

ADVISORY COMMITTEE ON DANGEROUS SUBSTANCES

FLAMMABLE SUBSTANCES SUBCOMMITTEE

PETROLEUM WORKING GROUP

MODERNISNIG PETROLEUM LEGISLATION

PHASE 2 OPTIONS

Introduction

1 At the 6th meeting on 12 March last year the Petroleum Working Group considered a paper (PWG01-2002 - attached at Annex 1 for reference) which set out some proposals for the way forward for Phase 2.

2 At the 7th meeting on 7 August last year these options were discussed further and members were requested to submit written comments on the way forward (ACDS/PWG/03/2002 - issued again as part of the package for this the 8th meeting on 5 August 2003).

3 The purpose of this paper is to facilitate further discussion on the options for the future regulatory regime for retail and non-retail petrol filling stations (PFSs), particularly in view of policy developments within HSC and wider Government.

Options

4 Listed below are a number of options which need consideration and discussion by members. We have deliberately steered clear of providing too much explanation of the options so that a full and frank debate can be undertaken on each option where views of all parties can be heard.

5 Of course, if any member, or their organisation, wish to speak to HSE separately from the meeting, we will be pleased to do so.

Option 1

Do nothing. Continue with annual licensing of PFSs, supported by standard licence conditions (currently being reviewed).

Option 2

Continue with annual licensing supported by a minimal number of standard licence conditions.

Option 3

Develop and introduce a consent regime for new PFSs, with deemed consent for existing PFSs to replace the requirement for a licence. This would include the requirement for consent from the PLA for a material change to take place.

Option 4

Develop and introduce a notification regime for new PFSs and existing PFSs with proposed material changes. This could be linked to statutory planning requirements.

Option 5

Remove the current licensing regime and do not replace it with any industry specific regulations; relying on existing health and safety legislation, eg HSWA, DSEAR, EWR etc.

6 Whichever option is adopted there is likely to be a need to develop an ACOP covering the day-to-day operation of PFSs.

Argument

7 As mentioned in paragraph 3 above, there have been a number of policy developments which need to be taken into consideration when developing the proposals for the future regulatory regime for the storage and dispensing of petrol as a work activity.

Permissioning Regimes

8 In March this year, HSC published a Policy Statement: *Our Approach to Permissioning Regimes* - <http://www.hse.gov.uk/enforce/permissioning.pdf>

9 The Policy Statement explains the philosophy adopted by HSC and HSE in regulating health and safety in hazardous industries through the use of permissioning regimes. It builds on the Discussion Document *Regulating higher hazards: Exploring the issues* (DDE15) published in September 2000 and Lord Cullen's Part 2 report into the Ladbroke Grove Rail incident published in September 2001. Responses to DDE15 were favourable overall to our approach, but made a strong call for greater clarity, particularly to know why permissioning regimes are established and how consistent are their features.

10 The Statement responds to a call for greater public understanding of HSC's approach to permissioning regimes. It sets out principles governing the introduction, development and maintenance of regimes, how the principles are implemented and explains the terminology used. However, it does not explain the origins of all regimes or justify why they were introduced.

Our Fire and Rescue Service – ODPM's White Paper

11 The Office of the Deputy Prime Minister (ODPM) has recently published a White Paper concerning the future of the Fire and Rescue Service

http://www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentservertemplate/odpm_index.hcst?n=3341&l=1

12 Section 4 of the White Paper discusses national, regional and local responsibilities. For example, in those areas where elected regional assemblies are set up, new, larger, fire and rescue authorities will be established on a regional basis. It is suggested that these authorities will be more efficient and better able to discharge their responsibilities for dealing with non-fire emergencies. Further, section 4 goes on to say that regional efficiencies need to be delivered quickly and that the fastest way of achieving this would be for local fire authorities themselves to establish effective regional management arrangements so that control rooms, resilience, procurement and many human resource functions are delivered regionally from an early date. A full version of Section 4 of the white Paper is at http://www.odpm.gov.uk/stellent/groups/odpm_fire/documents/page/odpm_fire_022968-07.hcsp#P278_51198.

The development of regional assemblies is also likely to impact on some existing county council structures.

13 Given that these changes are likely to have a significant effect on how both the fire services and local authorities are organised in the medium term, it would seem prudent to retain the status quo for Petroleum Licensing Authorities enforcement arrangements, at least for the time being.

14 HSE will be in contact with ODPM as the fire and rescue service proposals develop. Members will be kept informed about significant developments.

HSC's Business Plan 2003-04

15 Phase 2 of the Modernising Petroleum Legislation project is being undertaken as part of HSC's commitment to modernise and simplify the regulatory framework. For further details of this you can visit HSE's Website at <http://www.hse.gov.uk/aboutus/plans/hscplans/plan0304.htm>.

Action

16 Petroleum Working Group members are asked to consider the above information and discuss and comment as necessary at the meeting.

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MODERNISING PETROL LEGISLATION - PHASE 2

INTRODUCTORY PAPER

Introduction

1. The Health and Safety Executive (HSE) is part way through a 3-phase project, agreed by the Health and Safety Commission (HSC), to modernise petrol legislation. Phase 1 of the project, dealing with workplace storage and use of petrol, is nearing completion and work needs to begin now on Phase 2, retail petrol filling stations. This paper sets out the issues that Phase 2 needs to address and seeks views on a possible way forward.

Background

2. The primary legislation controlling the storage and use of petrol is the Petroleum (Consolidation) Act 1928 (PCA). This requires anyone who keeps petrol to obtain a licence from the local Petroleum Licensing Authority (PLA). The licence may be, and usually is, issued subject to a number of licence conditions. The PLA set the licence conditions, but they must be related to the safe keeping of petrol. The Local Authority Co-ordinating Body on Food and Trading Standards (LACOTS) has issued a set of standard licence conditions which most, if not all, PLAs apply to their sites. A licence is time-limited, usually being renewed every one to three years and can be transferred, in accordance with the Petroleum (Transfer of Licences) Act 1936.

3. In order to comply with two important European Directives, the Chemical agents Directive (CAD) and the Directive on Explosive Atmospheres (ATEX), a set of new regulations is about to be introduced, The Dangerous Substances and Explosive Atmospheres Regulations (DSEAR). These will introduce new controls on all dangerous substances that present a fire and/or explosion hazard, including petrol. It is the introduction of these new regulations that has given the impetus to the modernisation of petrol legislation because the DSEAR controls overlap with the controls imposed by the PCA and licensing.

4. Phase 1 of the project will enter its public consultation period on 18 February and it is proposed that licensing of petrol in all workplaces except retail petrol filling stations (RPFS) will cease and control of petrol will then come under the new DSEAR regime.

Retail petrol filling stations

5. RPFSs will remain subject to licensing until Phase 2 of the project has been completed. In HSE's view, sites, which sell petrol to the public, need greater specific control than non-retail sites. In the workplace there should be closer control of employees who are involved in dispensing activities. For example, they are required to be trained in safety precautions and emergency procedures and management has a duty to provide adequate levels of supervision. The public do not have any such training and a petrol leak or spill at a RPFS may cause a risk of injury to many people, including the public. Previous reviews of petrol legislation have revealed that most people connected with the retail industry believe that filling stations open to the public require specific legislation over and above that available through HSWA and DSEAR.

6. For this reason additional controls need to be developed to ensure a continuing high level of safety at RPFSs and it is these additional controls that form the core of the Phase 2 project.

The way forward

7. One possible way forward is the development of a "consent" regime. This would involve all RPFSs being granted consent to operate by a local Petroleum Enforcing Authority (PEA).

8. The procedure would probably need to be in two-stages.

- Stage 1 would give consent to the design and construction of a RPFS
- Stage 2 would give consent to operate a RPFS

9. It is often the case that design/construction of a filling station is done by a different organisation to the one which will subsequently operate it. It therefore seems sensible to divide the consent process on similar lines. It is envisaged that the PEA would give consent to the design before construction could start. The PEA would also ensure, by inspection, that the site was being constructed competently and in accordance with the submitted plans.

10. Consent to operate would be linked to the successful commissioning of the completed filling station. Day-to-day safe operation would be assured by DSEAR and new supporting regulations.

Issues

11. Paragraphs 7 to 10 are only a broad outline and are applicable only to new sites. There are a number of issues that would have to be settled before such a regime could be implemented. The following paragraphs set out the issues HSE has identified but there may well be others.

12. The new regime would almost certainly be implemented by new regulations and these would include provisions to deal with these issues. The exception would be any special conditions appropriate to any particular site (see paragraph 16) which could be dealt with by conditions attached to the consent. Examples might include over-the-pavement dispensing or unusual unloading procedures such as where the delivery point is inside a building.

Existing sites

13. It would be necessary to give existing sites some form of “deemed” consent from the date the new regime comes into force. If a licence is in force when the regime comes into force then deemed consent would be automatically granted by means of the new legislation.

Sites under construction when the new regime starts

14. There may well be some sites at the design phase or under construction when the new regime comes into effect. Provision would have to be made for these. What should that be?

Changes to existing sites

15. When the consent regime is in place, there needs to be a mechanism to ensure that consent would be necessary before any material change that significantly increases risk could be made. Typical circumstances might be proposals to:

- replace storage tanks or add additional ones to the site
- change the positions of the pump islands
- introduce LPG refuelling
- anything else which involves a significant change to the risk assessment (perhaps address “significant” in guidance)

Information needed to consider consent or material change applications

16. It is likely that it will be useful to create a list of information needed to consider applications e.g. location and type of equipment, proposed arrangements for leak detection etc.

Change of site operator

17. What should happen in the event of a change of operator? Should the new operator have to apply for a fresh consent or should the consent to operate be transferable to the new operator (in which case any conditions attached to the consent would have to be transferred with it)? Should the new operator be required to carry out a new risk assessment or agree to the previous one.

18. If the consent is to be transferable there should be a duty to notify the PEA when there is a change. Should this be by the new operator only or by the old operator also?

Appeals

19. There will need to be a right to appeal against a refusal of consent (need to consider human rights act implications).

Consent fees

20. It is Government policy that schemes involving a consent mechanism need to have a chargeable element. The fees would be charged on an “actuals” basis rather than a notional standard fee, however, it should be possible to produce a standard consent procedure which should give site developers some idea of the likely fees to be charged.

Unexpired licences

21. When the new regime comes in to force there will be licences in existence which still have some time to run. Should there be a facility to reclaim the cost of the unused part of the licence?

Withdrawal of consent

22. Should there be a facility to withdraw consent in the same way as licences could be withdrawn or do HSWA Improvement and Prohibition Notices give sufficient control?

General duties on site operators

23. Given the abolition of licences and their associated conditions, there may be a need for new regulations controlling safety on filling stations to supplement DSEAR. These might include duties to:

- ensure that petrol is unloaded, stored and dispensed safely (duties on the site operator and tanker driver/operator)
- have a system in place to ensure leaks are detected quickly as far as reasonably practicable (duty on site operator)
- ensure equipment is decommissioned safely and then maintained in a safe condition (duties on the site operator and whoever manages the procedure). There will also be a need to consider the relevant section of the Public Health Act in relation to the responsibilities relating to the disposal of disused tanks
- carry out a risk assessment and record it, even if less than five employees (duty on site operator)

Should a minimum age apply to those left in sole charge of a site (18 in current licensing conditions)?

Duties on “any person”

24. Phase 2 provides the opportunity to clarify the safety responsibilities that should fall on members of the public using retail filling stations. These might include a duty to dispense safely into vehicles and prohibition on:

- dispensing petrol into unsuitable containers
- dispensing by people under a specified age (16?)
- smoking
- use of unauthorised electrical equipment on site e.g., mobile phones

Site operator maintenance duties

25. There should be a duty to ensure that equipment is maintained in a safe condition. This needs to be a “catch-all” duty to cover situations where the site operator and site owner are different – there have been some problems here in the past with franchises and agencies.

Reporting petrol releases and fire and explosion incidents

26. The current requirements for reporting spills in the Reporting of Injuries Diseases and Dangerous Occurrences Regulations (RIDDOR) do not properly reflect the potential risks at filling stations, as

members of the public are present. A solution might be to have specific quantities for filling stations for spills that must be reported, e.g.:

- Indoors – 10 litres
- Outdoors – 50 litres

27. It might also be useful to make it necessary that any incident involving a fire or explosion at a filling station is reported to the PEA.

28. There is probably a need for these statistics to be collated centrally and the figures to be published annually. This would enable year-on-year comparisons to be performed.

Existing guidance

29. The guidance currently available, both from HSE and elsewhere, will need reviewing e.g.

- HSG 146 – Risk Assessments at Filling Stations
- HSG 41 – Construction/Operation of a Filling Station
- APEA Blue Book

Action

30. Members are asked to comment on the above ideas at the next meeting of the Working Group. In particular, members are asked to consider if the broad outline of the consent scheme described in this paper is a suitable way forward and what, if any, further issues need to be addressed as the proposal are developed.