

Proposals for the Control of Major Accident Hazards (Amendment) Regulations to implement Directive 2003/105/EC on the control of major accident hazards involving dangerous substances

Results of consultation and list of responders

Summary

1. The paper provides information about the outcome of the Health and Safety Commission's consultation on proposals published in a consultative document on 12 July 2004 seeking views on:

- the draft Control of Major Accident Hazards (Amendment) Regulations that will amend the Control of Major Accident Hazards Regulations 1999 (COMAH); and
- a partial regulatory impact assessment of the draft regulations.

2. The draft regulations will implement the health, safety and environmental aspects of Directive 2003/105/EC which amends Directive 96/82/EC (the Seveso II Directive) on the control of major accident hazards involving dangerous substances. Seveso II was implemented in Great Britain through the COMAH regulations.

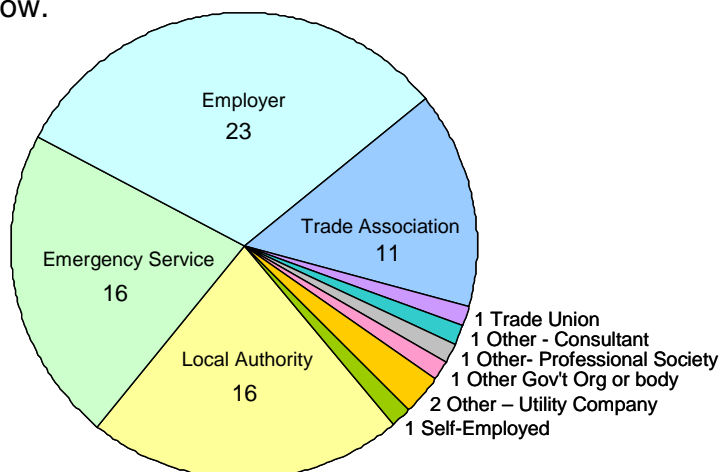
3. The consultation ran for 12 weeks ending on 1 October 2004. The CD asked 10 questions, which included two standard questions about the presentation of the policy issues and the consultation exercise itself. We provided a questionnaire that could be downloaded and completed electronically and returned to a dedicated e-mail account.

4. The Consultation questions

- **Question 1:** Do you agree with the way the draft regulations implement Directive 2003/105/EC?
- **Question 2:** Do you agree that regulation 3(4) of COMAH can be revoked?
- **Question 3:** Do you agree with the proposal to change to "inform" to "notify"?
- **Question 4:** Do you agree that where a safety report is reviewed but not revised, the notification from the operator to the competent authority should be placed on the public register?
- **Question 5:** Do you agree that the Agency should be named as a consultee on off-site emergency plans?
- **Question 6:** Do you agree with the proposed notification arrangements for petroleum products?
- **Question 7:** Do you agree that the operator should provide an amended safety report to the competent authority where information is excluded from the public register?
- **Question 8:** Do you think the regulatory impact assessment adequately assesses the most significant costs and benefits?
- **Question 9:** How well does the CD represent the different policy issues involved in this matter?

- **Question 10:** Please give details of anything you particularly liked or disliked about this consultation exercise.

5. The remainder of this document summarises the 73 responses received. A list of responders is included at the end. The majority of responses (almost a third) were from employers/business associations etc, and replies from local authorities, the emergency services and their associations accounted for just over a fifth each as shown in the chart below.



Q1 - The way the draft regulations implement Directive 2003/105/EC

6. Over 90% of those who responded agree with the way the draft regulations would implement the Directive.

Following a comment from one industry respondent, the wording of schedule 1, Part 1, Note 4 has been clarified.

Six respondents did not agree with the way the Regulations would implement the Directive. Two would have preferred a new set of COMAH regulations rather than a set of Amendment Regulations. This is the first time that COMAH has been amended and, given the straightforward nature of the Directive and the small number of other changes proposed, there are no special considerations that mitigate in favour of consolidating COMAH at this time. It is usual that a new set of regulations is only produced following the third set of amendments.

7. Comments from other respondents related to points of detail concerning e.g. the description of substances in the new petroleum products category; flammability definitions; and how the Chemicals (Hazard Information and Packaging for Supply) Regulations and the Directives on which they are based are referenced in COMAH. These and other similar enquiries did not raise any issues for the draft regulations and are being addressed where necessary in revised guidance.

Q2 The revocation of regulation 3(4)

8. This revision would replace the existing general provision on timescales for complying with certain duties with provisions under specific regulations on e.g. notification and safety reports. It was unanimously supported.

Q3 The change from 'inform' to 'notify' in regulation 8

9. The proposal to require operators to notify rather than inform the competent authority of any revisions to the safety report was supported by 94% of respondents. The change would allow the competent authority to keep a record of any revisions to the safety report, or cases where a report is reviewed but not revised.

10. One respondent considered the change unnecessary because it represents a change beyond that in the original Directive, and two others were opposed because, when linked to the existing definition of “notify”, it appeared to exclude the possibility of notification by electronic means. It is proposed that the definition of ‘notify’ should be amended to include e-mail and other methods allowed by the recipient which will allow greater flexibility for operators.

Q4 Letter on public register when safety report is reviewed but not revised

11. The CD proposed that an operator’s notification to the competent authority where a safety report has been reviewed but not revised should be placed on the public register. This was supported by 90% of respondents.

12. Six respondents had concerns about this proposal (two consultants, one chemical company, two industry associations and one local authority). These respondents expressed similar views:

- the letter should not be placed on the public register if the safety report is not on the register;
- operators are constantly reviewing safety reports and the requirement could introduce administrative burdens and bureaucracy resulting in additional costs.

13. The current Direction from the Secretary of State removes safety reports from the public register but does not extend to other documents. The proposed requirement does not alter existing arrangements on when/how to review safety reports, and the competent authority expects the additional costs of notification to be low as such notifications are likely to be short.

Q5 Agency as consultee on off-site plans

14. There was almost 100% support to the Agency (the Environment Agency and the Scottish Environment Protection Agency) being named as a consultee on off-site emergency plans. The change is intended to differentiate between the Agency’s role in the competent authority and that of an emergency responder.

Q6 Notification of petroleum products

15. The CD proposed that operators should include in their notification a breakdown of petroleum products using the substance groupings named in the new category. This was supported by 97% of respondents.

16. One respondent was concerned about how this would be dealt with in related changes to land-use planning legislation and the length of time an express consent (if necessary) may take. These comments have been referred to the devolved administrations who have responsibility for major hazard land-use planning.

Q7 Operator to provide amended safety report if information is excluded from the public register

17. Eighty five percent of those who responded agreed with this proposal. This implements a provision in Seveso II that was omitted from COMAH 1999. The requirement for the safety reports to be placed on the public register is not new but the existing regulations do not specify who should provide the amended report. This provision is intended to clarify that the duty rests with the operator.

18. Some industry respondents who did not support the proposal commented on:

- the amount of work involved in producing a public register version, and whether an amended report would need to appear ‘seamless’;
- the proposed timescale to prepare such a report (three months), considering that nine months would be more reasonable; and
- the value of an amended report.

19. The revised regulatory impact assessment now better recognises the additional work involved in preparing an amended report. Guidance will encourage operators to identify material for exclusion during the early stages of drafting/revising the report. The competent authority has further considered the proposed time period of three months to provide an amended report and believes this to be adequate.

Q8 Regulatory Impact Assessment (RIA)

20. Only 45% of those who replied agreed that the main costs and benefits had been adequately assessed. The regulatory impact assessment has been revised to reflect consultees’ comments.

21. **Industry** respondents commented that:

- companies operating outside the scope of EC legislation have a business advantage due to reduced operating costs. This is a second order (indirect) effect that is extremely difficult to quantify, and it is not usually addressed unless there is evidence to show that the effects are substantial. The revised assessment discusses this issue;
- the assessment generally under-estimates costs, with examples being given relating to the cost of providing a map or other image as part of a safety report, and providing an amended safety report if information is excluded from the public register. The revised assessment uses figures based on information provided by respondents;
- costs arising from changes due in October 2005 to the CHIP Regulations. The changes will bring some companies into COMAH because its application is determined by reference to categorisation of substances under CHIP. The current COMAH RIA is only intended to address changes arising directly from the Amendment Regulations/implementation of Seveso II amendments. As part of the CHIP project HSE is intending to look at wider-downstream consequences of changes to those regulations;
- benefits are over-estimated/insufficient evidence of benefits/information on environmental benefits is out of date. The revised assessment discusses benefits in more detail. The RIA uses a report from Det Norske Veritas completed in 2001 as the basis of environmental information. Although several years old, this is the latest available information and the estimates for certain environmental information are now illustrated as +/- 10% to allow for this.

22. Eleven **LA emergency planning units/associations** commented on the RIA. There were two main areas of concern:

- the assessment does not estimate the costs to local authorities in terms of off-site plan preparation, review, revision and testing, and information is presented as a total cost figure which does not illustrate who would incur particular costs. The RIA has been revised to better show estimated costs to LAs and to explain their role in COMAH emergency planning; and

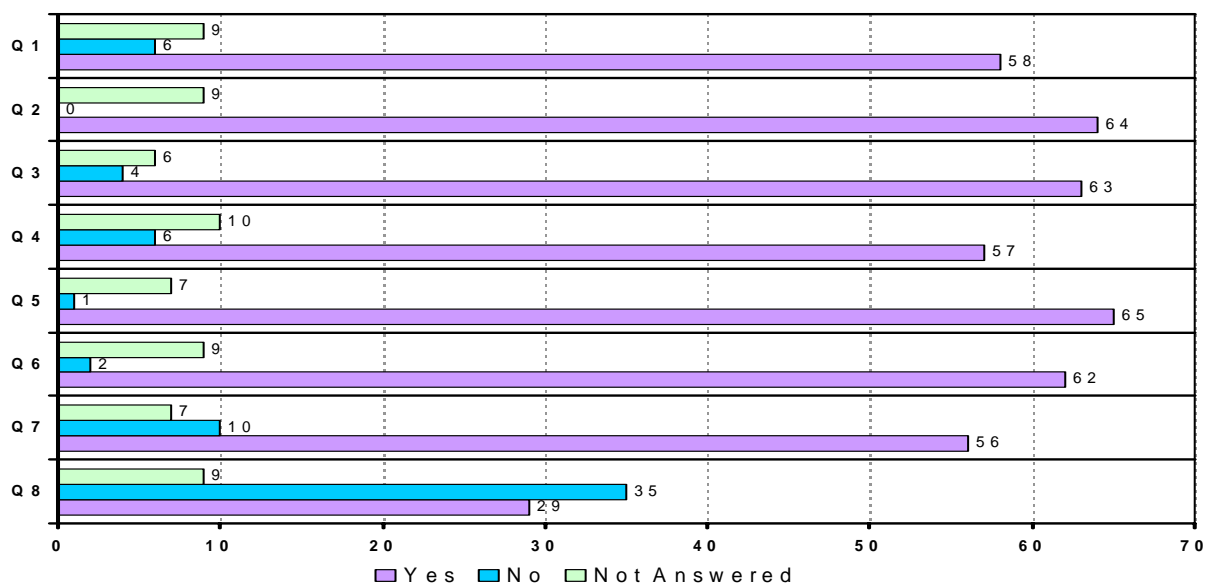
- LAs can recover costs of the ‘time spent’ by officers on off-site planning and HSE was asked to amend the guidance to enable them to charge for the full employment costs. The current proposals do not include any change to the current charging provisions. HSE has looked at the wording in the guide to COMAH and considers that the guidance is an accurate interpretation of the current provisions and that it cannot give further flexibility without going beyond what is permitted under the Regulations.

23. Seven ***emergency services/emergency service associations***, commented on the RIA. Their main concerns were:

- as with LAs, the assessment does not identify the costs of the emergency services’ involvement in off-site planning. The revised RIA now estimates the costs to the emergency services; and
- delays to the project to extend the charging provisions for emergency planning functions under COMAH. This work is being taken forward by the Department for Work and Pensions. Information about the consultation comments has been forwarded to DWP.

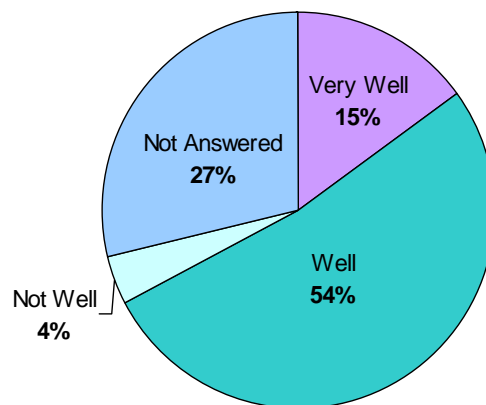
Summary of responses to first eight questions

24. The following bar chart shows the number of responses to the first eight questions discussed above:



Q9 How well the CD represented the different policy issues involved

25. Over 94% of respondents considered that the policy issues covered by the CD had been presented well or very well as shown below.



26. One industry responder considered that the land-use planning requirements would be better implemented through COMAH rather than separate land-use planning legislation. One emergency planning unit felt that the proposals identified issues of interest to operators better than those affecting emergency planners.

Q10 Like/dislike about the consultative document

27. The majority of respondents were supportive of the consultation efforts, welcomed the opportunity to comment, and considered that it was well-planned and publicised.

28. Some respondents would have liked the opportunity to comment on other aspects of COMAH and to see the revised guide issued with the CD. The draft guidance was not ready in time to be included in the published proposals but was available on the HSE website from 6 December for 11 weeks for consultation.

29. Suggestions were received that guidance on navigating the document electronically would have been helpful and cross-referencing the questionnaire with links to the CD. This will be put forward to the appropriate division within HSE to consider for future consultations.

30. Additional comments suggested increasing the period of consultation in future.

Other information obtained from consultation

31. To assist with the RIA, the CD also sought information from employers on whether or not they would be affected by the new threshold limits for dangerous substances, and if so how. These questions received a disappointing response, eliciting only eight replies, and in some cases it was not clear whether the response covered more than one establishment. They suggested:

- four would enter at lower tier because of changes to substances dangerous for the environment, carcinogens and petroleum products
- three would move from lower to upper tier because of changes to substances dangerous for the environment
- one would enter at upper tier because of the change to carcinogens.

Due to the limited number of responses it is not possible to draw any meaningful conclusions for the RIA.

32. Responses to this consultation have been lodged in the Health and Safety Executive's [Information Centre](#).

List of responders

Brenntag (UK) Ltd	Surfachem Ltd
Cornwall County Council	Diageo Scotland Ltd
Nufarm UK Ltd	West Sussex Fire and Rescue Service
Derbyshire Fire and Rescue Service	Cheshire CC, Halton and Warrington Unitary Authorities
Black Cat Fireworks Ltd	GlaxoSmithKline
Hertfordshire Constabulary	Cheshire Fire Authority
East Sussex County Council	Ciba Speciality Chemicals
Astra Zeneca	UKPIA
HM Fire Service Inspectorate	Agricultural Industries Confederation
Welsh Water	British Association for Chemical Specialities
Peak Environmental Consultants Ltd	BAE Systems, Land Systems
North Ayrshire Council	Staffordshire EPU
Emergency Planning Society	SIESO
Police Federation of England and Wales	North Wales Fire & Rescue Service
Neath Port Talbot and City and County of Swansea Joint EPU	Shell UK Ltd
West Yorkshire Fire and Rescue Service	UK Cleaning Products Industries Association
Buckinghamshire Fire and Rescue Service	ConocoPhillips (UK) Ltd
Norfolk County Council	British Chemical Distributors and Traders
Scottish Environment Protection Agency	Cleveland Potash
Highland Council	Non-Ferrous Alliance
Kent County Council	Merseyside Fire and Rescue Service
M Wansborough	Leeds City Council

South West Water	Institute of Directors
Scottish and Southern Energy plc	Local Government Association
Calor Gas Ltd	Leicestershire County Council
BP Grangemouth	Dorset County Council EPS
Chief Fire Officers Association	West Midlands Fire Service EPU
Greater Manchester Fire and Rescue Service	Chemicals Industries Association
Leicestershire Fire and Rescue Service	British Aerosol Manufacturers Association
Machin Consulting	Cleveland Fire Authority
Koppers UK Ltd	London Fire and Emergency Planning Authority
Association of Chief Police Officers	Lancashire County Council EPS
Scottish Power	Association of Police Health and Safety Advisors.
AWE Plc	National Grid Transco
Association of Chief Police Officers (Scotland)	Confidential responses (2)
Humber Emergency Planning Service	
Kodak Ltd	