

Advisory Committee on Toxic Substances Paper		ACTS/23/2005	
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ADVISORY COMMITTEE ON TOXIC SUBSTANCES

PROPOSED CHEMICAL (HAZARD AND PACKAGING FOR SUPPLY) (AMENDMENT) REGULATIONS 2005 – IMPLEMENTATION OF THE 29TH ADAPTATION TO TECHNICAL PROGRESS (ATP) TO THE DANGEROUS SUBSTANCES DIRECTIVE.

A Paper by JAN HARRIS

Issue

1. Members are invited to note draft paper HSC/05/38 (Annex 1) for submission to the HSC meeting on 26 July 2005, and to comment if appropriate. The paper seeks HSC's agreement to amend the CHIP regulations to bring the 29th ATP to the Dangerous Substances Directive (67/548/EEC) into legal effect, and to approve a new version of the "Approved Supply List".

Timing

2. Urgent. The relevant EU Directive (2004/73/EC) must be implemented by 31 October 2005. HSC agreement is being sought on 26 July to allow sufficient time for the Minister to sign the regulations and for the regulations to be laid before Parliament prior to entry into force.

Recommendation

3. That Members note draft paper HSC/05/38, and comment if appropriate.

Background

4. Members have been advised of the progress of the 29th ATP through a number of papers. Annex 1 of the Dangerous Substances Directive sets out the classification and labelling information for around 5000 chemicals that are classified as dangerous and pose risks to human health and/or the environment. The Annex is updated at routine intervals ensuring that dangerous substances and preparations ("chemicals") are correctly classified according to the latest scientific evidence (a process which identifies all hazards to human health and/or the environment), are labelled accordingly, and are appropriately packaged. The 29th ATP consists of 443 revised entries and 446 new entries.
5. At the ACTS meeting on 8 July 2004, paper ACTS/27/2004 presented HSE's report on the outcome of the EU vote on the 29th Adaptation to Technical Progress (ATP) of the European Council's Dangerous Substances Directive (67/548/EEC). All Member

States supported the package of amendments. The paper also set out our plans to amend the existing Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 (CHIP regulations) to implement the 29th ATP in Great Britain, and for HSC to publish a Consultative Document.

6. ACTS was consulted on the draft HSC CD between 19 October and 12 November 2004. The draft CD detailed the proposed amendments to the existing CHIP regulations, the changes contained in the 29th ATP, together with a partial regulatory impact assessment.
7. Public consultation took place between 17 January and 8 April 2005.

Argument

8. The amendment of Annex 1 of the Dangerous Substances Directive, and consequent amendment of HSC's Approved Supply List is routine. Industry is engaged in the European process, and suppliers are usually well aware of classification and labelling changes before publication of HSC's formal CD. The responses to consultation did not raise any additional issues. The suppliers of n-propyl bromide (nPB) continued to express their strong disagreement over the revised classification of nPB as highly flammable and toxic to reproduction. Airbus has also raised concerns about the revised classification of chromium trioxide from toxic to very toxic. Both parties consider that the classification cannot be justified by the scientific evidence.
9. A supplier of nPB wrote to the ACTS Secretariat and an individual member of ACTS raising its concerns and asking that ACTS consider the classification of nPB. Both the Secretariat and the individual member considered this inappropriate and conveyed this decision to the supplier.
10. HSE is advising the companies concerned how to advance their arguments through the European process.

Link to HSC Strategy

11. Implementation of the 29th ATP, through an amendment to the CHIP regulations, falls under the category of Mandatory Activities related to European and international work. It is not directly related to the Disease Reduction Programme. However, substance classification is the starting point for the proper control of chemicals for supply, storage, use and disposal.

Communication Plan

12. In keeping with regulatory changes, HSE will announce the entry into force of the amending CHIP regulations via the HSE web site. We aim to bring the amending regulations into force on 31 October 2005.

Evaluation Plan

13. t relevant.

Relevant Control Systems

14. Not relevant.

Consultation

15. ACTS and SCHIP continue to be kept informed of progress with the 29th ATP. We have also advised the Chemical Hazard Communication Society of progress. We will continue to keep these and other interested parties informed.

Presentation

16. Industry's vociferous objection to the proposed classification of n-propyl bromide (nPB) may prompt further lobbying. Since the proposal to classify nPB as both highly flammable and toxic to reproduction, the nPB industry has corresponded with ministers, made a formal complaint against HSE, threatened to begin legal proceedings against HSE, and twice taken its objections to the European Courts of Justice. (On the first occasion the ECJ dismissed the proposed action. The second case is still pending at the time of writing). The industry maintains that the nPB entry in the 29th ATP should be revised as the classification is not justified by the science and will mean nPB can no longer be marketed.

17. The nPB classification, together with the rest of the 29th ATP, received the full support and agreement of all EU Member States when the Directive was adopted. HSE's scientists, who have checked the latest data, fully support the revised classification.

Costs and Benefits

18. The final RIA (Annex F of the HSC paper) has been revised following consultation – see paragraph 23 of HSC/05/38.

Financial/Resource Implications for HSE

19. Over the last two years, work by HSE staff on negotiation of the Directive and preparation of the Consultative Document has cost, at present day values, approximately £46,000. The printing cost of the CD is estimated at £4580. There has also been some resource of HSE toxicologists, and latterly of an HSE economist. At present day values, this has cost approximately £4150. HSE Solicitor's contribution costs are estimated at £3420. Costs have been met from within existing resources.

20. Where the three additional sites fall within the scope of COMAH as a result of revised classifications (see paragraph 88 of the RIA), HSE's costs are recovered through a charging regime.

Environmental implications

21. The European scheme for the classification of chemicals is holistic, and integrates environmental, and health and safety considerations. This approach is also followed in CHIP. There are no specific environmental implications in the 29th ATP.

European implications

22. This work is EU driven and reflects Treaty obligations.

Devolution

23. Officials in Scotland and Wales have been consulted on the proposals but no issues were raised.

Other implications

24. Local authorities – it is estimated a total of three additional sites will become subject to the top tier requirements of COMAH, therefore needing off-site emergency planning.

25. Small and medium-sized enterprises – the RIA notes that compliance costs may be disproportionately higher for SMEs (see paragraph 115 of the RIA).

Action

26. To note the draft paper HSC/05/38 prior to submission to the HSC at its 26 July meeting.

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