool / competency assessment should take into account that the demand / uptake may not be as widespread as was the case in 2009 when the ban was introduced”

Is there anything you particularly like or dislike about this consultation? Please provide comments.

18. The opportunity to participate in the consultation was generally welcomed by those who took part

“It's good to see that the H.S.E. is listening to peoples opinions and trying to find alternatives to just banning the use of certain substances”
## General

### Sectors represented by respondents

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### Respondents status

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Annex 2

Brief summary of issues arising in the DCM-based paint stripper consultation

Risk associated with DCM-based paints strippers
A large majority of respondents considered that DCM-based paint strippers should only be used when reasonably practicable alternatives are not available, and felt that DCM-based paint strippers can be used safely provided basic precautions, such as ensuring adequate ventilation and using the correct respiratory protective equipment (RPE), are taken.

Legal basis for specific DCM training and competence assessment
One respondent questioned whether a new law requiring specific training and a competency test before professionals can use DCM-based paint strippers was necessary. HSE has, however, been informed by the European Commission that member states, such as the UK, have no option but to create a legal basis for the necessary training and competence arrangements so that professionals can once again use DCM-based paint strippers.

A couple of respondents questioned if the statutory instrument and training and competence arrangements where sufficiently rigorous to control the risk from DCM-based paint strippers. HSE notes, however, that the majority of respondents agreed that translating the minimum legal requirements of the derogation, in line with UK Government policy, provides a sufficiently robust training and competence arrangements to ensure safe working practices for those using DCM-based paint strippers.

Training and competence regime
One respondent questioned if the HSE would be able to properly enforce the training and competence requirements for professional users of DCM-based paint strippers. HSE can assure all stakeholders that it will carry out all necessary enforcement action inline with our published Enforcement Policy statement and Enforcement Management Model.

http://www.hse.gov.uk/pubns/hse41.pdf
http://www.hse.gov.uk/enforce/emm.pdf

Evidence assessment
A small number of respondents questioned whether all relevant cost had been included in HSE’s evidence assessment. One respondent was concerned that the costs of control measures (LEV, RPE etc) were not included in the evidence assessment.

Paragraphs 78 and 79 of the evidence assessment explain that control measures required when using substances hazardous to health (including
DCM-based paint strippers) are contained within the COSHH Regulations. These regulations require any company using hazardous/dangerous chemicals to assess the risks and put in place safe working practices, including the use of Protective Personal Equipment (PPE) and ventilation as appropriate. As the requirements of COSHH are already in place, these costs cannot therefore be attributed to the costs of specific DCM training required by the derogation.

One respondent questioned if the increased labour required for DCM has been considered as alternatives that may take longer to work can be spread over a wider surface area freeing up labour time. Paragraphs 112-116 of the evidence assessment consider this issue and conclude there is no evidence to suggest that painter-decorators are able to properly use the longer time needed for alternative formulations to work. Any potential cost savings will depend on the behavioural response of workers including many factors, such as availability and proximity of other jobs, how easy it is to switch between different jobs, and individual factors such as motivation, being paid by hour or by job.

Respondents from the aerospace industry commented that the evidence assessment underestimates the increased maintenance costs and the additional transport costs if DCM-based strippers are not available for professional use. HSE will amend the evidence assessment accordingly.

The provision of guidance

A request was made during consultation that HSE support the process with guidance. HSE, in partnership with industry stakeholders, will provide a syllabus that outlines the essential elements of training that professionals wishing to use DCM-based paint-stripper are required to undertake.