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HEALTH AND SAFETY COMMISSION

ADVISORY COMMITTEE ON TOXIC SUBSTANCES

**A consultative document on proposals to introduce a new Occupational
Exposure Limits (OEL) framework**

A Paper by Michael Topping

Issue

1 Publication of a Consultative Document (CD) setting out proposals for a new Occupational Exposure Limits (OEL) framework under the COSHH Regulations.

Timing

2 The attached paper (Annex A), and draft CD (Annex B), will be considered by Health and Safety Commission (HSC) on 5th August.

Recommendation

3 That ACTS recommends to HSC that they approve the publication of the CD.

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.

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. This paper presents the CD (Annex B). An Executive Summary explaining the proposals in lay terms will be tabled at the ACTS meeting.

Argument

7 The proposal set out in the CD builds on the consensus on the way forward that emerged from discussions on, and responses to, the options in the DD. The rationale for the approach is set out in the paper to HSC at Annex A.

Consultation

8 HSE consulted widely on the proposals in the DD (see ACTS/43/2002). Annex 10 of the draft CD lists the organisations and people that will be sent the CD. HSE will continue to seek stakeholder views on the proposal. A press release will be issued when the CD is published.

Costs and Benefits

9 A Regulatory Impact Assessment is at Annex 8 of the CD.

European implications

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

Devolution

11 None. Health and safety regulation is conducted on a Great Britain wide basis.

Action

12 That ACTS recommends to HSC that they approve the publication of the CD.

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HEALTH AND SAFETY COMMISSION

A Consultative Document on Proposals to Introduce a New Occupational Exposure Limits (OEL) Framework

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Cleared by

Issue

1. Publication of a Consultative Document (CD) proposing a new Occupational Exposure Limit (OEL) framework in the Control of Substances Hazardous to Health (COSHH) Regulations.

Timing

2. Routine. The proposed consultation period is September to December, with a view to introducing COSHH amendment regulations in Summer 2004.

Recommendation

3. That the Commission agrees to the publication of the CD.

Background

4. Research has identified a need to develop a new approach to OELs that will meet the needs of industry in the 21st century. For over 50 years OELs have played an important role in the control of dusts, gases and vapours in many industries and were an important element of the COSHH Regulations when they were first introduced. However, the interpretation and correct application of OELs requires specialist knowledge and expertise that is not widely available across the spectrum of firms, (now over 1.3 million, many employing fewer than 10 people), that use a wide range of chemicals and chemical products. A study of these firms showed limited understanding and awareness of OELs, consequently they have little direct influence on decisions these firms make on controlling chemical exposure.

5. The aim of the proposals in this CD is to ensure that the OEL system is simplified and set within a framework, which makes a real contribution to health protection by providing a practical, easy to use tool that will help dutyholders improve standards of control. Thus they contribute to HSC's strategy (HSC/02/106)) for HSE's work on chemicals, which emphasises the need for activities that will have a direct impact in the workplace. The proposals offer the opportunity to take advantage of electronic media to link OELs to practical advice on the steps employers have to take to comply.

6. To help formulate proposals that meets the needs of stakeholders, an ACTS subgroup worked with HSE to develop options. These were published in a Discussion Document (DD) last year. In addition, HSE spent considerable time giving lectures on the proposals to key interest groups. There was overwhelming support in the responses to the DD and from attendees at seminars, to moving towards a single limit system coupled to good practice advice on controlling chemicals.

7. Building on this consensus, the CD describes the proposed system and how it could operate, proposes amendments to Regulation 7 of COSHH Regulations and a revision to the ACoP text, makes proposals for incorporating some of the existing OELs into the new system and presents a regulatory impact assessment.

Argument

8. In the present COSHH Regulations adequate control is defined in terms of compliance with OELs. The first cornerstone of these proposals is to clarify the meaning of adequate control as:

- applying the principles of good practice for the control of exposure to substances hazardous to health;
- not exceeding the OEL; and
- for carcinogenic substances, exposure must be reduced as low as is reasonably practicable (ALARP).

This will have the effect of bringing exposure by all routes, inhalation, dermal and ingestion, explicitly within the definition of adequate control and encompass all substances within the scope of the COSHH Regulations.

9. It is already implicit within the existing COSHH Regulations that there is a need to follow the principles of good occupational hygiene practice. However since the proposal is to link adequate control to the principles, for improved ease of understanding, it is proposed to list them in a new schedule to the COSHH Regulations. The principles consist of eight simple statements, but HSE will also provide additional guidance on how to apply them. This approach follows that in the Genetically Modified Organisms (Contained Use) Regulations, which has a schedule on general principles on good microbiological practice.

10. The first principle is "control exposure by means that are proportionate to the health risk" This is expanded in the proposed ACoP as follows: "The employer's aim should be to apply the principles of good practice and to select the most appropriate controls that are proportionate to the risks arising from the work. So if the risks to employees' health are serious or uncertain, stringent control of exposure by all routes will be required." Thus for serious risks, exposure will, in effect, need to be reduced ALARP.

11. For carcinogenic substances, i.e. those assigned the risk phrases R45, R46 or R49 or subject to schedule 1 of the COSHH Regulations, adequate control will only be achieved if exposure is reduced ALARP. The inclusion of a specific duty to reduce exposure ALARP for substances subject to the Carcinogens Directive makes explicit compliance with the Directive.

12. The second cornerstone is to replace the current dual system of OELs (Occupational Exposure Standards (OES) and Maximum Exposure Limits (MEL)) with a single type of limit – the Workplace Exposure Limit (WEL). The single proposed duty associated with the limit is that it should not be exceeded.

13. The proposals get away from the artificial divide in the present system, which puts all chemicals into one of two distinct groups. They are either assigned an OES, which purports to be “safe”, in that employers do not have to further reduce exposure, or a MEL requiring exposure to be reduced ALARP. The reality is that there is a continuum of concern, which can be reflected by application of the first principle good occupational hygiene practice. There will be no overall reduction in standards for substances that currently have a MEL, since the first principle will ensure appropriate controls.

14. The third cornerstone is linking the new OEL, the WEL, to good practice advice on controlling exposure. For firms using the Internet to access information, the list of WELs will be linked to electronic *COSHH Essentials* (and other good practice advice for chemicals not covered by *COSHH Essentials*). *COSHH Essentials* is an internet tool that uses readily available information on a chemical and how it is used to provide easy to follow instructions on how to control the chemical. A new publication will contain the list of WELs and provide information either on the appropriate *COSHH Essentials* control approach or other sources of good practice advice. Thus however users access information on WELs they will not simply be left with a number, as in the present OES/MEL system, but will have information on what they have to do to keep exposure below the WEL.

Integration of Existing OELs Into the New Framework

15. There are currently about 500 OELs approved by HSC (150 MELs and 350 OESs). To facilitate decision-making as to which of the existing OELs could be taken forward into the new system as WELs, HSE assessed the quality and quantity of data underpinning all the MELs and OESs and the extent of industrial usage. The proposal is to establish a robust list of limits supported by documentation setting out the basis for the limit. The analysis, which has been endorsed by ACTS, identified 150 limits that fell into this category. The proposal is to transfer these into the new system as WELs.

16. For the limits that are not taken forward into the new system, control advice will, in the future, be available, either through *COSHH Essentials*, dedicated advice on control or a Chemical Hazard Alert Notice. This will ensure there is no overall reduction in standards.

Consultation

17. Responses to the DD were received from Industry; Trade Unions; Health and Safety Consultants; Health and Education Sectors; Government Departments; Associations, Federations, Institutes and Societies; and individuals. ACTS has been

actively involved throughout the development of these proposals and supports the publication of the CD. Annex 10 of the draft CD lists the organisations and people that will be sent the CD.

Presentation

18. HSE will continue to seek stakeholder views on the proposals. A press release will be issued when the CD is published.

19. A separate consultation will be carried out on two other issues, which will require amendment to the COSHH Regulations. These are prohibitions on the supply and use of cement containing hexavalent chromium and in relation to the application of the Regulations to maritime activities. These issues have different constituent groups from this CD, and so the consultation will be separate, but the outcomes will be combined into a single set of COSHH amendment Regulations.

Costs and Benefits

20. Annex 8 of the draft CD contains an updated RIA. Total compliance costs are estimated to lie in the range of £16.2 to £69.0 million. All costs are borne in the first year of compliance. To put the compliance costs in context, the upper limit equates approximately to a 0.065% reduction in the 10 year incidence of occupational ill health.

21. Table 3, on page 21 of the draft CD sets out the benefits of proposals in the CD compared to the existing OES/MEL system.

Financial/Resource Implications for HSE

22. Membership of the ACTS OEL Subgroup includes staff from FOD; HID; Policy Group, and Solicitor's Office. Work on the new framework has been built in to their respective workplans.

Environmental Implications

23. None. Though in the past Environment Agency have used OELs as a basis for air quality limits.

Other Implications

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

Action

25. The Commission is invited to agree to the publication of the CD.