

EU Directive on Services in the Internal Market

Consultation Response Form

The closing date for this consultation is 30/6/2004

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual consultation responses. This will extend to your comments unless you inform us that you wish them to remain confidential.

Please tick if you want us to keep your response confidential

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HSC invites others to comment on its views (accompanying covering letter, and pages 1-24, and 39 – 45 below). *Please address any comments to Peter Johnson, Health and Safety Executive, 8 South Wing, Rose Court, 2 Southwark Bridge, London SE1 9HS – Tel 020 7717 6430*

Please tick one of the following boxes:

	Small to Medium Sized Enterprises
	Representative Organisation (please specify):
	Trade Union
	Interest Group (please specify):
	Big Business
	Local Government
	Central Government
X	Regulator (please specify) <i>health and safety at work (Great Britain)</i>
	Other (please describe):

The questions are divided into four sections (see page 9 of the consultation document):

- I. General questions (page 4);
- II. Questions for business (page 25);
- III. Questions for regulators (page 38); and
- IV. Questions for service recipients (page 46).

You are welcome to provide answers to questions in any of the sections.

In addition to feedback on the proposals we would welcome information about barriers that are not addressed in the proposals. When responding to the consultation please provide evidence to support your arguments wherever possible.

Return completed forms to:

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General Questions

Question 1.

To what extent do you think the objectives, as set out in Article 1, will be achieved?

Comments:

The objectives in Article 1 seem likely to be advanced by abolishing discriminatory requirements designed to hinder service providers from operating in other Member States (MS). The kind of simplification provisions in Chapter II Articles 5 to 15, realistically applied, should do likewise.

However, success of the Directive will depend a good deal on securing public confidence in continuing sensible controls of risks to health and safety. The further development of the proposals needs to recognise that striving to create greater certainty for temporary service providers under the country of origin principle should not be at the expense of ensuring proportionate control of risks to workers, and the wider public who may be affected by work activities, not just as service recipients. HSC therefore seeks an exemption from the country of origin principle for health and safety at work regulation. However, the responses below include detailed comments on the Directive's country of origin provisions as they are currently drafted in order to reveal their implications for maintaining health and safety standards.

Question 2.

Do you think that the scope of the Directive, as given in Article 2 is sufficient?

X Yes

No

Not sure

If not, what changes would you like to see?

Further comments:

Question 3.

Do you think that the exclusions from this Directive given in Article 2(2) are sufficient?

Yes X No Not sure

If not, what changes or additions would you like to see?

The railway transport sector should be excluded to the extent that it is subject to authorisations (eg 'safety cases') in order to control potentially serious risks to the health and safety of workers, passengers, and other members of the public who may be affected by railway operations. This will avoid the potential for making mainline railways and underground systems, for example, subject to different requirements in places where the systems are linked.

Further comments:

The Department for Transport leads on transport in general. HSC is commenting because HSE has responsibility for the legislative framework for rail health and safety, acceptance of 'safety cases' for railway operations, and health and safety enforcement in relation to railways.

Question 4.

Do you think the definitions given in Article 4, in particular those for "service", "requirement", "coordinated field" and "authorisation scheme", are adequate in the context of the sector in which you operate?

Yes X No Not sure

If not, what changes would you like to see?

The definition of 'establishment' should include temporary service providers (TSPs) who undertake seasonal or other regular work in a Member State. Amending 'establishment' in this way would create less incentive for unscrupulous service providers to seek to operate across borders in order to keep one step ahead of the regulators. HSC is concerned for example about some, not all, who act as gang masters in the agricultural industry.

Question 5.

Do you think that the Directive takes adequate account of other Community law, both in Article 3 and other articles, for example, Articles 17 and 19(3)?

X Yes

No

Not sure

Comments:

The draft Directive indicates that the country of origin provisions (Article 16) should not apply to matters covered by Directive 96/71/EC (Posted Workers). HSC supports this. The Posted Workers Directive seeks to ensure among other things the health and safety of workers posted to GB from other MS. Directive 96/71/EC does so by ensuring that the posted workers will be subject to the health and safety regulation, inspection and enforcement by the host MS authorities, in GB the Health and Safety Executive (HSE) and local authorities. This approach is designed to promote the health and safety of posted workers in a straightforward and predictable way. HSC notes this is in contrast to the home MS regulation which would apply under the country of origin principle (Article 16) to TSP employees recruited locally in the host MS.

Question 6.

Have you experienced any difficulties in completing administrative procedures and formalities in order to set up a subsidiary company in another Member State?

Yes

No

Not sure

If so, please give examples.

Do you think the measures to simplify these procedures, as stated in Article 5, are sufficient and adequate?

If not, what changes or additions would you like to see?

Question 7.

In relation to the rule prohibiting a host Member State from requiring further documentation in Article 5(2), do you think the exception '*where a requirement is objectively justified by an overriding reason relating to the public interest*' is too narrow or too wide?

Too narrow Too wide Not sure

If so, how might it be improved?

Ensuring sensible and proportionate protections from risks to health and safety is in the overriding public interest.

It may be necessary to require originals or certified copies of certain kinds of certificate which are critical to assuring safety, eg certain certificates of testing.

Further comments:

Question 9.

Do you think there is a need for single points of contact (Article 6)?

X Yes No Not sure

How would you like to see the UK comply with this requirement?

'Single points of contact' (SpoCs) can help to promote transparency in regulation. SpoCs can make it as easy as possible for businesses to get general advice on what is required to comply with the law. But SpoCs should be seen as a gateway to obtaining advice on what is required in specific cases (when inspectors' expert advice may be needed), or to apply for authorisations. Health and safety authorisations are required only when no less stringent requirement will do to control serious risk – they may require a process of information provision, discussion, and expert consideration which is the job of front-line inspectors.

Further comments:

HSE already has 'Infoline', which provides thousands of enquirers each year with information on health and safety at work requirements and a gateway to regulatory services

Question 16.

Do you think the conditions permitting Member States to retain the authorisation schemes, as set out in Article 9(1)(a) to (c) are sufficient?

Yes

X No

Not sure

Comments:

Health and safety authorisations are used only where proportionate and objectively necessary. They are not used to discriminate against businesses from other MS. The Articles appear to permit proper health and safety authorisations to continue to be used to regulate potentially serious risks created in established service providers. Authorisations include nuclear, asbestos and explosives licences, offshore safety cases, and gas fitter registration (under CORGI).

However, it is not clear from the Directive as it stands that such authorisations may still be applied to TSPs. It will be important that this gap in regulation is removed. Perhaps this is part of the intention behind Article 17(17), but if so the Directive needs to make that clear.

Question 17.

Do the conditions applied to authorisations of limited number or of limited duration in Articles 11 and 12 pose problems for regulators or indeed applicants?

Yes

X No

Not sure

If so, please provide suggestions on how such problems could be mitigated.

Further comments:

Ensuring sensible and proportionate protections from risks to health and safety is in the overriding public interest. The Articles appear to allow authorisations to be of limited duration where necessary to ensure risks are adequately controlled (eg annual registration of gas fitters with CORGI)

Question 18.

Do you think the provisions of Article 13 would pose problems for UK authorisation schemes, in particular concerning the costs of the authorisation process incurred by the parties referred to in paragraph 2?

X Yes

No

Not sure

If so, please suggest ways any such problems could be mitigated.
Health and safety authorisations are required only when no less stringent requirement will do to control especially serious risks. Some authorisations require the applicant to provide detailed information about how they will manage risk, often in complex circumstances. That information is then assessed by inspectors. Further information, clarification, or changes may be required to provide assurance that risks will be reduced adequately. This kind of 'dialogue' between applicant and inspector is designed to assist the applicant to comply, as well as to help the inspector ensure adequate controls. Inspectors aim to conclude the process as swiftly as possible, but the potential seriousness of the risks and the need for the active co-operation of the applicant mean that a fixed time limit for such applications would not be appropriate. HSE and local authorities draw attention to procedures for making complaints – this includes any complaints about the time being taken to process an application.

Where certain authorisations require less initial information HSE has a performance target for how quickly decisions should be made (eg the asbestos stripping licence - because licence recipients must then notify HSE of new work 14 days in advance, and must submit work plans].

Further comments:

Question 19.

Do you think the tacit consent provision in Article 13(4) would pose problems for any UK regulatory schemes?

X Yes

No

Not sure

If so, please suggest ways any such problems could be mitigated.

Further comments:

Article 13(3) implies and 13(4) provides for applications to be accepted by default if the target date is not met. This is not appropriate in relation to authorisations which are proportionate, objectively necessary and non-discriminatory as required under the Directive itself (Article 9(1)) – people should not be put at serious risk simply because in a rare case the regulator fails to meet a service target. 13(3) and (4) should be modified accordingly.

Question 23.

Do you see any problems arising from the notification procedure set out in Article 15(6)?

Yes

X No

Not sure

Further comments:

To the knowledge of HSC and HSE, health and safety at work regulation in GB does not discriminate against service providers from other MS. Health and safety regulation is introduced when it is proportionate to control risks of injury or occupational ill-health. The provisions of Article 15(6) do not appear likely to impact on health and safety regulation.

Question 24.

How well do you think the country of origin principle will work in practice (Articles 16 – 19)?

X Not well

Well

Very Well

Not Sure

Further comments:

The country of origin approach may work well if confined to requirements which bear directly on establishment of businesses (subject to exclusion of health and safety authorisations – please see answer to question 16). However, HSC has serious concerns that the country of origin principle would undermine efforts to ensure that service providers, including TSPs, are consistently subject to sensible controls on work-related risks. The present proposals appear not to provide for key health and safety protections, including:

- (Article 17(16) and (17)) application to TSPs of authorisations which meet the Directive's own reasonable criteria (Article 9(1)); providing for a continued common basis of health and safety requirements, and communication, in circumstances where a number of providers, or a customer and service provider(s) must work together closely to identify and jointly control risk (eg construction sites, process plant maintenance).*
- inspectors to be able to take immediate action to stop work by a TSP where there is a risk of serious personal injury (contrary to the present Article 37 which would require prior liaison with the home MS).*
- provisions to ensure that unscrupulous service providers cannot operate across borders rather than in their home MS in order to stay one step ahead of the regulators.*
- continuation of duties on employers and self-employed people (not fully reflected in EU health and safety directives) to safeguard both workers and the wider public who may be affected by work activities (not an aspect of EU health and safety directives).*

However, even if refined in such ways, country of origin will reduce present certainties about what requirements apply; which authorities are responsible for regulation and enforcement; what form that will take; how a TSP may be held to account for serious breaches; how another MS authority may be held to account for its decisions. This will depend on whether the provider is a TSP. When an incident has led to death or injury such uncertainties will impact on victims and bereaved families.

Question 26.

Do you think the derogations given in Articles 17 – 19 are appropriate and sufficient?

Yes

X No

Not sure

What changes or additions would you like to see (for example, should there be a derogation for healthcare services or consumer protection where there is a serious problem)?

Please see answer to question 24 above

Are the safeguards on the exercise of derogations set out in Articles 19 and 37 adequate and workable for businesses or regulators?

Article 19, taken with Article 37, would need to be modified so that inspectors can continue to take immediate action to stop work by a TSP where there is a risk of serious personal injury (please also see answer to question 24 above)

Is it clear to you when you would / would not be entitled to take regulatory action in derogation from the country of origin rule?

It is apparent that the circumstances in which the ‘case by case’ derogation could be used are intended to be very limited, presumably intended to reduce any scope for MS to discriminate against other MS service providers. Unfortunately, the limitations in Article 19(2) add to the uncertainties inherent in country of origin: there is no definition of ‘Community harmonisation, which would render the derogation unavailable; whether the home MS has acted ‘within the shortest possible time’ as required in 37(2) is open to wide interpretation and will depend a good deal on the level and nature of the risks which need to be addressed.

These uncertainties are in addition to those arising from the potential bureaucratic inefficiencies of cross border liaison.;

Further comments:

Question 28.

Are the provisions in Article 19 sufficient to ensure health and safety protection of service providers in other Member States?

Yes

No

Not sure

Comments:

This question is not clear. Does it refer to service recipients? If so, the answer would be 'NO'. Please refer to the points in answer to questions 24 and 26.

Question 31.

Do you think the 'non-discrimination' requirement in Article 21 is sufficient and adequate?

Yes

No

Not sure

If not, what changes or additions would you like to see?

Is Article 21(2) problematic in relation to differential pricing or are such prices based on "objective criteria"?

Further comments:

Question 32.

Do you think the provisions on the posting of workers, as set out in Articles 24 and 25, are sufficient and adequate?

X Yes

No

Not sure

If not, what changes or additions would you like to see

Further comments:

The provisions appear compatible with the provisions of the Posted Workers Directive – to that extent they are satisfactory. Please also see answer to question 5 (inconsistency in treatment of workers posted by TSPs on the one hand, and recruited in the host MS on the other).

Question 35.

How easily do you think the provisions under Articles 24 and 25 can be implemented? For the service provider, the posted worker and public bodies charged with policing the regime?

Not easily

Easily

Very easily

Not Sure

Comments:

The provisions appear compatible with the provisions of the Posted Workers Directive – to that extent they are satisfactory. Please also see answer to question 5 (inconsistency in treatment of workers posted by TSPs on the one hand, and recruited in the host MS on the other).

Question 36.

Do you agree that the use of certification and voluntary marks improves the quality of services and should be encouraged?

Yes

No

Not sure

Comments:

Question 38.

What are your views on the information provision requirements in Articles 26 – 30?

Comments:

In terms of the country of origin approach, TSPs should also indicate in broad terms what statutory health and safety protections apply to workers, the self-employed, and to the wider public (not just service recipients). Business users of a service may wish to consider whether they should require a TSP to adhere to GB health and safety requirements as a matter of contract.

Customers of TSPs, when they have duties under GB health and safety law (eg as employers, self-employed people, manufacturers or suppliers) may contract out aspects of their business activity, but they may not delegate their health and safety duties. The courts have found that the activities of an employer's contractors are part of the employer's undertaking, which must be carried out in such a way as to safeguard people's health and safety. An employer contracting with a TSP will need to satisfy itself that it can fulfil its health and safety duties when a TSP is regulated under home MS law, which may be different, even though the overall intent to protect health and safety may be the same. The country of origin approach would place an extra burden on responsible employers to ensure effective communication about and control of risk in such circumstances.

Question 43.

How easily will it be to draw up European level codes of conduct (Article 39) in the sector in which you operate?

Not easy Easy Very Easy Not Sure

Who should be involved in the drawing up of the codes?

Further comments:

Question 44.

Do you think the areas considered for additional harmonisation in Article 40 are sufficient and adequate?

Yes No Not sure

If not, what changes or new additions would you like to see?

Further comments:

HSC notes that regulation of gambling as a business will not be subject to the country of origin principle until that regulation is harmonised across the EU, whereas regulation of work-related health and safety risks would be covered by it without effective harmonisation. This seems an odd distinction given that the continuing effectiveness of health and safety regulation is essential to help prevent serious injury, ill-health or death. There is a strong argument that any application of country of origin to health and safety at work regulation should not come into effect unless an agreed level of harmonisation has been achieved.

Question 45.

Assuming the Directive is adopted as per the planned schedule, is the timetable for implementation achievable?

Yes

X No

Not sure

Comments:

As indicated above, the timetables are unrealistic to carry through the generally welcome simplification processes envisaged by the Directive.

We welcome the European Commission's having given some consideration to how to continue sensible and proportionate control of work-related health and safety risks. However, as this response indicates, HSC has major concerns about how the country of origin principle would impact on health and safety.

Achieving effective and proportionate health and safety regulation which minimises the costs to business relies heavily on adequate consultation on the particular health and safety questions. Valuable insights may be afforded by the present DTI consultation but the DTI consultation does not raise the health and safety implications. HSC may wish to consult further on issues as they emerge during MS negotiations over the Directive. HSC does not consider that the EC timetable allows for such consultation to be carried out and to be considered in those negotiations.

Question 49.

Are there any other risks associated with not taking action?

Yes

No

Not sure

Comments:

Question 50.

Are there any other options which would achieve the objective?

X Yes

No

Not sure

Comments:

Options consistent with qualified support for the Directive would include:

- 1) provisions on simplification/established service providers broadly as now - only regulations bearing directly on setting up a business to be subject to the country of origin approach (health and safety at work excluded) - HSC's preferred option*
- 2) provisions on simplification/established service providers broadly as now – but country of origin approach introduced only when a greater but agreed level of community harmonisation is achieved (as for gambling sector) – with or without a set timescale.*
- 3) provisions on simplification/established service providers broadly as now – country of origin approach subject to derogation in all cases where authorisations found proportionate, objectively necessary and non-discriminatory; where co-operation between service providers and others essential to control of work-related risk; and to permit inspectors to issue Prohibition Notices as now to immediately stop work which is creating risk of serious personal injury.*

Question 56.

Which proposals in the Directive will you derive most benefit from?

What is the likely scale of the associated benefits?

Will they be significant?

Further Comments:

Question 57.

Are there any potentially useful measures which are missing from the Directive?

X Yes

No

Not sure

Comments:

A major omission from the EC proposals is provision to ensure that criminal prosecution can be conducted effectively across borders (whether under an EU measure or non-EU convention). In the absence of such a provision, timed for the adoption of the Directive, HSC is concerned that the Directive seeks to embrace criminal as well as civil sanctions. It would need to be made clear to all who may be concerned about a serious work-related incident involving a TSP that whether criminal sanctions may be considered or are brought will depend on home MS law, and whether it is practicable under the available judicial co-operation processes (eg to obtain evidence, including witness statements).

Where an incident may have resulted from the actions of more than one employer, including a TSP, the process of investigation, and decisions on possible prosecution risks being greatly complicated by the Directive.

Question 60.

Are there any sectors, groups or types of firm, for example Small and Medium Enterprises that will gain more or less in terms of the potential benefits that could result from the Directive?

X Yes

No

Not sure

Comments:

GB service providers working temporarily in another MS would be able to continue to manage health and safety risk in the ways set out in GB health and safety legislation. This may be of assistance to employers in some circumstances, but where they need to work with others to control risk HSC considers this arrangement is likely to be a barrier to effective action. The apparent business benefits may be illusory.

HSC considers that many client firms in GB and other MS will in fact specify the host MS health and safety law as having to be adhered to. It might be argued that this would be a satisfactory market solution to control the more serious risks. But extra risks from discontinuities in regulation are most likely in those businesses who do not take such a considered approach to risk management.

Question 61.

Will any particular country or region in the UK gain more or less in terms of the potential benefits that could result from the Directive?

Yes

No

Not sure

Comments:

Question 62.

How significant are the risks that the anticipated benefits will not be realised?

Not Significant

X
Significant

Very Significant

No Change

What is the nature of these risks?

There is a risk that uncertainties inherent in the country of origin approach may undermine public confidence in the regulation of work-related risks to health and safety. Public confidence would be crucial to the operation of the country of origin approach – the EC proposals will need to address this issue.

Further comments:

Question 63.

How significant are the risks of taking action under Option 2?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Not Significant	Significant	Very Significant	No Change

Comments:

HSC considers that DTI's favoured option 3 'qualified support' is the right option, taking account of the issues raised in this response.

Question 64.

Are there any other risks associated with option 2?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not sure
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Comments:

Question 65.

Which parts of the Directive should be:

Retained?

The proposals on simplification (single points of contact, electronic access, authorisations) will promote proportionality and transparency in regulation (subject to sensible timescales/additional resources).

Deleted?

HSC does not consider that the country of origin approach should be applied in relation to health and safety regulation because it risks undermining health and safety standards.

Improved?

HSC considers that new resources would be needed to cope with the simplification proposals. More realistic timescales are also necessary. Without such flexibility it is likely that the necessary resources (eg to review and justify existing authorisations) would come from strategic programmes to reduce injury, ill-health and deaths from work.

HSC considers that the costs and benefits of the country of origin approach need to take account of the following: risks to maintenance of health and safety standards in TSPs own activities, and in circumstances when TSPs must co-operate with other businesses to control risks; the inefficiencies inherent in an approach which is heavily reliant on inter-authority and inter-MS bureaucracy; and the risks in some sectors that unscrupulous firms will seek to exploit the approach as TSPs.

Added?

Question 71.

Are there any sectors, groups or types of firm that will lose more or less in terms of the potential costs that could result from the Directive?

Yes

No

Not sure

Comments:

Please see answer to question 60

Question 72.

Will any particular country or region in the UK lose more or less in terms of the potential costs that could result from the Directive?

Yes

No

Not sure

Comments:

Question 75.

What will be the likely impact of the Directive on competition?

Comments:

HSC recognises the benefits to the GB economy which DTI expects to come from growth in trade in services within the EU. The country of origin approach appears to be intended to provide more certainty for TSPs considering operating in another MS, but it seems likely to create uncertainties which may undermine those benefits: uncertainties on the part of potential employees, private consumers, and client companies for example. HSC notes that under the EC proposals, TSPs operating in GB would be under different regulation to competing domestic service providers, which undermines consistency in regulation within GB. Competition too could be undermined if in practice regulation and enforcement is less effective because of complexities of the mutual assistance aspect of country of origin.

Question 76.

Are there likely to be any impacts on competition other than those described?

Yes

No

Not sure

Comments:

Please see answer to question 75

Question 77.

Do you foresee any likely problems with enforcement and sanctions other than those discussed?

Yes

No

Not sure

Comments:

Although the host MS authorities would continue to investigate incidents, the country of origin principle would introduce a degree of complexity and uncertainty:

- TSPs would be subject to enforcement and sanctions in accordance with home MS law. Where enforcement action was appropriate against a TSP following an incident, it would not necessarily be on the same basis as a domestic service provider who may be involved in the same incident.*
- different enforcement regimes would apply following any serious risk or actual harm to a posted worker as compared to a worker a TSP recruits in the host MS.*
- where an alleged offence is so serious that criminal prosecution is appropriate under the home MS law (as in GB), present judicial co-operation processes do not allow defendants or witnesses to be required to attend court; payment of criminal fines cannot be enforced.*
- following a death when it is crucial that police and HSE co-ordinate possible manslaughter and health and safety investigations, liaison with another MS authority would be required if a TSP was involved.*

Questions for Businesses

Question 8.

If you are a business, have you experienced any problems in getting information on establishing a subsidiary company in another Member State?

Yes

No

Not sure

Comments:

Question 13.

If you are a business, do you anticipate any costs for your business as a result of the simplification process (Articles 5 – 8)?

Yes

No

Not sure

Comments:

If you are a business, will the provisions regarding simplification of authorisation schemes and conditions concerning limited duration and limited numbers of authorisations (Articles 9 – 13) impact on your practices?

Yes

No

Not sure

If so, how will it change your business practices?

What changes or additions would you like to see?

Further Comments:

Question 20.

If you are a business, will the elimination and evaluation of barriers listed in Articles 14 and 15 impact on your business?

Yes

No

Not sure

If so, how will it change the way you work?

What changes or additions would you like to see?

Are there other barriers not identified that have caused your business problems?

Further Comments:

Question 25.

If you are a business, will the country of origin principle (Articles 16 – 19) encourage you to provide a service in another Member State?

Yes

No

Not sure

If not, why would it not?

Further comments:

Question 29.

If you are a business, how well do you think the country of origin principle (Articles 16 –19) will work in the context of the sector in which you operate?

Very well

Not very well

Not sure

What changes or additions, if any, would you like to see?

Further comments:

If you are a business and have experience of posting workers to another Member State, have you encountered any difficulties?

Yes

No

Not sure

What was the nature of those difficulties?

To what extent do you think Articles 24 and 25 will alleviate them?

Further comments:

Question 34.

If you are a business, how well do you think Articles 24 and 25 will work in the context of the sector in which you operate?

Very well

Adequately

Not very well

Not sure

Would they provide significant advantages over the present position?

Further comments:

Question 39.

If you are a business, how well do you think Articles 26 – 30 will work in the context of the sector in which you operate?

Very well Adequately Not very well Not sure

Comments:

Question 42.

If you are a business, how well do you think these rules (Articles 34-38) will work in the context of the sector in which you operate?

Very well Adequately Not very well Not sure

Comments:

Question 46.

What are the most *common* barriers you or your business face in trading services across borders in the EU?

How much do they cost you?

What are the most significant barriers?

How much do they cost you?

Further comments:

Question 47.

What are the most common barriers you or your business face in establishing in other Member States?

How much do they cost you?

What are the most significant barriers?

How much do they cost you?

Further Comments:

Question 48.

Will the proposals address the barriers you face?

Yes **No** **Not sure**

Comments:

Question 51.

Will you or your business benefit from the Directive?

Yes

No

Not sure

If so, how?

Further comments:

Question 52.

Can you or your business benefit from the Directive's proposals, even if you do not plan to start or continue exporting?

Yes

No

Not sure

Comments:

Question 53.

Will you consider starting trading (exporting or importing) services with the EU if the proposals are implemented?

Yes

No

Not sure

Comments:

Question 54.

Will you expand your current trade with the EU if the proposals are implemented?

Yes

No

Not sure

Comments:

Question 55.

What is the likely scale of the benefits?

Will they be significant?

Further comments:

Question 66.

Are there implementation or compliance costs for your business which are likely to arise from the Directive proposals?

Yes

No

Not sure

What is the likely scale of these costs?

Will they be significant?

Which are likely to be the most burdensome proposals?

Further comments:

Question 73.

Will the Directive have different implications for the costs of different sized businesses?

Yes

No

Not sure

Comments:

Question 74.

Are there particular derogations (Articles 17 – 19) that will have a significant impact on your business?

Yes

No

Not sure

Comments:

Questions for Regulators

Question 10.

If you are a regulator, do you think the simplification process and the provisions concerning authorisations (Articles 5 - 13) would have serious consequences for the regulation of the sector for which you are responsible?

Yes

X No

Not sure

If so, please provide details of such consequences and how they may be mitigated.

'No' - subject to 1) more realistic timescales to achieve what the directive requires, and extra funding to cover the work such as reviewing and justify authorisations or further development of electronic access; 2) a realistic approach to deciding when electronic access is appropriate and what degree of sophistication is proportionate. Otherwise this will draw resources from Government and HSC strategic programmes to reduce work-related injury, ill-health and deaths, and working days lost.

Further Comments:

Question 12.

If you are a regulator, do you think that the simplification process (Articles 5 - 8) can be satisfied in the existing legislative framework?

X Yes

No

Not sure

Do you think that it can be achieved within existing infrastructure and resources?

The simplification process is in line with the purposes specified in the primary health and safety legislation (the Health and Safety at Work etc Act 1974, HSWA).

Extra resources would be needed, for further development of electronic access and for reviewing and justifying authorisations. Such a review would include HSC consulting with stakeholders on any changes which may be proposed to regulations – this is a statutory requirement under HSWA. However, HSC anticipates that GB health and safety authorisations will be found to be proportionate, objectively necessary and non-discriminatory.

If not, what would need to be done, and what would the estimated costs of this be?

HSE is considering the possible costs and will supply an estimate separately.

Further Comments:

Question 15.

If you are a regulator, do you think that the provisions governing authorisation schemes (Articles 9 - 13) can be implemented under the existing legislative framework?

Yes

No

Not sure

Do you think that it can be achieved with existing infrastructure and resources?

Please see above

If not, what would need to be done, and what would the estimated costs of this be?

Further comments:

Question 21.

If you are a regulator, will Articles 14 and 15 significantly impact on the regulation of the area for which you are responsible?

Yes

X No

Not sure

If so, how?

Health and safety requirements apply irrespective of whether an employer is based in GB or another country, and provide comprehensive sensible safeguards for workers, and members of the wider public who may be affected by work activities. Enforcement action where it is appropriate is taken in an entirely non-discriminatory way subject to the territorial limits of HSWA jurisdiction, and international judicial co-operation processes.

What are the estimated costs?

What changes or additions would you like to see?

How could any problems identified be mitigated?

Are all the restrictions identified in Articles 14 and 15 on the right list?

Question 22.

If you are a regulator or responsible for policy in such an area, will the restriction on Article 15(5) on the introduction of new regulatory schemes be a problem for you?

Yes

X No

Not sure

If so, please provide details of the problems it may cause and how those problems may be mitigated.

Further Comments:

HSC does not believe that provisions of the kind to be evaluated under Article 15(2) appear anywhere in GB health and safety legislation.

Question 27.

If you are a regulator, to what extent will the requirement in Article 16(3) on Member States to supervise UK service providers who provide their services in other Member States have an impact in your area?

X Yes (considerable)

No

Not sure

Will it be possible to take on this function with existing infrastructure and resources?

No – supervision of TSPs in other MS would be an entirely new and additional role for HSE and local authorities. It would involve additional staff resources, training, and new organisation to accomplish the task.

Further Comments:

Question 41.

If you a regulator, how easy will you find it to provide assistance and to co-operate with a regulator in another Member State (Articles 34 - 38)?

Very Easy Easy X Not Easy Not sure

Comments:

This would be a new and continuing role which HSC expects would absorb a significant amount of HSE and local authority resources. Without additional resources to match the demand, resources would inevitably be withdrawn from HSC strategic programmes aimed at achieving Governemnt and HSC targets for reducing work-related harm.

The extra cost of mutual assistance is difficult to predict. HSE will be trying to make an estimate, though this is likely to involve many assumptions. Costs would depend on the numbers of TSPs moving from GB into other MS, and the scale of the reverse flow. HSC would be grateful to know what estimates DTI has made of these numbers and any projected growth as a result of the Directive.

HSE and local authorities seek to target investigations and enforcement on the most serious risks, taking account of the extent of any actual harm to people who may be affected. Inspectors' efforts are also prioritised in order to support progress towards HSC strategic programmes. But other MS authorities may have different priorities and it is difficult to predict how these priorities would interact. The Directive appears to leave no scope for negotiation in the extent of co-operation.

Whether the mutual assistance process could be made to work effectively, and the costs, would also depend for example on how bureacratic the process became, what inefficiencies remote enforcement by another MS authority brought, and the extent to which smaller MS were able to resource their end of what would be a complex process.

Question 67.

Are these assessments of costs for Government and regulators reasonable (C.78 p.83)?

Yes No Not sure

Comments:

The costs of screening existing and new authorisations will be significant but it will not be the greatest cost to health and safety at work regulation.

The country of origin proposals, and mutual assistance in particular, would represent a major new and continuing role, creating the greatest of the costs from the new Directive as currently drafted (please see also answer to question 41). It would also be vital to monitor such a process to evaluate its effects on standards of health and safety, and this in itself would be a significant call on HSE and local authority resources.

Question 68.

What will be the likely cost of setting up a “single point of contact” (Article 6)?

Comments:

HSE already has ‘Infoline’ which provides ready access by phone, e-mail or letter to anyone wanting information about health and safety requirements, or who wants access to regulatory services (eg authorisations) or expert advice from Inspectors in particular circumstances.

HSC considers this to be a model which would achieve the Directive’s objective in a proportionate way, and recommends the approach to other regulators and other MS authorities.

Question 69.

What other likely costs can you foresee?

Will they be significant?

The costs to the UK economy each year from health and safety incidents has been estimated at between £11 billion and £18 billion, equivalent to 2% to 3% of GDP in Great Britain. The work of HSC, HSE and local authority health and safety enforcing officers is aimed at reducing this cost through promoting sensible measures to control work-related risks, and the human suffering which arises from it. If the country of origin approach had an adverse effect on health and safety standards, as HSC believes it would, or withdrew resources from the health and safety enforcing authorities’ targeted and proportionate efforts then there would be costs to the economy, or opportunity costs from failure to reduce them.

Can they be quantified?

This will be difficult. HSE will consider whether an estimate could be made.

Further Comments:

The way in which the country of origin approach is developed in Directive will be crucial in the extent of the costs it imposes on the regulator, and its economic impact.

Question 78

Are the proposed arrangements for monitoring adequate (c.102 – C.108 p.92-3)?

Yes

No

Not sure

Comments:

HSC would wish HSE to establish a baseline of data against which the impact of the Directive, especially the country of origin approach, could be evaluated. It would be important to consider the effects on the regulatory process as well as on health and safety standards.

Interim monitoring of key indicators may help to provide early warning of any problems, and to contribute to a review.

Monitoring will be no substitute for considering beforehand the likely impact of the country of origin approach on maintaining TSP health and safety standards.

Question 79.

What will be the likely costs of monitoring for your sector?

Comments:

HSE will seek to estimate the costs of a monitoring and evaluation programme.

Questions for Recipients of Services

Question 11.

Could the simplification obligation (Articles 5 – 8) have an implication on the protection of recipients of services?

Yes

No

Not sure

Comments:

Question 30.

Do you think this section (Articles 20 – 23) sufficiently deals with the rights of service recipients?

Yes

No

Not sure

If not, what changes or new additions would you like to see?

Comments:

Question 37.

How well do you think the quality of service provisions in Articles 26 - 33 provide for consumer protection?

Very well **Not very well** **Adeqautely** **Not sure**

What addictions or changes would you like to see?

Further comments:

Question 40.

Do you think the powers of monitoring and supervision (Articles 34 – 38) will provide adequate consumer protection?

Yes **No** **Not sure**

If not what changes or new additions would you like to see?

Further comments:

Question 58

What are the most *common* barriers you face when purchasing services from EU service providers?

How much do they cost you?

What are the most significant barriers?

How much do they cost you?

Further comments:

Question 59.

Will you be more or less likely to purchase services from the EU if the proposals are implemented?

More likely

Less likely

No change

Comments:

Question 70.

Are there any other potential costs to service recipients arising from this Directive?

Yes

No

Not sure

Comments:

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Comments:

Further Comments:

***Please see accompanying covering letter from the Health and Safety
Commission Secretary***

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply X

Here at the Department for Trade and Industry we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

X Yes

No