

Health and Safety Executive Board		HSE/ 14 /08	
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Type of Paper:	Above the Line	Exemptions:	Annex fully closed: FOI s35; formulation of government policy
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Proposed Mines Regulations 2014: Consultation

Purpose of the paper

1. The Board is asked to agree to public consultation on the proposed Mines Regulations 2014 for a period of eight weeks from April 2014. We are proposing to lay the Regulations before the end of the year. The Regulations replace all existing legislation specifically covering health and safety in mines. As part of this, ten ACOPs supporting the existing law would be withdrawn and replaced by a single package of supporting guidance.
2. The draft consultation document, including the draft Regulations and impact assessment are attached at the Annex.

Background

3. Professor Löfstedt recommended that mining legislation – along with that from other sectors – should be consolidated by April 2015. Government accepted the recommendation and asked for this to be done by 2014. The project presented the opportunity for a long-overdue replacement of existing law, much of which has remained substantially untouched since the 1950s and 1960s, with a significant amount being outdated and redundant. Indeed, the Mines Inspectorate initial review of current requirements estimated that at least 75% of provisions were no longer of any relevance and could be removed without replacement.
4. The remaining law also needed significant revision, for example most of it still places principal duties on an individual, ie the mine manager rather than the mine operator. This therefore represents more than a simple consolidation and the Board agreed in April 2013 to this approach.
5. The proposed regulations replace 33 substantive sets of regulations/orders (plus 13 which modify these in some way) and those parts of two Acts which are relevant statutory provisions of the Health and Safety at Work etc Act 1974 (HSWA) and do not need retaining to give effect to the remaining sections. In doing this we will;
 - a. remove provisions which are now unnecessary (eg because the activities regulated no longer take place) or are adequately covered by general health and safety legislation;
 - b. retain specific provisions necessary to control hazards specific to deep mining; and
 - c. ensure continuing implementation of the Extractive Industries Directive.

6. The development of the proposed regulations has been undertaken in collaboration with the key stakeholders in the industry – principally mine operators and trade unions. Relevant government departments have been consulted as appropriate. The proposal to lay the regulations by the end of the year has allowed extensive informal consultation with stakeholders on the developing regulations. This has been vital in supporting the sector in understanding this major structural change in the health and safety legal framework for mines. In light of the prior engagement that has already been undertaken with the industry, and in line with Cabinet Office guidance, we believe 8 weeks is on balance the right period for formal consultation.
7. The industry is small, employing around 5,000 workers across the coal and other mineral sectors. There are presently only three large deep coal mines in production, plus a handful of smaller coal mines employing tens of workers. The non-coal sector comprises a large potash mine, a large salt mine, five gypsum mines, plus assorted smaller mines extracting stone and other minerals. There is potential for a small number of coal mines to start up in future, but nothing is certain. There is also a proposal for a major new potash mine on the Northeast coast; the earliest this would start production is 2017/18. Nevertheless, there remains the potential for catastrophic accidents and the new regulations provide a modern framework with the clear focus on identifying, assessing and controlling major accident risks.

Argument

8. The existing set of mines legislation is generally old, prescriptive and out of line with modern principles of health and safety regulation. It has been introduced piecemeal over time mainly in response to incidents and other concerns, and is very complex. Some updating has taken place previously to address issues connected with privatisation of the coal sector in the mid-nineties, but further modernisation was not taken forward.
9. As an industry with potential for major accidents and multiple casualties, HSE considered the introduction of a permissioning-type regime in the new legislative framework for the sector. While this was viewed as a possible approach for the future, it was felt unreasonable to expect the industry to move in one step from a deeply prescriptive framework to one based on a general duty and a requirement to demonstrate risks are ALARP. However, this can be re-visited as an option when the proposed regulations are reviewed.
10. We have developed a single set of regulations that lays down specific, goal-setting requirements relating to the key organisational aspects of safe management of a mine and to the key physical hazards inherent to deep mining. These regulations will overlay the general duties that mine operators are subject to under the Management of Health & Safety at Work Regulations (MHSWR) and other secondary legislation such as the Provision and Use of Work Equipment Regulations (PUWER). The result is a reduction in the number of regulations from around 1000 currently to 70-80 regulations in the Mines Regulations 2014.
11. Supporting guidance will replace the ACOPs which sit alongside a number of the existing sets of regulations and will provide practical advice on

compliance with the more general requirements in the new legislation. This contains some of the detail currently in parts of the existing prescriptive legislation and is seen by stakeholders as a key element of the new framework. This guidance will be in single document – and so be easier to access than the numerous separate documents at present.

12. The focus of the proposed regulations is on the management and control of major hazards in mines. The much reduced prescription will encourage operators to move away from using compliance with detailed requirements as a measure of their health and safety performance, towards an approach based more on identification, assessment and control of risk focussed on demonstrating for themselves, the workers and the regulator that risks have been reduced to as low as is reasonably practicable.
13. Some of the provisions in the draft regulations are more detailed than the corresponding part of the Extractive Industries Directive – these are supported by the industry as well-established controls.

Other countries

14. Australia is one of the world's major mining nations and it has been reviewing its mining safety legislation over a period of years. Successive changes have placed greater emphasis on risk management, with some additional more prescriptive and compliance-driven approaches in some areas. Principal responsibility for health and safety in mines lies with mine operators. There are many similarities with our proposed approach.
15. As a result of a review following recommendations in the Royal Commission (RC) report on the Pike River coal mine disaster in November 2010, New Zealand introduced new mining regulations in December 2013. Whilst these cover similar core issues such as health and safety management systems, control of mining hazards, competence and emergency preparedness, they are also prescriptive and voluminous (there are over 200 regulations). This reflects the fact that New Zealand is starting from a less well developed position than GB on major hazard risk control, and that they were developed extremely quickly following the publication of the RC Report.

Outline of the Mines Regulations 2014

16. The regulations lay down general duties relating to overall management of safety at a mine; the management structure that should be in place, and; the need for a documented demonstration that risks have been assessed and control measures are in place. In addition there are specific requirements relating to the principal major hazards unique to deep mining. These are:
 - Fire
 - Flammable/explosive gases and dusts
 - Rock falls
 - Inrushes of water or other materials
 - Transport through shafts
 - Mass transport below ground
 - Explosives

- Stability of waste tips

There are also other significant provisions including those relating to escape and rescue and inhalable dust in coal mines.

17. The main duties under the new regulations will be placed on the operator of the mine, ie the person or corporate body in overall day-to-day control of the undertaking. This is a significant and overdue legal change from the present where most duties in existing mines legislation bear on individual mine managers who are usually employees, albeit senior ones. This is a legacy from the nationalised past of the coal sector but which has never been corrected. For this reason, current mines legislation cannot generally be used to enforce against mine operators, and HSWA is the usual mechanism. In future the new regulations will be the primary instrument for doing this. Mine managers will of course retain duties under section 7 of HSWA.
18. On scope, we have opted to retain the existing definition of a 'mine' which means that anything that is or ever was an excavation for the purpose of extracting minerals, falls within the definition. This means that tourist mines, storage mines, etc, will be within scope of the legislation. However, the approach in the proposed regulations will mean that the requirements on, for example, tourist mines will be proportionate to the relatively lower level of hazard present compared with active extracting mines. The tourist mines we have spoken to indicated that this was their preference. It retains the status quo regarding the scope of mine-specific legal requirements.

Sensitive issues

19. The mining industry has been subject to the same prescriptive legal framework for decades and it initially saw the prospect of modernisation as a significant challenge. HSE has engaged closely and extensively with mine operators and trade unions during the last 12-18 months to ensure that industry now has a much better understanding of the goal-setting approach in the proposed regulations. The industry is now much more ready for the change and recognises that the regulations will provide a modern mines-specific framework for ensuring major hazards in particular are adequately managed and controlled. The proposed regulations will underpin the approach that both industry and the regulator have taken in recent years to safety in mines and on that basis the overall financial burden in terms of additional requirements is expected to be small. HSE support to the industry for the transition will continue up to and beyond the introduction of the Regulations.

Mines rescue

20. The business stakeholders agree that the current prescriptive arrangements, including the requirement for coal mines to participate in a Secretary of State-approved rescue scheme, are no longer tenable, largely due to the significant reduction in the coal sector since their introduction. They support clearer, shorter duties centred on a clear requirement for all mines to ensure effective rescue provision is available to be called upon if necessary.
21. Membership of the current scheme guarantees a coal mine support – in terms of additional rescue personnel – if this is necessary eg in a protracted rescue scenario. The industry is discussing with Mines Rescue Service

Limited (the private not-for-profit company that delivers the scheme) how to ensure this is available if necessary in future without the scheme. MRSL has assured us that not being the provider of the scheme will not threaten its viability; 80% of its income is from other services it offers to industry. This change may entail higher costs for coal mines – although we have been unable to establish this with any certainty at present and will invite comment in the Consultation Document. HSE has also assured coal trade unions that its interventions will ensure that operators will continue to make adequate rescue provision in future.

Worker inspections

22. Section 123 of the Mines and Quarries Act 1954 provides for the trade union representing the majority of the workers to undertake monthly workplace inspections. In HSE's view, the Safety Representative and Safety Committees Regulations 1977 – which also apply in mines – provide sufficiently for worker inspections. Although they stipulate inspections at at least 3-monthly intervals, there is provision for more frequent inspections where workforce and employer agree or where there has been a substantial change in the conditions of work.
23. There is also specific provision in section 123, but not the 1977 Regulations, for worker inspection reports to be sent routinely to the HSE. The coal trade unions have said they do not want to lose this provision which they say is a vital element in ensuring deficiencies are brought to HSE's attention. However, safety representatives can send inspection reports to HSE if they believe remedial action is necessary but has not been taken by the employer. We are in addition proposing to strengthen this provision in the proposed regulations with a duty on operators to send reports to HSE whenever safety representatives identify an imminent risk of serious danger. This mirrors offshore safety legislation and is commensurate with the major hazard potential in underground mines.

Interface with OGDs and Devolved Administrations

24. There are several OGDs with an interest in this work. DECC leads on energy policy and so has an interest in the coal sector. They are also the sponsor department for the Coal Authority which manages the environmental and safety liabilities of historical coal mining in GB. In England, Defra and the Environment Agency (EA) are responsible for legislation implementing the Mining Waste Directive (MWD) and this has links with safety legislation on the stability of tips. Local authorities also have functions with respect to disused/abandoned mines and tips in relation to public safety. DCLG lead on local civil contingency issues – Mines Rescue Services Limited are on a number of local authorities' response arrangements.
25. The main interest of the devolved administrations in mines is the MWD and environmental risk from waste tips. The Scottish Government administers the relevant legislation in Scotland and it is applied through the planning system. In Wales the Defra legislation is now applied by Natural Resources Wales. Both instruments have a slight overlap with health and safety legislation covering tips. We have made the various bodies aware of our proposals and they have so far raised no objection. Our view is that they

may need to make minor amendments to their supporting guidance and no more.

Action

26. The Board is asked to approve the package for consultation and note that if it does so the Minister will be asked to write seeking collective agreement from the Reducing Regulation Committee to consult.

Paper clearance

27. The SMT.