

Advisory Committee on Toxic Substances Paper		ACTS/20/2004	
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ADVISORY COMMITTEE ON TOXIC SUBSTANCES

Agreement to a new approach to adequate control and a new OEL framework following consultation (CD189)

Issue

- 1 Agreement to a new approach to adequate control and a new Occupational Exposure Limit (OEL) framework under the COSHH Regulations.

Timing

- 2 Changes to the COSHH Regulations to implement the new approach will be combined with those needed to implement the EU Directive on chromium VI in cement. Subject to approval by the Health and Safety Commission and ministers, they will come in to force before the end of 2004.

Recommendation

- 3 That ACTS agrees submission to HSC for endorsement of the proposals set out in paragraphs 11 – 22 and in annexes B – E.

Background

July 1998 (ACTS/27/1998)

- 4 ACTS discussed the drawbacks in the current OEL Framework and agreed that a working group should be set up to develop a revised OEL Framework. The Working Group was re-energised in July 2000.

November 2001 (ACTS/36/2001)

- 5 ACTS agreed the publication of a Discussion Document (DD) developed by the Working Group. The DD examined the concerns with the present system, put forward and compared three options for a revised framework and proposed a new set of criteria for establishing the limits. The first option partially met and the other two fully met 7 criteria ACTS agreed for a new framework.

November 2002 (ACTS/43/2002)

- 6 ACTS considered the analysis of the responses to the DD and asked its Working Group to develop a CD with proposals for a new OEL framework. The final proposal was built on the two options meeting the 7 criteria agreed by ACTS.

July 2003 (ACTS/24/2003)

- 7 ACTS agreed the publication of a Consultative Document (CD) developed by the Working Group. This was endorsed by HSC in August and the CD published in October.

March 2004 (ACTS/04/2004)

- 8 ACTS noted the analysis of the responses to the CD and agreed the OEL Working Group's strategy for taking on board the responses to the CD.

The ACTS OEL Working Group

- 9 The ACTS Working group (membership at annex 1) has been a good example of team working with members working with HSE to develop a new approach that would facilitate improved control of chemicals. The team worked together to devise an approach from a blank sheet of paper, and then decided how to graft it into the present system, taking account of the need to remain compliant with the Chemical Agents Directive. Since July 2000 the group has met a total of 12 times.

Prime Minister's Panel for Regulatory Accountability

- 10 It was announced in the budget on 17 March that a Panel for Regulatory Accountability would be chaired by the Prime Minister to strengthen the scrutiny of major regulatory proposals. At the time of writing this paper, the OEL Framework is on the agenda for the first meeting of the Panel on 20 July 2004. HSE's Economists provided Cabinet Office with further information on the benefits of the proposed new system for the 20 July meeting (see paragraph 28).

Argument

11. ACTS/04/2004 contained an analysis of responses to the CD. Fifty-eight replies were received from Industry; Trade Unions; Health and Safety Consultants; Energy, Health, Transport and Education Sectors; Associations, Federations, Institutes and Societies. Of these two offered no comment on any part of the CD and one was received four months after the end of the consultation period. There was widespread support for almost all aspects of the proposals. However the comments received raised some real concerns regarding the ACoP text for COSHH Regulation 7 (the only part of the ACoP with substantive changes), and the transfer of existing OESs into the new system. Therefore, at the March meeting, ACTS asked:
 - that an HSE/Social Partner drafting group be formed to refine the COSHH ACoP (see paragraphs 14 -15);

- that the OEL Working Group consider further the options for the transfer of OESs for discussion and agreement at this meeting (see paragraphs 17 - 19); and
- that the seven objectives for a new approach established by the OEL Working Group be revisited to ensure the current version of the proposals meets those criteria (see paragraphs 19 - 22).

Changes to the COSHH Regulations

12. The responses to the CD showed strong support for the proposed changes to the COSHH Regulations. A number of respondents did suggest that that the CHIP Risk Phrase R42 (May cause sensitisation by inhalation), should be referred to in Reg 7(7). This would be in keeping with the reference to R45, R46, or R49 (all three indicate the possibility of a substance causing cancer) and the duty for the level of exposure to these substances to be reduced so far as is reasonably practicable.
13. Annex B contains the new Reg 7(7) that HSE Solicitors have drafted to addresses this. This uses the definition of a substance that causes occupational asthma set out in para 4 of Appendix 3 of the current COSHH ACoP

Changes to the COSHH ACoP

14. The COSHH ACoP Drafting Group met on 13 May (members of the group are listed at Annex A). The remit of the group was to redraft the ACoP in the light of concerns from stakeholder groups:
 - about the complexity of the text; and
 - that the text appeared to make it a requirement to comply with COSHH Essentials guidance.

It was never the intention of HSE or the ACTS Working Group to raise the status of COSHH Essentials beyond that of guidance. COSHH Essentials was designed to be practical and easy to understand and is particularly helpful in improving compliance and reducing risk among SME's. The revised ACoP sets out two route maps to compliance. Duty holders can either use the COSHH Essentials approach or other good practice guidance or start from first principles. Thus companies that have already developed their own approaches to complying with MELs and OESs, can continue to use their existing good practice, whereas SMEs may prefer to follow the COSHH Essentials route.

15. Annex C contains the revised proposed COSHH ACoP text following the drafting group meeting and subsequent comments received from social partner members unable to attend. Changes to the text that appeared in the CD are shown in revision mode, with new text in blue and deleted text in red and struck through. These changes have been agreed with the OEL Working Group.

Guidance to Support the Principles of Good Practice for the Control of Exposure to Substances Hazardous to Health

16. Regulation 7(7) of COSHH will require employers to apply the principles of good practice for the control of exposure to substances hazardous to health and comply with any workplace exposure limit (WEL). The principles are set out in eight bullet points and will form a new schedule to the COSHH Regulations. Respondents to the CD generally welcomed them. Annex D contains the guidance that HSE has drafted to support the principles. A broad cross-section of the occupational hygiene community as well as the ACTS subgroup were consulted on this guidance and the comments received are currently being considered. The version at Annex D is for illustrative purposes and will be refined before being published as part of the COSHH ACoP. It will also be available on the HSE website.

Integration of existing OELs into the new framework

17. Responses to the CD showed strong support for:

- the definition of a WEL;
- the proposed duties associated with the WEL;
- the criteria for setting WELs (the WEL criteria was tested at a special joint meeting of WATCH members and the OEL Working Group in early 2002);
- the proposed method for publishing WELs;
- transferring soundly based OESs and all the MELs into the new framework as WELs; and
- not taking forward as WELs those OESs for substances which are biocides no longer authorised for use, or subject to the Montreal Protocol.

However, responses were split almost 50:50 on the proposal to delete the 322 OESs which ACTS agreed were not soundly based.

18. HSE members of the OEL Working Group have met to further consider the transfer of OESs for discussion and agreement at this meeting. Annex E contains the list of 322 OESs proposed for deletion that appeared in the CD. The revised proposal is to only delete those OESs for which there is some concern about the whether human health is protected at the value of the OES. Thus those OESs for which there is no evidence of concern, although there is insufficient evidence to state they are soundly based, will be transferred into the new system as WELs. Annex E flags which substances, under this proposal, would be deleted and which transferred into the new framework. This new proposal would result in 100 OESs being deleted. This would go some way to meeting stakeholder concerns that too many OESs were being lost under the proposal in the CD.

Meeting the seven objectives agreed by ACTS for a new approach

19. When the OEL Framework Working Group was set-up, ACTS agreed three main issues which must be tackled:

- establish an effective and efficient system for setting occupational limits;
- integrate OELs into the COSHH Regulations so that they are clearly seen as one element in the range of actions which employers have to take to control exposure; and
- provide a strategy for making employers, safety representatives and trade associations aware of OELs and what needs to be done to comply.

20. The Working Group therefore agreed seven objectives which would address the three issues in paragraph 19, and provide a yardstick against which proposals for a new framework can be assessed. The seven objectives were included in the discussion document published in March 2002.

21. At the ACTS meeting in March 2004, members asked that the seven objectives should be revisited to ensure the current version of the proposals meets those criteria. Annex F shows how the proposals meet each of the objectives.

Next Steps

22. The COSHH Regulations will be amended towards the end of 2004 to implement the EU Directive on Chromium VI in Cement. It would be an unacceptable burden on dutyholders if the regulations were amended twice in a short period of time. To avoid this, the changes to the COSHH Regulations arising as a result of the OEL framework need to be made at the same time i.e. before 31 December 2004. This timetable, will require agreement to be reached on the proposals at this meeting, so that they can be considered by HSC at their meeting on 7 September.

Link to HSC Strategy

23. The proposals are in keeping with HSC's new strategy for the health and safety system in Great Britain. This recognises the need for the development of effective intervention strategies that will result in a reduction in occupational exposure to chemicals, and a consequent improvement in occupational health.

Communication Plan

24. An external communication plan will be developed with stakeholders and DIAS prior to implementation. An internal communication plan will be developed with FOD and DIAS.

Evaluation Plan

25. An evaluation plan will be developed to assess the impact the new framework has on reducing cases of occupational ill health

Consultation

26. Publicity for the proposals included articles in Safety and Health Practitioner; Occupational Health Review; HSL's Lablink and HSE's Express.

27. Members of the OEL subgroup have given various presentations on the proposals at events in the UK and overseas.

Cost and Benefits

28. The CD contained a Regulatory Impact Assessment. HSE's Economists have provided Cabinet Office with further information. This confirmed that there would appear to be reductions in risk that could be reasonably achieved by firms taking action as a result of the regulations, and therefore although the RIA assumed that only a small proportion of firms would take action, it is likely that benefits would equal or exceed costs.

Environmental implication

29. Not applicable.

European implications

30. The proposals will facilitate the implementation of OELs established by the EU in the UK.

Other implications

31. None.

Action

32. That ACTS agrees the OEL Working Group's proposals for a new OEL framework as referred to in paragraphs 11 – 22 and set-out in annexes B – E.

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