

Health and Safety Executive Board		HSE/15 /08	
Meeting Date:	28 January 2015	FOI Status:	Open
Type of Paper:	Above the Line	Exemptions:	
TRIM Reference:	2015/15620		

The 'recast' of the Placing on the Market and Supervision of Explosives for Civil Uses (POMSTER) Directive (93/15/EEC) and its impact on the Explosives Regulations 2014

Purpose of the paper

1. To inform the Board about forthcoming work to amend the Explosive Regulations 2014 in order to implement the newly 'recast' Placing on the Market and Supervision of Explosives for Civil Uses (POMSTER) Directive.

Background

2. The directive is one of nine being updated or 'recast' as part of a package of measures known as the EU's 'New Legislative framework' (NLF) for the marketing of products. The measures are designed to help the internal markets for goods work better and to strengthen and modernise the conditions for placing a wide range of industrial products on the EU market. The package builds on existing systems to reinforce the application and enforcement of internal market legislation and therefore is not a new regime.
3. The aim of the European Commission in this recast is to improve market surveillance rules; boost the quality of conformity assessment of products; clarify the meaning of CE marking; and establish a common legal framework for industrial products.
4. Eight of the directives are being transposed as an 'alignment package' into UK law and are required to be in force by April 2016. HSE is the lead department for the POMSTER Directive whilst Department for Business Innovation and Skills (BIS) have the lead on the remaining seven.
5. HSE enforces product safety issues on behalf of the BIS who lead on the internal market issues for the UK.

Implementation

6. At the moment explosives product safety legislation is covered by the Explosives Regulations (ER) 2014. The recast of the Directive will require small scale amendments to be made to these Regulations by April 2016.
7. The timetable for negotiations for the recast in Europe prevented HSE from incorporating the appropriate amendments into ER2014 while those regulations were being drafted. This was because HSE needed to meet a key recommendation within the Governments response to the Löfstedt Review, to

review industry specific legislation by the end of 2014. The Board were made aware in June 2013 (**HSE13/63**) of this timetabling with ER 2014.

8. The Government's preferred policy on implementing European Directives is to 'copy out'. This is the starting point for the work of comparison between the Directive and ER2014 that will be required in order to draft amending regulations. Our approach will be to meet the Government's and the Directive's requirements while maintaining effective and appropriate safety standards.
9. The POMSTER Directive requires that any explosives first placed on the market have been tested for conformity and satisfy essential safety requirements under the Directive.
10. The principle changes within the recast are intended to reinforce safety requirements by ensuring that all products first placed on the market comply, and remain compliant with essential safety requirements, are CE marked and conformity assessed by a notified body. There is also an obligation to take action to recall or withdraw explosives from the market if they pose a risk.
11. The recast also allows for the accreditation and continuous assessment of notified bodies.
12. The changes described above will only impact on a small part of the explosives sector including manufacturers, importers and distributors.
13. As the Directives are being transposed as a package, where possible the Explosives policy team intend to align with BIS on the overall timetable and significant dates such as clearance of the impact assessment by the Regulatory Policy Committee. The timetable for implementation can be found in **Annex 1**.

Issues

14. HSE has however sought clarification on parts of the drafting of the recast in relation to the scope, application and the requirements of licences and permissions. Subject to interpretation there is a possibility that the scope of the existing directive has been changed and additional duties will fall on some explosives stakeholders.
15. HSE are working with the Commission to address these issues. Early verbal indications from the Commission are that these issues will be resolved favourably and in keeping with the current GB health and safety regime. However, we may have to revisit our impact assessment and plans for implementation if this is not the case. We will keep the Board updated.

Consultation

16. As lead on the majority of the alignment package, BIS will be holding a full public consultation, currently planned for summer 2015, on all of the common provisions affecting the eight directives, which includes the POMSTER directive. This provides a consistency of approach including similar definitions, penalties and conformity attestation.

17. For those changes specifically to technical explosive matters, HSE has invited a full range of stakeholders to a working group including; industry representatives, local authorities, devolved administrations, trades union, BIS and HSL [in their role as the only GB Explosives notified body]. Subject to Board views we propose not to hold a separate general public consultation on explosives but to use this technical group, and some other targeted representations, as the focus for both our informal and formal consultation on the amending regulations. This follows Cabinet Office guidance on consultation.
18. Broader product safety issues will be covered by the BIS public consultation which we will reference in our communications on the POMSTER recast.

Impact

19. HSE economists have begun work on the impact assessment (IA) and this includes a series of interviews with stakeholders to estimate the likely costs and benefits of transposition. The first of these took place in December and will continue through mid-January to inform estimates for the IA at the end of January. Although it is too early to estimate specific costs from the few interviews that have taken place, they have been extremely productive, giving a clear indication that the changes will not be particularly onerous on business. As a result costs are expected to be low.

Devolved Administrations

20. Representatives from both the Scottish and Welsh Governments have been invited to the working group and will be kept informed of progress.
21. The programme team maintains regular contact with colleagues from HSENI, who are responsible for their own transposition. HSENI have also been invited to participate in the working group.

Action

22. To note:
 - the proposed amendments to ER2014, plan and timetable for implementation;
 - the need to clarify the exact scope and application of the Directive as it stands;
 - the proposal for limited targeted consultation through a working group rather than a full public consultation.

Next steps

23. We will return to the Board with proposals for an amended set of Regulations in late 2015.

Paper clearance

24. This paper has been cleared for submission to the HSE Board by the Regulation Committee on 8 January 2015

Annex 1: Timetable for implementation

January 2015- March 2015	Submit pre-consultation impact assessment to the RPC for approval
May-June 2015	Ministerial write-round [RRC]
Summer 2015	Consultation and analysis of responses [BIS] HSE to consult through the working group.
October 2015- January 2016	Final draft regulations developed following analysis of consultation responses. Legal package prepared for making regulations.
January 2016	Guidance for duty holders and regulators on the amending regulations published in line with Cabinet Office guidance.
March 2016	Regulations laid before Parliament
20 April 2016	ER2014 (as amended) comes into force