

## Annex to HSC/02/51

### SUMMARY OF RESPONSE TO DDE15

#### Overview of response

The Discussion Document DDE15 drew 70 responses, including multiple responses from some organisations and a few nil responses. Allowing for these, a total of 61 organisations and individuals sent substantive responses to some or all the questions raised by DDE15. The profile of these 61 respondents is set out in the following table.

#### Profile of Respondents

	1 Onshore	2 Offshore	3 Nuclear	4 Rail	5 Gas	6 Non-specific	Total
1 Employers and employers' associations	5	5	4	7	1	2	<b>24</b>
2 Trade Union organisations		2				1	<b>3</b>
3 Emergency services (police, fire, ambulance)						6	<b>6</b>
4 Local Government bodies				1		1	<b>2</b>
5 Government Departments						2	<b>2</b>
6 Voluntary safety body						1	<b>1</b>
7 Professional bodies	1		1			2	<b>4</b>
8 Rail passenger groups				3			<b>3</b>
9 Consultants/ verification body/ service providers		2		4		5	<b>11</b>
10 Individuals	2	2	1				<b>5</b>
<b>Total</b>	<b>8</b>	<b>11</b>	<b>6</b>	<b>15</b>	<b>1</b>	<b>20</b>	<b>61</b>

The predominance of employers' bodies (representing the views of duty holders) is to be expected and is fairly well spread across the sectors, though strongest in railways. The railways sector also shows by far the strongest cross-section of views.

Most respondents welcomed the consultation as the first step towards enlightening them about the criteria HSC/E use to decide which industries should be subject to permissioning regimes and about the reasoning behind

the detailed requirements of those regimes. Many respondents doubted that HSC/E policies have been consistent, though they claimed it was difficult to draw firm conclusions about this given the lack of transparency over key policy decisions on permissioning. There was a strong call for more clarity from HSC/E, including common principles for permissioning regimes. However, respondents also warned against pursuing consistency for its own sake, ignoring the special needs and circumstances of each industry. Respondents also raised a wide range of issues.

The rest of this analysis summarises the response to each question posed by DDE15. Q1 seeks views on the *description* of the principles (and Q9 on the description of regimes). Subsequent Qs seek views on their *appropriateness*, but the answers inevitably overlap and may not be entirely consistent (eg because of misunderstanding).

**Question 1 – HSE would welcome your views on the extent to which the 4 principles capture the key features of ‘permissioning’ regimes**

Around 70% of respondents (see table below) expressed a view. Most respondents supported the 4 principles as describing the key features of permissioning regimes, but with numerous reservations. This pattern applied to all the principles, with most respondents giving the same answer on each of the 4 principles.

Principle	Agreed	Disagreed	No / Unclear views	Total
1	35	7	19	61
2	36	7	18	
3	37	7	17	
4	35	8	18	

Most negative responses (eg UKOOA) and reservations came from duty holders. The most common complaint was of a lack of a clear rationale for the choice of industry subject to permissioning and for (some of) the differences between regimes (eg BNFL). CBI felt the principles are not necessarily reflected consistently in the different regimes. Some respondents questioned the appropriateness of the term “permissioning”.

The most common concerns on **Principle 1 (the impact of societal concern)** were that it is unclear how “society’s” views came to be applied to certain industries rather than others; and that societal concerns are not a rational basis for decision making. We should also clarify what “high hazard” means.

Few reservations were expressed on **Principle 2 (the responsibility of the risk creator)**. The most common concerns were that requiring duty holders to set standards for control measures etc does not encourage continuous improvement; and that “adequate” demonstration needs clarification. There were some doubts about the practical value of safety cases/reports.

Most respondents supported **Principle 3 (preference for a goal-setting framework)** per se, though one individual commented that SMEs might benefit from more prescription as they lack the resources to develop their own standards. The most common concern was about the balance between permissioning and enforcement of general health and safety law (eg what value the “permission” if it leads to no relaxation of general requirements ?).

**Principle 4 (the involvement of the safety regulator)** appeared to be more controversial than the first three. (Slightly) more respondents disagreed and those who agreed did so with more reservations. The most common concern was that HSE should be more forthcoming about its role and not seek to avoid the responsibilities that come with giving “permissions”. Permissioning regimes impose extra demands on the regulator, for clarity, consistency and technical proficiency. Some respondents felt HSE does not enforce the law hard enough.

**Question 2 – HSE would welcome your views on whether this basis [ie relating to principle 1, societal concern] for the application of “permissioning” regimes is appropriate.**

Over 80% of respondents (52/61) expressed a view, split evenly between those who supported the principle as a basis for permissioning and those who had reservations (though the nature of the reservations was not always clear). Only 3 respondents clearly opposed the principle. A slight majority of employers (including virtually all the onshore/COMAH duty holders) were in the reservation group; most other stakeholders were in favour. The most common comment, made by CBI and several employers, was that the regulator has a key role, supported by business, in educating public opinion about the nature of risk. The TUC supported the need for living documents.

**Question 3 – HSE would welcome your views on whether principle 2 properly reflects the responsibilities and demands which should be placed on duty holders**

80% of respondents (49/61) expressed a view, a small majority agreeing with principle 2. Only 3 respondents disagreed, but the rest had reservations. The CBI and Railtrack said that more prominence should be given to the requirements of the HSW Act to control risks. The CBI (and UKOOA) also emphasised the administrative burden of permissioning. The TUC questioned reliance on QRA and called for more workforce or union involvement in permissioning regimes.

**Question 4 - HSE would welcome your views on what more could be done to help safety cases to become living documents of practical relevance to the daily operation of sites**

Nearly 75% of respondents (45/61) offered comments, including virtually all employer bodies. However, there was a wide variation of view. Some (UKOOA, ATOC) claimed safety cases are already living documents, while others (Railtrack) said this objective would not be appropriate. The CBI said DDE15 confused safety cases & reports and what they are intended to achieve. Most suggestions to improve vitality involved greater workforce involvement (or workforce understanding – BP, LUL) and accessibility on-line (TUC). Shell and BP said HSE should accept less technical data.

**Question 5 – In relation to all or any of the regimes, HSE would welcome your views on whether the current balance between goal-setting and prescription is appropriate**

Nearly 75% of respondents (45/61) expressed a view, a small minority (mostly employers, but also the rail passenger groups) supporting the current balance. Several employers (eg ATOC, Railtrack, BNFL, UKOOA, Shell) warned against the dangers of reintroducing excessive prescription, whether through the safety case/report acceptance process or through regulator-produced “guidance”. Some respondents (eg CBI) noted that SMEs can have difficulty with goal-setting (occasional comments on Q1 and other Qs also supported prescriptive elements, particularly for SMEs). Some emergency services also called for more specific requirements on emergency planning, including greater statutory recognition of their role.

**Question 6 – For any or all of the regimes, HSE would welcome your views on the extent to which principle [4] adequately describes the place of the safety regulator in “permissioning”**

Over 60% of respondents (39/61) expressed a view, a few others being confused by the erroneous reference to principle 3. 14 respondents more or less agreed with the description in principle 4 (only 5 disagreed in whole or in part), but with several reservations. Several suggested that the description of HSE’s role is incomplete, particularly in not recognising the responsibility that comes with “permissioning” (eg BP, ATOC, Transco). Some emphasised the need for a competent and expert regulator. UKOOA questioned the value of HSE acceptance. Several responses raised similar points under Q7 below and these can be read together.

**Question 7 - *For any or all of the regimes, HSE would welcome your views on whether safety regulator intervention is currently pitched correctly, bearing in mind that more activity requires more resource***

75% of respondents (46/61) expressed a view. Only 8 respondents, mostly employers, agreed with the current level of intervention, some (eg LUL) with reservations over inconsistency. 7 respondents, mostly individuals and consultants, argued for greater intervention; 2 (including the Nuclear Safety Directors' Forum) argued for less. The most frequent comments, particularly among duty holders, were that HSE needs to be much more open about its role, recognising that this involves a degree of responsibility (cf Q6), and prepared to achieve and maintain a balanced relationship with duty holders. Some (eg CBI) emphasised the need for a competent regulator. Others felt that charging has distorted the regulator/dutyholder relationship.

**Question 8 – *For any or all of the regimes, HSE would welcome your views on the likely consequences of greater disclosure of safety cases and the safety regulator's reports***

Nearly 75% of respondents (45/61) expressed a view, split fairly evenly between those in favour of more open-ness (eg the rail passenger groups & some employers) and those against it (primarily most employers, many of whom were concerned to preserve commercial confidentiality, as well as security). The most common argument in favour was that greater transparency would build greater stakeholder confidence in both regulators and duty holders, who might be seen by third parties as having too cosy a relationship. Others argued against because of possible delays, resource implications and the risk that (to avoid breaching confidentiality and giving ammunition to special interest groups) safety cases would become bland, standardised documents of no safety value.

**Question 9 – *In relation to the principles, and to any or all of the regimes covered in Chapter 3, HSE would welcome your views on whether the description of the key features matches your understanding of them***

Over 50% of respondents (33/61) agreed that the descriptions in chapter 3 matched their understanding of the regimes (a few suggested relatively minor additions). The response was fairly even across groups and sectors, except that there was little response from onshore (COMAH) and nuclear duty holders. A few respondents asked for clarification of terms (eg acceptance) or the grounds for HSE involvement. UKOOA and MSF felt that HSE's approach to permissioning is inconsistent. Shell said HSE inspectors are not following published guidance in evaluating COMAH reports. BNFL referred to Licence Condition 36 as an example of where the regulator might unwittingly take responsibility for safety management away from the operator.

**Question 10 - *In relation to the principles, and to any or all of the regimes covered in Chapter 3, HSE would welcome your views on the extent to which the differences between the “permissioning” regimes are necessary and appropriate***

Under 50% of respondents (29/61) expressed a view (some others explaining that they did not know enough about other regimes to compare them). Most of those who commented (eg CBI, Railtrack, UKOOA) felt that regimes should be tailored to the needs of the industries they covered and there is no justification for a common model. However, several recognised that not all differences could be explained by the need for tailoring (eg some are historic). Most (eg TUC, BP) would support more evidence of common principles, greater convergence of elements (eg management systems ?) and more sharing of good practice.

**Question 11 – *HSE would welcome your views on the role & value of external non-regulator scrutiny in a “permissioning“ regime***

Several respondents were unsure what the term “*external non-regulator scrutiny*” meant. Only just over 40% of respondents (25/61) expressed a clear view, which was 2:1 in favour of some sort of external scrutiny. Those against were employers, particularly offshore. Nuclear and (most) rail employers were in favour. Several comments noted the need for (a) true independence and (b) considerable expertise, which is likely to be in short supply. Many of those in favour were consultants or passenger groups.