

CHEMICALS REGULATORY FORUM

Forward Work Programme

NOVEMBER 2006

Chemicals Regulatory Forum - Forward Work Programme

INTRODUCTION

1. This forward work programme details the priorities for current and future work by the Chemicals Regulatory Forum (CRF). The CRF was set up in 2004. It brings together industry bodies, government, and the regulators to look at the impact of regulation on the UK chemical industry. Although each individual piece of legislation impacting upon the chemicals industry undergoes a Regulatory Impact Assessment, there had previously been no forum to consider the overall, cumulative impact on the competitiveness of the UK chemicals industry. There had also been no real mechanism to allow a joint Government-industry forward-look at future legislative proposals, to help influence their development (usually within the EU). The CRF is seeking to address both of these challenges through a developing Forward Work Programme of initiatives on a number of key issues. The CRF has no executive authority but, as its name implies, is a forum where views and ideas are exchanged. Its papers and minutes are published on the DTI website.

2. The progress against the programme will be reviewed at each CRF meeting. It includes work currently being undertaken by its members in response to the Government's Better Regulation initiatives (e.g. the Hampton Review and the Better Regulation Task Force "Regulation – Less is More" study). The forward work programme also includes work that the CRF will undertake to tackle the issues raised in the study on the 'Evaluating the Cumulative Impact of Safety, Health and Environmental Regulation on the UK Industrial Coatings, Aerosols and Speciality chemicals sectors'. Although the study found that there was scope for work in all the areas detailed below, a high proportion of its proposals relate to issues already being tackled under the Hampton agenda, and a number of the findings from the study are already the subject of on-going work by Government and the Industry. A copy of the Executive Summary to the report on the study is attached.

FORWARD WORK PROGRAMME

3. The attached table identifies the topics that will be taken forward by the CRF over the coming year with an indication of the priority given by the Forum's members. The following comments provide some context for each of the Topics to be undertaken by the members of CRF.

Topic 1: Current simplification initiatives and Hampton Review. As noted earlier, a large proportion of the concerns raised by participants in the study on 'Evaluating the Cumulative Impact of Safety, Health and Environmental Regulation on the UK Industrial Coatings, Aerosols and Speciality chemicals sectors', are already being tackled under the agenda set by the Hampton Review (<http://www.hm-treasury.gov.uk/media/A63/EF/bud05hamptonv1.pdf>). These concerns were focused on a) the quality of regulatory guidance, b) efficient information collection, c) streamlining inspections, and d) consolidating regulatory regimes. Although specific action is being taken to review certain guidance, the main follow-up is for the CRF to consider the regulator's responses to the Hampton recommendations against the likely effect on the issues at a) to d).

Topic 2: Simplification Proposals. The CRF will continue to support development of specific proposals for regulatory simplification relating to the chemicals sector in line with guidance from the Better Regulation Executive (<http://www.betterregulation.gov.uk/>). The British Coatings Federation will prepare a specific proposal relating to removing the requirement for a waste treatment licence for the use of a compactor for empty containers such as paint tins.

Topic 3: Regulation and Recognition Project. This project has just completed a pilot phase, and is focussed on the implementation of the COMAH regulation. The idea is to provide business with a 'recognition factor' that will enable regulatory enforcement interventions to be better focussed on those installations with weaker compliance records. Looking forward, the project needs to consider how the recognition factor could be utilised in a wider context, as well as how to role out the principles to other areas of enforcement compliance work.

Topic 4: Waste. Business members of the CRF have input to the review on UK Waste Strategy. The consultation is now complete, and Government is working on a revised strategy. The CRF will continue to work closely with Government, mainly DEFRA, and other stakeholders to ensure any resultant regulatory or enforcement changes do not have an unnecessary adverse effect on the competitiveness of the sector.

Topic 5: Review of the Biocidal Products Directive. The Commission are now starting work on reviewing the Biocidal Products Directive. The Chemical Industries Association is leading work on behalf of the industry to provide evidence to this review. There is general support for the objectives of the directive, but real concern about the disproportionate cost of registering "actives" under the BPD and the resultant adverse

impact on availability of "actives" on the market. The CRF will support these efforts, working with Government, regulators and the Commission to identify the real impact of this Directive and work towards its reform.

Topic 6: Definition of "Placing on the market". The industry has been concerned about the negative consequences of the lack of a consistent definition of placing on the market across EU legislation. This has led to extra costs and variations in interpretations across the EU. The current review of the New Approach directives provides the opportunity to tackle this issue. The CRF is influencing developments to ensure that greater consistency is achieved without undermining accepted definitions in existing regulatory regimes.

Topic 7: Davidson Review and McCrory Review: Both these reviews are due to report by the end of 2006. The Wallace Report for Scotland was published in August 2006. As with the Hampton Review, the CRF will consider issues arising from these reviews and include relevant actions in the Forward Work Programme.

Topic 8: REACH Implementation. The UK Competent Authority (HSE) will provide regular updates on implementation of REACH. As there are already a number of arrangements for ensuring industry involvement, the CRF will not duplicate them by considering REACH over the coming year. This position will be reviewed in a year's time.

Topic 9: Globally Harmonised System of Classification and Labelling of Chemicals (GHS). One of the key elements of the Forward Work Programme is engaging with the Commission's proposal to introduce a Regulation on the Global Harmonised System for the Classification and Labelling of Chemicals or GHS for short. Over 20 pieces of legislation will be affected. The CRF will continue to work with the HSE to ensure that:

- The interface between GHS and REACH is coherent,
- The transitional arrangements are workable, and
- Any changes to the scope of "downstream" controls on chemicals are proportionate and appropriate.

Topic 10: Buncefield Report. The outcome of the report into the Buncefield incident is likely to have significant implications for the chemicals sector. It is likely to have bearing on the issue of overlap between the responsibilities of regulators. The HSE is already keeping the CRF abreast of developments.

Topic 11: Early warning of regulations. The CRF is to re-consider its system of alerts, particularly the scope for members share information on an informal basis.

Topic 12: Green Procurement Plan. Two of the trade association members of the CRF (BACS and UKCPI) are developing guidance for local authorities on purchasing cleaning products in response to the Green Procurement Plan. Other trade association members of the CRF will consider the scope for producing similar guidance.

4. This Forward Work Programme has been produced by Chemicals Unit, DTI on behalf of the Chemicals Regulatory Forum. Please contact the Secretary to the CRF for further details of the Forward Work Programme and its underpinning research:

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Topic	Action	Priority	Detail
1. Current simplification initiatives & Hampton Review	1. CRF to review selected regulatory guidance and recommend improvements.	LOW	British Coatings Federation to review LAPPC PG6 series of process guidance notes, particularly PG6/33 (wood finishing) and PG6/44 (coatings and inks manufacture). Results to be presented to CRF and decision taken on rolling out result, including identifying applicability to new guidance.
	2. CRF to consider regulators' post Hampton actions to make information collection from firms more efficient	MED	Hampton is an important agenda for the CRF and this was reflected in the responses to the study on the cumulative impact of regulation. CRF to consider regulators response to these points and identify where additional action might be required.
	3. CRF to consider regulators' post Hampton actions to streamline inspections, including TAs & regulators working on ways to increase consistency.	MED	
	4. CRF to consider regulators' (and Departments) post-Hampton actions on consolidating regulatory regimes and permits, including the Environmental Permitting Programme.	HIGH	
2. Simplification proposals	CRF members to work up specific regulatory simplification proposals and	LOW	a) British Coatings Federation to prepare simplification proposal for removing the

	present them to the relevant Government Department.		<p>requirement for a waste treatment licence for the use of a compactor for empty containers such as paint tins. Proposal to be considered by CRF for presentation to Defra.</p> <p>b) CRF to consider options for further regulatory simplification proposals on a rolling basis.</p>
3. Regulation & Recognition	CRF to continue to support development of a viable Recognition Factor by the regulators and identification of realistic rewards for good performance.	HIGH	Although clearly linked to follow up to the Hampton Review, the R&R project is a continuing commitment inherited from the previous work started under the auspices of the Cabinet Office (CEMAP). The CRF will continue to support this project through work of a sub-group. The project is likely to go to a full regional trial in 2007.
4. Waste	CRF members to input the chemical industry perspective to development of waste policy.	HIGH	The UK Waste Strategy is currently under review. EU MS's are debating and implementing the recently published Commission's Thematic Strategies on Waste Recycling and Use of Natural Resources. The CRF will engage with the UK negotiating team, consider developments, share information and identify specific issues, such as alternative fuels and incineration of waste, for detailed consideration.

5. Biocidal Products Directive	CRF to co-ordinate input of industry concerns to Commission review of the Biocidal Products Directive (BPD).	MEDIUM	The Commission is now taking clear steps to start the Review process. The actual review is likely to take place over 2007. The Chemical Industries Association is leading on influencing the Review, particularly by compiling an industry critique of the impact of the BPD. CRF members to consider further support for this work as the Review gets under way.
6. Placing on the Market	CRF to input to the New Approach Review in relation to a revised definition of "placing on the market".	MEDIUM	CRF has been closely engaged in the issue of technical definitions. DG Enterprises proposal for legislation has gone to inter-service consultation at the European Commission. Discussions are continuing.
7. Davidson Review & Macrory Review	<ol style="list-style-type: none"> 1. CRF to consider follow-up actions for the chemicals sector following publication of the Davidson Review (Wallace Report). 2. CRF to consider the outcome of the Macrory Review, particularly in relation proportionate penalties and charging. 	<p>MEDIUM</p> <p>MEDIUM</p>	<p>The Davidson Review of "gold plating" is due to report by the end of 2006. The Wallace Report for Scotland was issued in August 2006. The Macrory Review of penalties is also due to report by the end of 2006.</p> <p>The CRF will consider the implications of these reports for the chemicals sector. This will include</p>

			presentations by the review teams, regulators and relevant Government departments. Specific actions may arise as a response to the presentations.
8. REACH Implementation	CRF to consider scope for improved policing of imported preparations and products.	LOW	Although REACH implementation is an issue of real concern to the CRF, there are already arrangements in place to ensure industry input into the issue. The CRF to receive regular updates on REACH implementation from the Competent Authority and consider whether there is scope for further involvement in a year's time.
9. Globally Harmonised System of Classification and Labelling of Chemicals (GHS)	CRF to compile details of problems with present labelling and hazard classification systems, to help inform negotiations on GHS.	HIGH	The CRF has agreed that GHS is an important development that should be the subject of close attention by the CRF. A sub-group is being formed to engage with negotiations.
10. Buncefield Report	CRF to consider implications of report.	MEDIUM	It was agreed that this was a very significant issue for the industry. The Health and Safety Executive (HSE) has already made a presentation to the CRF, and will continue to keep the CRF abreast of new developments as the Buncefield investigation progresses. The final report on Buncefield is not due until 2007.

<p>11. Early warning of regulations</p>	<p>CRF to review systems for alerting industry to new/amended regulations and opportunities for industry involvement at an early stage.</p>	<p>MEDIUM</p>	<p>Although much work has been carried out in this area, e.g. Commission Roadmaps, it would merit further attention. The CRF should re-consider its system of alerts, particularly circulation of early warnings on an informal basis between members.</p>
<p>12. Green Procurement Plan</p>	<p>CRF to consider implications of European Commission's Green Procurement Plan.</p>	<p>LOW</p>	<p>BACS & UKCPI are developing guidance for UK local authorities on purchasing cleaning products in response to the Green Procurement Plan and have circulated details to the CRF. Other trade association members to consider scope for producing similar guidance.</p>

Extract from "Evaluating the Cumulative Impact of Safety, Health and Environmental Regulation on the UK Industrial Coatings, Aerosols and Speciality Chemicals Sectors" by London Economics in association with RPA – August 2006

Executive Summary

The DTI's Chemicals Unit commissioned this study on behalf of the Chemicals Regulatory Forum (CRF). The study was directed by a Steering Group comprising representatives of the DTI, Defra, the Cabinet Office, and three trade associations: the British Aerosol Manufacturers' Association (BAMA), the British Coatings Federation (BCF) and the British Association for Chemical Specialities (BACS).

The main tasks set out in the Terms of Reference (ToRs) were the following:

- o To estimate the cost of compliance with current SHE regulations in excess of the minimum costs necessary to ensure current levels of protection; and,
- o To solicit proposals for reductions in the cost of compliance with current SHE regulations, while maintaining current levels of protection.

The study also outlines, in Annex 2, a study toolkit describing how other researchers could replicate and use our methodology in future studies for other sectors or the economy.

Methodology

Information has been gathered through in-person interviews with representatives of 48 different sized firms, gathered from a wide range of sub-sectors and trade associations. The objective of using personal interviews was to engage actively with representatives of firms on the relevant issues while minimising the burden on firms that participation in the study created.

In this study the cost of regulation is computed by analysing the total and excess costs of complying with current SHE regulation. Total compliance cost is defined as the cost compared to a situation of no regulation. Excess compliance cost is defined as the additional unnecessary expenses incurred over the minimum necessary to achieve the same level of SHE protection (hence eliminating excess costs should provide the same SHE goals, while elimination of total costs could put the benefits of SHE protection at risk).

The sector of interest is "industrial coatings, aerosols and speciality chemicals" as given in the ToRs. This definition is quite broad because it defines the sector at a very high level of aggregation and includes subcategories outside the sector. For the purposes of this study, we defined the sector of interest by 4-

digit Standard Industrial Classification (SIC) code matching the sectoral coverage specified in the ToRs.

Results

The results are based on the responses of a relatively small sample of firms – many of which were unable or unwillingness to place a precise value on the costs of regulation which they incur – and the use of data at a very high level of aggregation which limits the precision of the definition of the sector. This creates some uncertainty surrounding our estimates of the total and excess costs of current SHE regulation.

In this study, the average total cost of compliance with SHE regulation for the industrial coatings, aerosols and speciality chemical sectors was estimated to be around 2.1% of turnover. As for the excess cost of regulation, firm representatives estimated that the unnecessary or excess cost of SHE regulation was approximately 0.6% of turnover on average.

Estimates of the cost of regulatory compliance for the entire industrial coatings, aerosols and speciality chemicals sectors have been obtained using a weighted average by turnover category to take account of the size distribution of the sector. It was found that compliance costs were only roughly constant across firms of all sizes, and the weighted estimated total cost of compliance for the sector is 1.20% of turnover, or £278m per year¹. The weighted excess cost of regulation is 0.38%, or £87.4m per year. In policy terms this suggests that, based on the assumptions made in this study, some £87.4m per year could be saved each year without detriment of SHE benefits and goals through the better design and implementation of current SHE regulations. A further interesting result was that, by asking firms to think of the cost of compliance with regulation as the cost of activities they would not undertake were regulation not to exist, their estimates of the cost of regulation fell. This was because many claimed that their firm would carry out most of the tasks prescribed by regulation even if they were not forced to by law, in some cases for insurance purposes.

Sources of excessive cost of regulation

We asked interviewees to break their estimates of excess cost down into different components. The respondents found that excess costs are particularly of 3 types:

- Staff time, typically spent reading and understanding regulations and guidance notes, dealing with inspectors, and conducting risk assessments;
- Changes to labels after reclassifications of chemicals, which in some cases required expensive new software; and,

¹ Total turnover in the industrial coatings, aerosols and speciality chemicals sector, as defined in this study, was some £23,154m in 2004 (Source: Annual Business Inquiry (ABI), Office for National Statistics (ONS)).

- Changes to products, particularly after reclassifications of chemicals, such as changes to CHIP.

The regulations most frequently cited as creating excess compliance were the Packaging Waste Regulations (PWRs), COMAH and the Biocidal Products Directive/Regulations.

Benefits of regulation

We also asked interviewees if SHE regulations had benefited their firms. The main benefits of regulation that interviewees cited fell into the following five main groups:

- Improving SHE performance;
- Improving the efficiency with which firms deal with waste;
- Benefits of visits from regulators;
- Improving firms' reputations with consumers and the general public; and,
- Forcing firms to analyse their processes systematically.

Proposals for better implementation of current regulation

Interviewees made many recommendations for improving regulation. The nine most common recommendations across interviewees were:

- 1) Clearer, more concise and timelier guidance on the requirements of regulations;
- 2) Regulators should keep industry informed of future changes to regulations;
- 3) Make information collection from firms more efficient;
- 4) Make inspections more efficient;
- 5) Reduce duplication of policies across regulators;
- 6) Make inspection and enforcement more risk-based;
- 7) Make charging for inspections fairer;
- 8) Relax regulatory requirements for 'trivial' risks; and,
- 9) Ensure that inspections take account of the requirement in SHE law placing responsibility on individual employees.

Proposals for changes to regulation

Respondents indicated the following as the main proposed changes to the structure of regulations:

- 1) Integrate the large number of separate environment SHE into an overall regulatory regime and ensure that they are consistent across the UK;
- 2) Replace multiple site permits with consolidated single site permits;
- 3) Create a single regulator to enforce the single site permits;
- 4) Tailor regulations more closely to risks;

- 5) Make better use of voluntary actions and learn from industry experience;
- 6) Improve the effectiveness of communication of risk to consumers and industry customers;
- 7) Develop central registers of information on companies to ensure that regulators are aware of all companies subject to regulation;
- 8) Create a hierarchy of laws so that industry can apply a single law for products that fall under several different regulations;
- 9) Ensure consistency between regulation in across the UK;

In terms of specific existing regulations, respondents proposed to:

- 1) Improve consistency between different regulations;
- 2) Simplify the Packaging Waste Regulations;
- 3) Reduce requirements for registration and testing of products under the Biocidal Products Directive;
- 4) Remove the requirement on firms to research the geology beneath their sites under IPPC. Instead, require experts in the EA to instruct firms on the geology of ground underneath sites, based on information available to them, and any concerns this causes;
- 5) Amend the European Commission's Green Procurement Plan;
- 6) Under the Hazardous Waste Regulations and CHIP, de-classify items as 'hazardous' if these pose a trivial risk to public health or the environment; and,
- 7) Under landfill regulations, permit landfill disposal or incineration of empty sacks that have contained toxic materials.

Proposals for changes to the process of producing regulations

Some interviewees argued that changes to the political process were required to prevent what they saw as an 'avalanche of regulation' that caused ongoing problems for their firm. Their proposals focussed on:

- 1) Legislators to think carefully what new regulations would add to existing ones;
- 2) Legislators to consider the impacts of regulations along the supply chain;
- 3) Legislators to avoid changes that would require reclassification of chemicals unless well justified by safety gains;
- 4) Where changes in classification are required, ensure these are 'stacked up' and thus only required every two years or so;
- 5) UK legislators to consider more closely whether UK implementation of EU regulations is stricter than in the rest of the EU and to consider the cost-benefit consequences of this situation for the UK; and
- 6) Examine the value of assumptions used in cost-benefit assessments of regulations.

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