Health and Safety Executive Senior Management Team Paper			SMT/09/116
Meeting Date:	4 November 2009	**FOI Status:**	Open post HSE Board meeting
Type of Paper:	For discussion	**Trim Ref:**	2009/422046
FoI Exemptions:	Section 35 – Development of Policy		

HEALTH AND SAFETY EXECUTIVE

Senior Management Team

Physical Agents (Electro-Magnetic Fields) Directive

A Paper by Tim Beaumont

Advisor: Matthew Penrose, Colin Connor, Maria Ottati

Cleared by Jane Willis on 23 October 2009

Issue

1. Board approval for an influencing and an outline negotiating strategy for the proposed amendment to the Physical Agents (Electro Magnetic Fields) Directive ('EMF Directive').

Timing

2. Routine, a proposal is likely to emerge from the European Commission in Spring 2010.

Recommendation

3. That SMT approves the attached paper for submission to the HSE Board.

Background

4. The first EMF Directive (EC/2004/40) was adopted in 2004 with implementation due by April 2008. Implementation was subsequently delayed until 2012 after concerns were raised by the magnetic resonance imagery (MRI) community about the impact of the Directive on some types of scanning. The delay has given the Commission the chance to consult stakeholders on the potential future of the Directive. This consultation is now drawing to a close and a new proposal on EMF is expected from the Commission in Spring 2010. The new proposal will clarify what will happen to the existing Directive.

Argument

5. See attached Board paper

Consultation

6. Consultation on this paper has taken place internally with CSD 4 (the operational inspectors/technical specialists for EMFs), HSE's economists, lawyers and International Unit. Other government departments including devolved administrations & HSENI have also been involved. The proposals in the paper were developed in the light of what is known about the views of key external stakeholders and other Member States.

Presentation

7. A number of European health & safety directives are currently in play (artificial optical radiation, MSDs & EMF). All three have attracted strong interest from stakeholders who will continue to take a close interest in our proposals for implementing them..

Costs and Benefits

8. It is not possible to calculate the cost of any new proposal until it is published by the Commission next year. However, HSE has recently revisited the 2003 regulatory impact assessment on the existing Directive and updated the figures.

9. Using the risk assessment process set out by the Directive, HSE economists have estimated the minimum cost of the current Directive to be £17 to £50 million in the first year and a present value of £36 to £135 million over 10 years. The main costs would be associated with carrying out site risk assessments and measurements of EMFs. The assessment process is very technical and very few firms will have in the in-house capability to complete assessments.

Financial/Resource Implications for HSE

10. Currently being dealt with using existing staffing resources. Implementation and communication of any new EMF Regulations would involve resource, which would be considered as part of any subsequent regulatory impact assessment.

Environmental implications

11. None known

Action

12. To agree the attached paper for submission to the HSE Board meeting on 25 November 2009 .

Health and Safety Executive Board			Paper No: HSE/09/
Meeting Date:	25 November 2009	**FOI Status:**	Open
Type of paper:	Above the Line	**Exemptions:**	
Trim reference:			
Keywords:			
PHYSICAL AGENTS (ELECTRO-MAGNETIC FIELDS) DIRECTIVE – PROGRESS AND NEXT STEPS IN INFLUENCING			

Purpose of the paper

1. To provide an update on progress with the anticipated proposal from the European Commission on the future of the Electro-Magnetic Fields Directive; and to seek a steer on the preferred influencing strategy.

Background

2. The Electro-Magnetic Fields (EMF) Directive[1] was first adopted in 2004 with an original implementation date of April 2008. The Directive required that dutyholders controlled exposure to EMFs to below agreed limits. The limits in the Directive were taken from recommendations published by the International Committee on Non-Ionising Radiation Protection (ICNIRP).

3. It became apparent that the Directive would have had a significant impact on magnetic resonance imaging (MRI). Research confirmed that some types of MRI scanning would have exposed workers above the ICNIRP limits and would be prohibited under the Directive. In response to these concerns, an amending Directive was adopted in 2008 that delayed the implementation of the original Directive until 2012[2].

4. The delay has allowed the European Commission to consult stakeholders from across Europe on the future of the Directive. This activity is drawing to a close and a new proposal from the Commission is now expected in Spring 2010.

5. The main sectors affected by the Directive are healthcare, engineering (particularly welding and cast metal processes), broadcasting, rail, telecommunications and energy distribution. Previously certain groups of stakeholders, particularly in the healthcare and engineering sectors have been concerned about the costs of the Directive and the restrictions the Directive could place on current processes. Most sectors see the benefit in having a level playing field in Europe and some, for example telecommunications, are comfortable with the idea of agreed safety limits.

6. It is timely to update the Board on the broad proposal expected from the Commission and seek a steer on the next phase of the influencing strategy

[1] Directive 2004/40/EC of the European Parliament and of the Council of 29 April 2004 on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (electromagnetic fields)(18th individual Directive within the meaning of Article 16(1) of the Directive 89/391/EEC)

[2] For more on the HSE involvement in the negotiation of the delaying Directive see HSC/07/31 – 'Directive 2004/40/EC on the exposure to workers to the risks arising from physical agents (Electromagnetic Fields)'

Argument

7. During 2009 the Commission has reviewed four broad options for the future of Directive:
   i. Keep the original Directive and implement by 2012
   ii. Introduce specific amendments to the Directive
   iii. Decide to not have a Directive but still take EU wide non-binding action (issue guidance or use social partner agreements)
   iv. Revoke the Directive and take no further EU wide action.

8. To date, the Commission has received a report assessing stakeholder views on the future of the Directive. This report was written by an external contractor - the FICETTI consortium. FICETTI undertook a Europe-wide, structured stakeholder assessment exercise in early 2009. The Commission have also completed one round of consultation of the social partners, again asking for views on the Directive's future.

9. The FICETTI report found that there was greatest stakeholder support for a revised directive – either containing revised exposure limits or a derogation based on risk assessment. Although the outcome of the first round of social dialogue is not yet published, HSE officials expect that most EU social partners – employers and employee representatives – will support a revised Directive.

10. From what we know of the outcomes of the Commission's consultation exercises, it appears that a proposal for an amended binding Directive is very likely to emerge. Our work on this issue now needs to focus on influencing the development of a proposal that addresses the risks in a sensible and proportionate way.

11. The outcome of the Commission's consultation aligns broadly with the stakeholder work HSE officials have carried out. The majority of UK stakeholders support the idea of EU wide action, albeit with some reservations. Some sectors are particularly concerned about the current exposure limits values. MRI users are content with an option that allows MRI use to continue as it does under the current regulatory regime. Annex A summarises the work that HSE officials have being doing in 2009. Central to this work are the ongoing discussions with UK stakeholders. Annex B summarises these discussions.

12. The main milestones in the next few months are:
    - Second round of consultation of social partners – launch due early November 2009
    - EMF Working Party of the Advisory Committee on Safety & Health opinion – December 2009
    - Commission publishes formal proposal April 2010.

<u>Influencing strategy</u>

13. HSE officials will continue to seek to influence the Commission with the following key objectives in mind:
    i. To ensure, so far as is reasonably practicable, worker protection where there is a risk of harm.
    ii. To develop an outcome that commands broad support among stakeholders.

iii. To ensure the costs associated with the outcome are justified by the benefits.
iv. To ensure that the outcome has a sound basis in the consensus of current science associated with EMFs.
v. To ensure that the outcome is in line with the principles of better regulation and HSE's existing policy statements on risk and enforcement.

14. To achieve this, HSE officials will focus on influencing the text of the new Commission proposal. The aim will be to ensure that the new text addresses the concerns of key UK stakeholders while preserving the ability of the Directive to protect workers where there is risk. The findings of the HSE impact assessment (see paras 17-18) will help identify where amendments to the Directive may be most effective.

15. The most desirable outcome for this process would be to have a proposal come forward in April 2010 that HSE, government and key stakeholders can support. It should then be possible to adopt a Directive that ensures worker protection and can be transposed into national law with minimal disruption of the existing UK regulatory framework. A particular goal is to ensure that there are no unnecessary additional burdens on those already managing the risk.

Action

16. To agree the influencing approach outlined at paras 12 – 14 above.

Costs

17. It is not possible to assess accurately the costs of any new proposal until the Commission announces it. However, HSE officials have revisited the impact assessment that was carried out for the original Directive in 2003.

18. The revised impact assessment has benefited from extra knowledge about the number of businesses affected and the risk assessment process. A guide and a draft European standard have been produced setting out for dutyholders the process they should go through to produce an assessment. In completing the HSE impact assessment officials have followed the same process.

19. HSE officials estimate that the minimum extra cost of implementing the current Directive to be £17 to £50 million in the 1st year and a present value of £36 to £135 million over 10 years. The main costs would be associated with carrying out site risk assessments and measurements of EMFs. This process is very technical and very few firms will have in the in-house capability to do these assessments.

Paper clearance

20. The Senior Management Team cleared this paper on 22 October 2009.

Annex A- HSE activity to date

The UK already has government representation on the EMF working party of the Advisory Committee on Safety & Health (ACSH). A representative from EEF also sits on the working party. The UK views and concerns about the Directive have been made at meetings of the working party.

In addition to the influence we have at that committee we:

- Met with the main UK stakeholders to discuss their views on the Directive and how they would like to see the Directive evolve (see Annex B). These meeting included site visits to appreciate the main EMF risks in various industries. We plan to have further contact with SMEs associations in Autumn 2009 via the SBTAF.
- Presented at an EU-wide seminar in Slovenia setting out the UK concerns with the Directive and the effectiveness of using the Framework Directive at Regulating EMF risks.
- Gave further presentations on the Directive at meetings of the Cast Metal Federation, Radio-Frequency Register Annual Meeting, the British Retail Consortium and the annual conference of the Institute of Physics and Engineering in Medicine (IPEM).
- Attended meetings of the British Institute of Radiology (BIR) safety committee to discuss progress with the Directive. A member of the BIR attended Redgrave Court to give a Chief Scientists Seminar on MRI.
- Encouraged UK stakeholders to respond to the FICETTI survey on the future of the Directive. Because of our involvement, the UK provided significantly more returns to the survey than any other member state.
- Provided further detailed comments on the FICETTI report ahead of the final publication.
- Provided support in the form of briefings during the first round of consultation of EU social partners.
- Set up an online community of information as more rapid way to share information.

The work of HSE officials has generated some benefits. UK stakeholders and their views have the highest profile in the consultation work that the Commission has been carrying out and key UK stakeholders have been kept up to date with developments.

Going into the next phase of work, the Commission asked HSE officials to advise on the methodology to use when carrying out the EU impact assessment.

Annex B – Current UK stakeholder views

HSE has had regular discussions about the Directive with key stakeholders in all of these sectors as well as with trade unions

Generally, UK stakeholders are comfortable with a revised Directive as long as it minimises unnecessary burdens on dutyholders while continuing to focus on those processes where there is a risk.

The main points to be aware of are:

- Having a Directive is a useful way of establishing commonly accepted minimal standards of safety.
- For large well-established industries such as telecommunications and energy distribution work has been carried out to ensure compliance with ICNIRP standards already and the Directive would have little impact.
- SMEs, particularly in the engineering/welding sector, are likely to be significantly affected by the Directive with a risk that extra levels of assessment and costly measurements would be required without a significant impact on risk.
- The health sector's primary concern is to be not restricted from carrying out important diagnostic and surgical work.
- No UK stakeholder was is favour of leaving the Directive as it is. Most want to see revised limit values and an approach that takes into account risk of harm. The health community are more in favour of receiving a sector based derogation that would exclude healthcare from the requirements of the Directive.

Annex C – Abridged impact assessment data

Assumptions and approach

Throughout we have tried to estimate the *extra* costs likely to be associated with a new Directive. Practically there should be suitable assessments taking place and appropriate preventative measures implemented already to ensure compliance with the Framework Directive regarding EMF risks.

Our research has indicated that the businesses / companies, sites, pieces of equipment and workers potentially affected would be ***at least***:

- 55,000 businesses / organisations
- 260,000 sites
- 277,000 pieces of equipment
- 447,000 to 713,000 workers

Costs

We also assumed 50% compliance as it would very unlikely that HSE would devote the necessary resources required to get 100% compliance with the Directive. A summary of the estimated minimum costs is below:

Type of cost	**First-year costs**			**10 year present value**		
Awareness	2,145,000	to	2,145,000	2,145,000	to	2,145,000
Familiarisation and planning	3,630,000	to	3,630,000	3,630,000	to	3,630,000
Determination and assessment of risks	13,107,250	to	45,864,000	30,650,686	to	122,739,908
Provisions aimed at avoiding or reducing risks*	?	to	?	?	to	?
Worker information and training	249,634	to	994,392	2,148,771	to	8,559,415
Consultation and participation of workers**	0	to	0	0	to	0
Health surveillance***	?	to	?	?	to	?
Total	**16,986,884**	**to**	**50,488,392**	**36,429,457**	**to**	**134,929,323**

*****: It is difficult to estimate how much preventative measures will cost when it is not clear the circumstances where this will apply.
**: Consultation is assumed to take place through usual channels and therefore to have nil impact.
***: Cost will depend on Directive wording but can assume to be a nil impact due to existing provisions already being in place

Estimated annualised costs would range between £4.2 and £15.7 million.