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|  | Energy Division  **Karen Daniels**  Health & Safety Executive  2.2 Redgrave Court,  Merton Road,  Bootle,  Merseyside,  L20 7HS  [karen.daniels@hse.gov.uk](C:\\Users\\kdaniels\\AppData\\Local\\Microsoft\\Windows\\Temporary Internet Files\\Content.Outlook\\A82032CX\\karen.daniels@hse.gov.uk)  <http://www.hse.gov.uk/> |
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| Date: 4 November 2019 |

Dear Sir/Madam

You are being consulted on proposed amendments to the Mines Regulations 2014 (MR2014) to apply a new binding limit for respirable crystalline silica (RCS) of 0.1mg/m3 below ground in coal mines. A questionnaire is attached at Annex 1.

MR2014 impose duties on mine operators to protect persons at work from the risks to their health arising from exposure to inhalable and respirable dust and respirable crystalline silica (RCS) below ground in coal mines. Directive (EU) 2017/2398 amends the Carcinogens and Mutagens Directive (2004/37/EC) (CMD) and sets down new occupational exposure limit values (OELVs) for a number of recently categorised carcinogens and mutagens. Importantly, it includes a new binding limit for exposure to RCS of 0.1mg/m3. OELVs are implemented into GB law by the Control of Substances Hazardous to Health Regulations 2002 (COSHH), in particular, the approved workplace exposure limits (WELs) set down in the EH40/2005 publication.

Directive 2017/2398 came into force on 17 January 2018 and EU Member States have until 17 January 2020 to transpose its requirements into their national legislation. In June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU. This Consultation Letter sets out the HSE’s proposals for implementing the RCS OELV below ground in coal mines

GB already has an established WEL for RCS of 0.1mg/m3, identical to the new EU limit, but that WEL is disapplied below ground in coal mines by MR2014 – the only GB workplace where the limit does not currently apply. Since 2007 a RCS concentration of up to 0.3mg/m3 has been permitted below ground in coal mines, with MR2014 requiring remedial action to be taken at or above this level. Following the introduction of MR2014 all other COSHH requirements (in relation to substances other than RCS) apply below ground at coal mines. The current RCS WEL, and therefore the new EU limit, of 0.1mg/m3 already applies above ground at coal mines, and at all other mines.

The establishment of the new binding EU OELV for RCS means that we can no longer apply the higher limit of 0.3mg/m3 below ground in coal mines. MR2014 must be amended before the transposition deadline of 17 January 2020.

HSE therefore propose to make amendments to MR2014 to remove the disapplication of the WEL for RCS below ground in coal mines (regulation 44). HSE also propose to amend regulation 45 to remove all references to RCS to simplify the regulatory framework by avoiding duplication. Regulation 10 of COSHH requires that exposure to hazardous substances ‘is monitored in accordance with a suitable procedure’, which may include appropriate arrangements for sampling RCS. This will ensure the safety standards in relation to limiting the exposure to RCS are maintained. The proposed removal of this disapplication of the RCS WEL does not reduce existing health and safety standards, indeed it enhances the protections of coal miners’ health. The necessary amendments to MR2014 are at Annex 3.

EH40, which sets down WELs, will also be updated to reflect amendments to MR2014, and more generally, CMD. The guidance to MR2014, L149, will also be updated.

HSE does not expect that the implementation of the limit for RCS will result in significant additional costs to business. An Impact Assessment has been prepared (Annex 2).

This Consultation Letter sets out HSE’s proposals for implementing the binding limit for RCS of 0.1 mg/m3 below ground in coal mines and includes:

Annex 1 – Consultation questionnaire;

Annex 2 – Consultation Impact Assessment; and

Annex 3 – proposed MR2014 amendments.

HSE is undertaking this consultation in compliance with its duty to consult under section 50(3) of the Health and Safety at Work etc Act 1974. A summary of responses to this consultation will be made available on the consultation webpage after the close of the consultation period where they can be viewed by members of the public.

Information provided in response to this consultation may be subject to publication or disclosure in accordance with the following access to information regimes: the Freedom of Information Act 2000 (FOIA); the Data Protection Act 2018; General Data Protection Regulation (GDPR); and the Environmental Information Regulations 2004 (EIR). Statutory Codes of Practice under the FOIA and EIR also deal with confidentiality obligations, among other things.

If you would like us to treat any of the information you provide as confidential, please explain your reasons for this in your response. If we receive a request under FOIA or EIR for the information you have provided, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will be disregarded for these purposes. Requests for confidentiality should be made explicit within the body of the response.

HSE will process all personal data collected as part of this consultation in accordance with the General Data Protection Regulations. HSE’s Privacy Notice is available [here](http://www.hse.gov.uk/privacy.htm#data-protection-rights).

Enquiries and responses should be sent to:

Written: HSE Energy Division, Health and Safety Executive, Building 2.2 Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS

Email: karen.daniels@hse.gov.uk

**Responses are required by 2 December 2019**

Code of Practice on Consultation

HSE is committed to best practice in consultation and to the Government’s Consultation Principles. The Government is improving the way it consults by adopting a more proportionate and targeted approach, so that the type and scale of engagement is proportional to the potential impacts of the proposal. The emphasis is on understanding the effects of a proposal and focussing on real engagement with key groups rather than following a set process.

Additional guidance can be found at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

If you require a more accessible format of this document, please send details to karen.daniels@hse.gov.uk and your request will be considered.

Quality assurance and complaints

If you have any complaints about the consultation process (as opposed to comments about the issues, which are the subject of the consultation) please address them to:

Susan Robinson,

HSE Consultation Coordinator,

2.2 Redgrave Court, Merton Road, Bootle. L20 7HS

Email: [susan.robinson@hse.gov.uk](mailto:susan.robinson@hse.gov.uk)

We aim to reply to all complaints within 10 working days. If you are not satisfied with the outcome, you can raise the matter with the Information Commissioner’s Office at Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF or HSE’s Acting Chief Executive, David Snowball at Health and Safety Executive, Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS. You can also write and ask your MP to take up your case with us or with Ministers. Your MP may also ask the independent Parliamentary Commissioner for Administration (the Ombudsman) to review your complaint.

Yours faithfully,

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Karen Daniels

Policy Advisor, Energy Division