

## Summary of the key points of responses to the Consultative Document on HSC's Draft Policy Statement on Permissioning Regimes

### Details of consultees and responses

SPD sent out 374 copies of the CD on HSC's draft policy statement on permissioning regimes. There were 48 responses including those received as a result of the document's availability on the HSE website. The consultees are listed in the table below.

	<b>Comah</b>	<b>Offshore</b>	<b>Nuclear</b>	<b>Rail</b>	<b>Asbestos</b>	<b>GMO</b>	<b>Gas</b>	<b>General</b>	<b>TOTAL</b>
1. Employers	4	1	8	2	1	1	1	5	23
2. Trade Union	0	1	0	0	0	0	0	4	5
3. Emergency	0	0	0	0	0	0	0	2	2
4. Govt Body	1	0	1	1	0	1	0	1	5
5. Prof Body	0	0	0	0	0	0	0	2	2
6. Rail Passenger	0	0	0	1	0	0	0	0	1
7. Consultants/ Verf Body / Service Providers	1	0	1	1	0	0	1	1	5
8. Individuals	0	0	0	0	0	0	0	5	5
<b>TOTAL</b>	<b>6</b>	<b>2</b>	<b>10</b>	<b>5</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>20</b>	<b>48</b>

### General points

The majority of responses were positive and the exercise was welcomed for its openness. 36 respondents said the document identified and addressed the key issues well or very well.

22 respondents sought more clarity on what a permissioning regime covers and suggested the definition should be given as early as possible in the document. The TUC and a group of safety representatives consulted by the TUC felt the document needed prior knowledge to understand the detail of the processes involved and they suggested examples should be included to illustrate the principles. They suggested references to paragraphs in other documents, particularly R2P2, should be reproduced in this document for ease of reference. Some respondents questioned the definition of high hazard industry and argued that construction, mining and docks should be included in the definition. The aim to ensure consistency between regimes was welcomed. Cabinet Office said a more detailed explanation of the arrangements by which HSE will work with other agencies to maximise consistency would be helpful.

There were 7 particular points that stand out.

1. **Principle 1 on societal concern and Ministers overriding the criteria:** Under Principle 1 the need to address high levels of societal concern and the recognition that Ministers can decide to over ride the criteria described in principle 1 provoked discussion and comment. There was some concern that undue weight would be attached to societal concern when making a decision to introduce a permission regime. Twelve respondents made this point. We were asked to discriminate between genuine societal concern and a particularly vocal pressure group or the media. Respondents felt that where societal concern considerations lead to requirements that do not align with scientific evidence this should be acknowledged and the basis for the decision presented transparently and openly. Similarly Minister's right to override this criteria was questioned. One respondent said "I feel the principle will be readily sacrificed on the altar of political expediency ie if politicians want a permissioning regime as a result of public pressure, then it will be delivered, regardless of real risks, cost and any real benefit".
2. **Principle 10 on appeals:** 23 respondents commented on the proposal that there should be adequate and consistent mechanisms for appeal. The nuclear industry was particularly interested in this issue as the right of appeal does not currently exist in its industry. An appeal process that is open, transparent and clearly explains why decisions are taken by the safety regulator was welcomed. There was no strong view from the nuclear industry as to whether there should be an administrative mechanism or statutory mechanism. The main concern was for openness and to avoid a combination of delays, continuous requests for more information and then rejection. Cabinet Office welcomed the proposal and suggested HSE provide a detailed explanation of the elements of a model appeal mechanism setting out time limits for the various stages of an appeal and the award of costs. Nuclear Industries Directorate at DTI supported this principle when we discussed the CD with them at a meeting.
3. **Principle 8 on transparency and openness:** 28 respondents commented on striking the right balance between transparency and openness and ensuring the regime is achieving its objectives. 19 respondents supported this principle and thought it struck the right balance. The TUC supported principle 8 but felt the current system often denied workers access to information because of commercial confidentiality. Four respondents questioned whether commercial confidentiality was being used as an excuse to deny access to relevant information. Those who had concerns about this principle questioned the need to disclose key relevant documents and argued to protect national security and commercial confidentiality at all costs. They felt this was an important point that should not be compromised. It was pointed out that it was not the role of the health and safety regulator to keep workplace safety representatives informed of progress – that was for the duty holder to do.
4. **Principle 4 on the role of the health and safety regulator:** 29 comments were received on the limitations of what a permissioning regime can

achieve. The majority of comments supported the principle however, 7 respondents expressed concern about the description of the health and safety regulator's role in assuring safety. It was felt the current drafting absolved the health and safety regulator for both the quality of its advice and the assessment upon which its decisions to grant consent was reached. The distinction between the health and safety regulator accepting a duty holder's approach and accepting that arrangements are safe was considered confusing and unclear. Though no one argued that the duty holder's legal responsibilities should be displaced to the health and safety regulator, it was felt that the health and safety regulator must accept they have important responsibilities under such a regime and should be able to assure safety. London Transport Users Committee recognised the health and safety regulator should not carry all the responsibility for the duty holder but referred to the action brought against HSE by Thames Trains insurers after the Ladbroke Grove incident and asked to what extent should a duty holder be able to rely on the health and safety regulator's acceptance of a permissioning regime.

5. **Principle 1&3 on dutyholders sharing responsibility:** Railway Safety and the Office of the Rail Regulator felt the policy statement assumed all work activities and decisions were done in isolation whereas in railways this is rarely the case. Railway Safety felt that principle 1 and 3 should be redrafted to reflect the fact that often several duty holders are involved in making key decisions and that safety performance in a complex industry is based on the effectiveness of many duty holders.
6. **Principle 2 on proportionality within a regime's life cycle:** 3 respondents representing the nuclear industry suggested amending principle 2 to reflect the need for proportionality within a permissioning regime during the life cycle of a hazardous activity. The nature and extent of the permissioning regime should reflect changes in risk during the various stages of high hazard activities. For example an operating nuclear power station presents a greater risk than a plant undergoing decommissioning.
7. **Applying permissioning regimes to wider industries:** Anne Jones from the Simon Jones Memorial Campaign provided a number of positive comments on the document. However, she takes issue with the definition of exceptional hazard and argues that it is far too narrow. At the least, she wants to see docks and construction sites included in the criteria. She has suggested that all new businesses that use heavy plant or hazardous machinery should be licensed and subject to the criteria described in this policy statement. In addition, Stephanie Trotter, a fellow campaigner, wrote proposing all businesses should be licensed for safety; the revenue from this license could be used to appoint more inspectors to enforce health and safety legislation.