**CONSULTATION REPORT**

**CD287 - Carcinogens and Mutagens – Revision of limit values in “EH40/2005 Workplace Exposure Limits”**

**Executive Summary**

This consultation relates to proposals for the implementation of Directive (EU) 2017/2398, which amends Directive 2004/37/EC and introduces 11 new binding occupational exposure limit values (BOELVs) and amends 2 existing BOELVs to help protect workers from the ill-health effects of exposure to carcinogens and mutagens in the workplace.

As the Directive was adopted while the UK was still a member of the EU, HSE embarked on a project to introduce the BOELVs into the GB regulatory system and, as part of that process, the Health and Safety Executive (HSE) held a public consultation between 15 April 2019 and 7 June 2019. The consultation sought views on 2 specific areas:

1. The assessment of the costs and benefits of the proposed changes as set out in the draft Impact Assessment produced by HSE.
2. The proposed implementation of new BOELVs through amendment of the Workplace Exposure Limits (WELs) in Table 1 of HSE’s publication “EH40/2005 Workplace exposure limits”.

Views were received from a wide range of sectors and organisations which included:

* Industry sectors eg woodworking, welding and chemicals
* Health and safety professionals
* Trade Unions
* Trade Associations

The overall response to the consultation was positive, with the majority of respondents agreeing that updating the WEL’s in HSE publication EH40/2005 was the most appropriate way of introducing the revised limits.

**Introduction**

This report presents a summary of the outcome of HSE’s public consultation on proposals to implement the GB Directive (EU) 2017/2398, which amends Directive 2004/37/EC.

BOELVs are set to help protect workers from the ill-health effects of exposure to hazardous substances. In the case of CMD this is in relation to substances that are carcinogens or mutagens. The amending Directive (2017/2398) adds 11 new BOELVs and amends 2 existing BOELVs in the original CMD.

The original CMD contained BOELVs for 3 carcinogenic substances (Hardwood dust, Benzene and Vinyl Chloride Monomer). In GB these limit values were transposed as WELs in the Health and Safety Executive (HSE) publication “EH40/2005 Workplace exposure limits”. The same approach was proposed for implementation of the new/revised limits in the latest amendment to the Directive.

The WELs in Table 1 of EH40/2005 are binding. The requirement to comply with WELs is set out in regulation 7(7) of the Control of Substances Hazardous to Health Regulations 2002 (as amended).

The BOELVs listed in the amending Directive were based on the opinions of a committee of independent experts (The Scientific Committee on Occupational Exposure Limits) after review and examination of scientific and epidemiological data. Those opinions were subsequently considered and endorsed by the EU Working Party on Chemicals (WPC) (a sub-group of the tripartite Advisory Committee on Safety and Health at Work (ACSH)) - on which the UK Government was represented - and by the ACSH itself. An analysis of the socio-economic impact of the revised BOELVs was also undertaken before the Directive was published.

HSE officials consulted GB industry stakeholders during the WPC discussions on the BOELVs. The views of industry and workers at European level were also directly represented on the WPC.

The final BOELVs in the Directive were agreed by the European Council (including the UK) and European Parliament.

This consultation related to the BOELVs scheduled for introduction in 2020. The amendment to CMD also contains additional, lower BOELVs for hardwood dust and Chromium VI compounds, scheduled for introduction in 2023 and 2025 respectively. These additional limits were not part of this consultation and will be subject to further consideration at a later date.

**Previous communications with stakeholders**

Ongoing stakeholder engagement has been an integral part of negotiating and transposing the Directive. HSE contacted representatives from industry sectors potentially affected by the Directive. Several key stakeholders from industry were contacted. Some of the representatives were from trade and professional associations and bodies, who obtained and passed on views from their members and shared information with them to increase awareness further. Their feedback was then used to inform HSE’s negotiating position early in the process. This enabled HSE to receive valuable early insight on policy proposals and on the key issues for industry together with evidence on potential implementation costs.

**Public consultation**

The formal public consultation ran from 15 April until 7 June 2019 (8 weeks).

The launch of the public consultation was communicated via the HSE Website and through the HSE COSHH and Construction e-bulletins (which between them have over 200,000 subscribers). HSE also directly contacted individuals/companies and trade associations to inform them of the start of the consultation. The webpage containing the consultation document was viewed 11,192 times during the consultation period. Of these, 1124 visits to the consultation webpage were from recipients of the COSHH e-Bulletin and 284 visits from the construction e-Bulletin.

Respondents were encouraged to reply using the online questionnaire, but they could also use a Word version of the questionnaire (available via HSE’s website) or respond by email. General narrative responses were also received from respondents and these are included in the consultation analysis. This analysis is designed to be read in conjunction with the consultative document (CD287) at:

<https://consultations.hse.gov.uk/hse/carcinogens-mutagens-revision-of-limit-values/>

**Response demographics**

A total of 33 responses were received from a range of industry sectors and organisations. 28 responses were received via the on-line consultation and 5 responses by email.

**Responses by organisation type**

The majority of responses were from industry and trade associations representing industry.

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| --- | --- |
| Consultancy | 3 responses |
| Industry | 18 responses |
| National and Local government | 1 response |
| Private Individual | 2 responses |
| Professional body | 2 responses |
| Trade Association | 4 responses |
| Training organisation | 2 responses |
| Trade Union | 1 response |

**Industry responses by size of business**

The responses from industry represented businesses ranging in size from 15 to 5700 employees

|  |  |
| --- | --- |
| 1000+ employees | 7 responses |
| 250 – 999 employees | 5 responses |
| 50 – 249 employees | 2 responses |
| 10 – 49 employees | 4 responses |

All responses were analysed to establish if there were any common themes.

**Summary of responses**

**Question 1**

**Q.1** *The findings of the impact assessment (IA) suggest there is unlikely to be any significant additional costs to business from complying with the revised workplace exposure limits (WELs) following implementation of Phase 1 of the Carcinogens and Mutagens Directive (CMD). Based on your knowledge and understanding of the changes, do you agree or disagree with the IA finding?*

**Of the 33 total responses, 17 (52%) agreed with the findings of the IA.  Of the 17 in agreement, 11 responses were from businesses in the sector and 2 were from trade associations. Overall, 50% of trade associations that responded agreed with the findings of the IA.**

**8 (24%) respondents disagreed with the IA findings and provided comments relating to following substances:**

**Hardwood dust** – There was a concern from a training company that many businesses in the sector are micro or SME, and often lag behind standards in larger companies, that there would be cost implications in achieving compliance.

**HSE response:** Those businesses that are already compliant with the current occupational exposure limit, should have no issues in meeting the lower limit to be introduced in 2020. The CMD contains a transitional period before the limit reduces further in 2023. This further lower limit, scheduled to come into effect in 2023, was not the subject of this consultation and will be considered seperately at a later date.

**Chromium (VI)** **Compounds** – There was concern from a private company undertaking chrome plating and grinding services that reducing the limit any lower than the current limit would incur costs for installation of exhaust ventillation.

A private powder coating and galvanising company stated that the revised exposure limits will almost certainly entail improved PPE. They also advised that there are suitable alternatives for the use of chromate for surface treatment of alluminium, and authorisation [under the Registration, Evaluation, Authorisation & restriction of Chemicals Regulations (REACH)] should not be given now that alternative technology is available.

Another private company undertaking chrome plating thought the costs associated for the initial limit to come into effect in 2020 would be reasonably affordable, but was concered that the further reduced limit due to be to be introduced in 2025 following a transitional period would necessitate significant investment and create significant barriers to effective operation of plating processes such as Chromium plating. It also stated its view that new measuring equipment would need to be developed for the lower limit as it is not currently possible to detect such a low concentration.

A trade association also commented that there would be difficulty in measuring to the 2025 limit.

An organisation representing safety and health professionals believed that the impact for the revised WEL for Chromium (VI) process-generated may be underestimated. It stated its belief that large-scale indoor welding such as tanks and structures will require the use of more innovative Local Exhaust Ventilation (LEV) solutions, rather than seeking to rely on the use of Respiratory Protective Equipment (RPE) to mitigate exposure. It did not provide any specific data to support this view, however.

**HSE response** – Use of some Chromium (VI) Compounds are now restricted under REACH Regulations and require authorisation for use. HSE is aware of industry concerns regarding the further reduction to the Chromium VI limit included in CMD (and scheduled to come into effect in 2025). This further lower limit was not the subject of this consultation and will be considered seperately at a later date.

**Respirable Crystalline Silica (RCS)** – Although the GB WEL for process-generated RCS will not change, RCS has been added to the CMD as a carcinogen and the entry in EH40/2005 will be noted to reflect this. A trade association was concerned that adding a ‘cancer’ notation to the RCS entry in EH40/2005 would impact the industry e.g. it could be used by anti-quarrying pressure groups when companies are seeking planning permission for quarry working in areas where RCS will be generated. They are also worried about public relations as the general public may become alarmed that any quarry close by is working minerals that are categorised as human carcinogens.

**HSE response** - RCS generated by a work process is already considered to cause lung cancer and needs to be controlled accordingly. The World Health Organisation’ International Agency for Research on Cancer (IARC) has given RCS a Group 1 classification (agent is carcinogenic to humans). The WEL for RCS has not changed.

**6 (18%) Respondents answered ‘Unsure/don’t know’ to Q1.**

**2 (6%) Did not answer Q.1**

**Q.2** *The new WELs will be introduced in an update of the HSE publication EH40/2005* [*http://www.hse.gov.uk/pubns/priced/eh40.pdf*](http://www.hse.gov.uk/pubns/priced/eh40.pdf)*. Do you agree that this is the most appropriate way of updating the WELs?*

**28 (85%) respondents agree that EH40/2005 is the most appropriate way of updating the WELs.**

**1 (3%) respondent disagrees that EH40/2005 is the most appropriate way of updating the WELs leaving the following comment:**

Should asbestos be included?

**HSE response:** Asbestos has its own set of Regulations setting out the minimum standards for the protection of employees from risks related to exposure to asbestos. [The Control of Asbestos Regulations 2012](http://www.hse.gov.uk/pubns/priced/l143.pdf)

**2 (6%) Respondents answered ‘Unsure/don’t know’ for Q.2**

**2 (6%) did not answer Q.2.**

**General comments**

A trade union had doubts about setting limits for known carcinogens and was unhappy with the limit for Respirable Crystalline Silica, believing it should be lower.

**HSE response:** The binding occupational exposure limits contained in the amendment to the Carcinogens and Mutagens Directive are based on review of the scientific and epidemiological data by a committee of independent experts.

**Conclusion**

The overall response to the consultation was positive, and the findings of the impact assessment provide a fair reflection of the potential impacts to business. The majority of respondents agree that updating the Workplace Exposure Limits in HSE publication EH40/2005 is the most appropriate way of updating the WELs.

From the responses received there have been no additional costs identified for inclusion in the impact assessment. For most of the substances, where adequate controls are already in use and properly maintained and used, there should be no additional costs to business.

HSE has noted the concerns raised about the impact of further, lower limits for hardwood dust and Chromium (VI) compounds scheduled for introduction in 2023 and 2025 respectively. These additional limits were not part of this consultation and will be subject to further consideration at a later date.

The revised exposure limits are the result of independent expert analysis of scientific and epidemiological data and, based on the response to the consultation, HSE believes that their introduction will be of benefit in improving the protection of health of UK workers.

The revised exposure limits be introduced in the UK through an update to HSE publication “EH40/2005 Workplace exposure limits” to be published on 17 January 2020.