

30 December 2003

Mr Tony Gissane  
Health and Safety Executive  
Health and Safety Policy Directorate  
Chemicals and Flammables Policy Division  
7NW Rose Court  
2 Southwark Bridge  
London SE1 9HS

Dear Sir

**RE: Proposals to introduce a new occupational exposure limits (OEL) framework. Consultative Document 189.**

The members of the British Occupational Hygiene Society represent a wide range of organisations and as such this response can only be a compromise of sometime conflicting views.

In the main Society members welcome the review of the current OEL system and are pleased to offer suggestions on the proposed new framework. The increase in good practice advice on how to control exposures is widely supported. However there is universal disquiet at the wholesale removal of the majority of OELs because they are now considered not to have a robust scientific basis.

The majority of respondents whilst appreciating that COSHH Essentials is a useful tool are concerned that:

- it has not been adequately evaluated
- it is not universally applicable
- it is based on R-phrases which do not keep pace with toxicological knowledge
- R-phrases on MSDSs are often wrong
- by suggesting air monitoring is not necessary we are eroding the Gold Standard of whether a control measure is working

- by suggesting air monitoring is not necessary we are losing a valuable source of good quality exposure data necessary to link health effects to substance exposure
- by over simplifying the COSHH process we are omitting some very important duties and responsibilities

There are many responses that make useful suggestions as to modification of the wording of the Regulations or the guidance in the ACoP but which are not easily incorporated into any of the particular questions in Annex 11.

We would appreciate an opportunity to explore these suggestions further.

Yours sincerely

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[Y]

Please indicate in the square brackets above (y for yes leave blank for no) if you do not wish details of your comments to be available to the public. (NB if you do not put a 'y' in the brackets they will be made public. This takes precedence over any automatic notes on emails that indicate that the contents are confidential.)

Alternatively, to treat your comments on a particular section as confidential, please insert bracketed text '(Treat as confidential)' within that section response.

**Q1: Do you agree with the proposed new approach to adequate control?**  
(Paragraphs 34 - 37, page 10)

[Y ]

**[The approach is good. Society members realise control of exposure from all routes is important and that compliance with airborne concentration limits is only one means of demonstrating control. We would need to be convinced of the effectiveness of control in the absence of an effective means of measuring exposure. Adherence to a good working practices does not demonstrate control of exposure.]**

**Q2: Do you agree with the proposed principles of good practice for the control of exposure to substances hazardous to health as listed in Box 1? (Paragraphs 39 - 44, pages 11 - 12)**

[Y ]

**[The basic principles of good occupational hygiene practice should be the minimum skill level for all persons working with substances hazardous to health. To set out these principles in clear, concise and easily understandable terms in the Regulations is a major step forward. This is operational occupational hygiene practice and must be combined with design occupational hygiene principles. The proposed guidance must be clear between these 2 aspects of good practice. ]**

**Q3: Do you agree with the proposed changes to the COSHH Regulations?**  
(Paragraph 45, page 12)

[Q3: ]

**[The changes are too profound to answer YES or NO. The question overlaps with the previous question. Some of the changes are good (parts of Schedule 2A) but others not. The problem with the use of R-phrases is mentioned elsewhere. The CD mentions extensively the problems with people understanding the 2 tier OEL system (OES and MEL) but to all external views we will still have a 2 tier system. ]**

**Q4: Do you agree with the proposed changes to the COSHH ACoP?** (*Paragraph 46, page 13*)

[Q4: ]

[Again a YES or NO answer is not appropriate, there is some very useful advice and information but some sections are unclear and contradictory. Compliance with Control Guidance Sheets may give different levels of control in different workplaces, e.g. measuring face velocity at an LEV enclosure does not tell you anything about what the operator does in front of the enclosure. ]

**Q5a: Do you agree with the definition of a WEL?** (*Paragraphs 47 - 49, page 13*)

[Y ]

[Q5aComments: ]

**Q5b: Do you agree with the proposed duties associated with the WEL?** (*Table 1, page 13*)

[Y ]

[Q5bComments: ]

**Q5c: Do you agree with the proposed criteria for setting WELs in Annex 3?** (*paragraphs 50 – 56, page 14 and annex 3, pages 50 - 54*)

[Y ]

[Q5cComments: ]

**Q6: Do you agree with the proposals for good practice advice?** (*Paragraphs 57 - 61, page 15*)

[Q6: ]

[The guidance is simple, practical and the format is user-friendly. More along the Control Guidance Sheets lines is required and it needs to be validated. Does following a CGS reduce exposure below a WEL? More practical experience of the system is required. ]

**Q7: Will the new system make it easier for you to comply with the COSHH Regulations?** (*Paragraphs 62 - 66, page 16*)

[Y and N]

[Fewer OELs makes the need for control harder to demonstrate but more guidance on good practice makes the introduction of controls, once accepted that they are necessary, easier.]

**Q8: Do you agree with the proposal to use the COSHH Essentials system to provide the primary route to good practice advice?** (*Paragraphs 68 - 70, page 17*)

[Y ]

[Yes use whatever provides the correct level of control, BUT makes sure the correct level of control is achieved, AND improve COSHH Essentials to more comprehensively cover the requirements of the COSHH Regulations. ]

**Q9: Do you agree with the proposed method for publishing WELs?** (*Paragraphs 71 – 76 page 19 and Table 2, page 20*)

[Y ]

[Excellent. Good information readily available is vital to our Society members.]

**Q10: Do you agree with the proposals to link WELs, COSHH Essentials and EH64?** (*Paragraph 77, page 20*)

[Y ]

[Link with existing EH40 information as well. ]

**Q11: Is the link between the principles of good practice and good practice guidance, such as COSHH Essentials clear?** (*Paragraphs 77 – 78, pages 20 - 21 and Boxes 3 and 4, pages 21 - 22*)

[Q11: ]

[The examples given are straightforward. Do not change legislation until the results of the pilot trial are available. Mention other sources of good practice advice and effective exposure controls]

**Q12 Table 1 – OESs proposed for transfer into the new system as WELs.** (*Annex 7, pages 62 - 68*)

**Do you agree with the proposed approach for Table 1?**

[As mentioned in the covering letter Society members had greatest difficulty reconciling the new OEL Framework with the total abandonment of the vast majority of the existing OELs. This is the comment for all parts of question 12. ]

Do you agree with the substances and limit values in this table?

(Please put y for yes in the square brackets. Leave blank for no.)

[Q12T1Limits: ]

(Please place any comments within the square brackets below.)

[Q12T1Comments: ]

**Q12 Table 2a - MELs proposed for transfer into the new system as WELs** (*Annex 7, pages 69 - 71*)

**Do you agree with the proposed approach for Table 2a?**

(Please put y for yes in the square brackets. Leave blank for no.)

[Q12T2aApproach: ]

Do you agree with the substances and limit values in this table?

(Please put y for yes in the square brackets. Leave blank for no.)

[Q12T2aLimits: ]

(Please place any comments within the square brackets below.)

[Q12T2aComments: ]

Table 2b - MELs going into the new system (flagged as under/needing further review)  
(Annex 7, pages 72 - 74)

**Do you agree with the proposed approach for Table 2b?**

(Please put y for yes in the square brackets. Leave blank for no.)

[Q122bApproach: ]

Do you agree with the substances and limit values in this table?

(Please put y for yes in the square brackets. Leave blank for no.)

[Q122bLimits: ]

(Please place any comments within the square brackets below.)

[Q122bComments: ]

**Table 3a - OESs not proposed for transfer into the new system (COSHH  
Essentials can be used to select appropriate control measures)**

(Annex 7, pages 75 – 80)

**Do you agree with the proposed approach for Table 3a?**

(Please put y for yes in the square brackets. Leave blank for no.)

[Q12T3aApproach: ]

Do you agree with the substances in this table?

(Please put y for yes in the square brackets. Leave blank for no.)

[Q12T3aLimits: ]

(Please place any comments within the square brackets below.)

[Q12T3aComments: ]

**Table 3b - OESs not proposed for transfer into the new system (gases) (Annex 7,  
page 81)**

**Do you agree with the proposed approach for Table 3b?**

(Please put y for yes in the square brackets. Leave blank for no.)

[Q12T3bApproach: ]

Do you agree with the substances in this table?

(Please put y for yes in the square brackets. Leave blank for no.)

[Q12T3bLimits: ]

(Please place any comments within the square brackets below.)

[Q12T3bComments: ]

**Table 3c - OESs not proposed for transfer into the new system (process-  
generated dusts, mists or fumes) (Annex 7, page 82)**

**Do you agree with the proposed approach for Table 3c?**

(Please put y for yes in the square brackets. Leave blank for no.)

[Q12T3cApproach: ]

Do you agree with the substances in this table?

(Please put y for yes in the square brackets. Leave blank for no.)

[Q12T3cLimits: ]

(Please place any comments within the square brackets below.)  
[Q12T3cComments: ]

**Table 3d - OESs not proposed for transfer into the new system (Chemical Hazard Alert Notices (CHANs) would be produced for these)** (*Annex 7, pages 83 - 84*)

**Do you agree with the proposed approach for Table 3d?**  
(Please put y for yes in the square brackets. Leave blank for no.)  
[Q12T3dApproach: ]

Do you agree with the substances in this table?  
(Please put y for yes in the square brackets. Leave blank for no.)  
[Q12T3dLimits: ]

(Please place any comments within the square brackets below.)  
[Q12T3dComments: ]

**Table 3e - OESs not proposed for transfer into the new system (biocides no longer authorised for use or substances subject to the Montreal Protocol)** (*Annex 7, page 85*)

**Do you agree with the proposed approach for Table 3e?**  
(Please put y for yes in the square brackets. Leave blank for no.)  
[Q12T3eApproach: ]

Do you agree with the substances in this table?  
(Please put y for yes in the square brackets. Leave blank for no.)  
[Q12T3eLimits: ]

(Please place any comments within the square brackets below.)  
[Q12T3eComments: ]

**Q13: HSE would welcome views on the Regulatory Impact Assessment (RIA).**  
(*Annex 8*)

[No comment ]

**Q14: Additional comments**

**[The expectation that Employers who were unable to embrace an OES and MEL system will suddenly start improving control of employee exposure to substances hazardous to health and hence meet the Revitalising Health and Safety targets is visionary. The majority of BOHS respondees who are working very hard to meet these Revitalising Health and Safety targets were concerned that the proposals as currently drafted will not assist them in their task.]**

**Q15: In your view how well does the Discussion Document identify and address the key issues?** (Please choose from the list below and place your answer within the square brackets)

[Well ] Very Well                      Well                      Not Well                      Poorly  
The issues are presented well but some of the proposals are not clear, and not based on good science.

Q16a: Is there anything you particularly liked about this consultation exercise?

(Please put y for yes in the square brackets. Leave blank for no.)

**[Q16aLiked: ]**

(If Yes – please let us know about it by putting your comments within the square brackets below.)

**[Q16aComments: ]**

**Q16b: Is there anything you particularly disliked about this consultation exercise?**

(Please put y for yes in the square brackets. Leave blank for no.)

**[Q16bDisliked: ]**

(If Yes – please suggest how we could do better in future consultative documents by putting your comments within the square brackets below.)

**[Q16bComments: ]**