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## HSE REVIEW OF THE CURRENT APPROACH TO WORKPLACE TEMPERATURES

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### Issue

1. SMT clearance of the draft paper (Annex 1) for submission to the HSE Board

### Timing

2. For approval at the 2<sup>nd</sup> September SMT Meeting to enable the paper to go to the HSE Board Meeting on 23<sup>rd</sup> September 2009.

### Recommendation

3. The Senior Management Team is asked:
  - For views on a proposed programme of work subsequent to the review of HSEs current approach to workplace temperatures.
  - To agree that the attached draft paper can be submitted to the Board.

### Background

4. See attached Board paper.

### Consultation

5. OPTSD, FOD, SBTAF, Strategic Interventions Division have been consulted during the review.

### Financial/Resource Implications for HSE

6. A best estimate of the full cost of the review is £81,000. This includes the salaries of three members of staff (Band 1, 2 and 4) who assisted the review and consultancy fees. Travel and subsistence costs for HSE staff totalled approximately £820. Details of the costs associated with the proposed programme of work are contained within the Board paper.

## Annex 1 – Draft Board paper

Health and Safety Executive Board		Paper No: HSE/09/	
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<b>HSE REVIEW OF THE CURRENT APPROACH TO WORKPLACE TEMPERATURES</b>			

### Purpose of the paper

1. To inform the Board:
  - about the Health and Safety Executive's review of the current approach to workplace temperatures and to provide an update on progress to date
  - To seek a steer on a proposed programme of work and advice to the Secretary of State.

### Background

2. There have been many attempts to review the issue of maximum temperatures in the workplace. In early 2009, the TUC called for the case for a regulatory maximum temperature to be revisited. The TUC view is that there should be an absolute maximum temperature of 30°C (27°C for those doing strenuous work), at which point workers should not have to work and an employer should be liable for prosecution. They stress that this is intended as an absolute maximum rather than an indication that regular indoor work at just below 30°C would be acceptable.

3. The Workplace (Health, Safety and Welfare) Regulations 1992 lay down particular requirements for most aspects of the working environment. Regulation 7 deals specifically with the temperature in indoor workplaces and states that '*During working hours, the temperature in all workplaces inside buildings shall be reasonable.*' However, the Regulations do not specify either maximum or minimum temperatures. The associated ACOP (Workplace health, safety and welfare. Workplace (Health, Safety and Welfare) Regulations 1992. Approved Code of Practice) provides guidance on minimum temperatures and explains: "*The temperature in workrooms should normally be at least 16 degrees Celsius unless much of the work involves severe physical effort in which case the temperature should be at least 13 degrees Celsius.*" However, there is no guidance provided on the definition of "reasonable" temperatures.

4. In relation to the issue of setting a maximum temperature for workers in the workplace, HSE's current policy position is that this is not feasible. Thermal comfort in hot conditions is dependent on a number of factors, including humidity, ventilation, clothing, radiant temperature and work activity to name but a few; therefore, a single maximum figure in relation to temperature would not be appropriate to the full range of activities and workplaces. This is in contrast to a minimum temperature, where there are the same number of factors however, in cold environments, air temperature is a much better predictor of how a person will feel.

5. Further to TUC calls for a regulatory maximum temperature and an Early day Motion, James Purnell, the then Secretary of State, wrote on 16 January 2009 to HSE to propose that they should undertake a review of the current approach to workplace temperatures. HSE were requested to report to the Secretary of State with recommendations by 12 October 2009.

6. Professor Ray Kemp was commissioned to assist HSE with the review, which considered four questions posed by James Purnell:

- whether the relevant legislation and guidance has kept pace with the changing nature of workplaces and working patterns;
- whether there is continued justification for having minimum recommended working temperatures but not a corresponding maximum recommendation - for those working indoors;
- whether more can be done to address the corresponding effects - including seasonal variations - on those working outdoors; and
- what can be learned about workplace temperatures in the wider 'good work' context, for example in relation to access to drinking water and other facilities in the working environment.

The review also considered the arguments for and against a maximum workplace temperature.

7. Professor Kemp studied information obtained from key European Union member states as to how workplace temperatures are managed in their countries, along with research he gathered on experiences of managing workplace temperatures in Australia. Discussions were held with stakeholders at a forum in Rose Court on 23<sup>rd</sup> July 2009. In addition, a questionnaire was distributed by HSE to a large number of stakeholders, across a wide range of sectors, to seek their views on the approach to workplace temperatures. HSE were able to raise awareness of the questionnaire on a larger scale with assistance from the Institute of Occupational Safety and Health (IOSH) who posted a copy on their website. Over 440 responses were received (405 via IOSH and 44 responses direct to the HSE).

## **Argument**

8. Consultation with stakeholders during the review revealed that there is no overall consensus on an effective approach to workplace temperatures. There are two differing views emerging:

- i) there is a lack of clarity in current guidance which leads to inconsistencies in thermal working environments both within and between industries (60% of those that responded to the survey via IOSH). Additionally some smaller businesses are not aware of HSEs guidance on this topic (7% of respondents to the survey via IOSH were not aware).
- ii) HSE guidance is sufficient (40% of those that responded to the survey via IOSH) and effective in helping them to manage any potential risk involved with workplace temperatures and implement any subsequent risk controls.

9. It is acknowledged that raised temperatures in the workplace can lead to a range of health impacts:

- heat fatigue
- Heat rash
- Dry eye
- Lack of concentration

however, these are not usually major health risks in themselves.

10. In his report Professor Kemp concludes that setting a simplistic upper limit could provide a false sense of safety. Simple temperature limits would not prevent the more serious condition of heat stress from occurring and could be counter productive from a health and safety perspective if inaction occurred below the upper limit. Professor Kemp concludes that on balance, the workplace temperature issue is not one that justifies active regulatory intervention, but rather improved joint working between all parties to the issue – government, trade unions and employer representatives (see Annex 1). Professor Kemp has produced a full set of options for possible further action and these are summarised at Annex 2. A full copy of the report can be requested from Kate Haire and will be published on the HSE website in due course.

### **The proposed way forward/ next steps**

11. The review does not point towards a need to change HSEs current policy position, but does suggest a number of options for going forward (Annex 2). In building on these, it would be possible to design a staged programme of activity on which the Board is invited to comment.

#### **Step 1 – Immediate action: Raise awareness and understanding of HSEs guidance**

HSE could take immediate action to address concerns that some smaller enterprises are not aware of existing guidance and therefore do not apply the standards. We are aware from consultation undertaken during the review of where we need to raise awareness and have identified opportunities throughout the review where we could highlight this message.

#### **Step 2 – Short term: Work with industry to help them to produce sector specific guidance and support new guidance with an awareness campaign**

There is an appetite for cross industry working in order to improve best practice guidance and this approach reflects the new HSE Strategy. HSE could work with stakeholders to review guidance and work towards the development of sector specific guidance for those industries where thermal comfort is a more particular issue.

#### **Step 3 Longer term: Evaluate the effect of steps 1-2 and consider potential changes to the Approved Code of Practice.**

In the longer term we would not rule out changes to the ACoP but would suggest that more work needs to be done, including the completion of an impact assessment to evaluate the effect of steps one and two and to accurately calculate the full costs and benefits of any potential regulatory changes e.g. the incorporation of an acceptable zone of thermal comfort (for further detail see annex 2, option 4).

12. Throughout the implementation of these steps consideration will be given to specific enforcement initiatives if appropriate. We will need to have detailed discussion with FOD and Local Authorities regarding this.

13. We have attempted to estimate the costs associated with this proposed programme of activity but the Board should note that these calculations are based on rough and untested assumptions and would need to be refined through the impact assessment process. The assumptions are particularly sensitive with respect to the costs of familiarisation with new guidance and the scale of businesses affected. The estimated costs associated with each step are as follows:

**Step 1:** Up to £10,500. This includes HSE staff costs of £5000 based on preparation for, and presentations at, four events involving staff at Bands 2-5. A rough estimate of the costs to industry for attendance at events is £5500. Consideration could also be given to raising awareness as part of FOD inspections.

**Step 2:** Up to £20,000,000. This remarkably high figure is very much a rough first estimate and is based on the assumption that all workplaces could be affected. This figure includes the costs of producing sector specific guidance (estimated cost to HSE £42,000 based on requirement for 5 working groups and £90,000 cost to industry); familiarisation costs and costs associated with attendance at awareness raising events. More work is required to test these assumptions and costs.

**Step 3:** at this stage, it is not possible to calculate the costs associated with regulatory changes as there are too many unknown factors. However, the costs are likely to be significantly higher than those associated with steps 1 and 2. Factors such as the cost of measures to manage temperatures, job rotation, additional breaks and the environmental impact to name but a few would have to be calculated.

### **Action**

14. The Board is invited to provide a steer on the proposed next steps and the advice that we should give to the Secretary of State in October 2009. If the Board agrees this approach, our next steps will be informed by carrying out a regulatory impact assessment.

### **Paper clearance**

15. The senior management team cleared the paper on 2 September 2009.



## Workplace Temperatures Review - Executive Summary

*At the request of the Secretary of State, HSE has instigated a review of the current approach to workplace temperatures and in particular the arguments for and against a maximum temperature. Ray Kemp Consulting Limited (RKCL) was engaged to support the review. At present, there is no specified upper limit for workplace temperatures and it is thought timely to review the current position.*

*This draft report sets out the findings of the review and has been undertaken by analysis of documentary evidence and information from key stakeholders. A stakeholder forum to discuss the advantages and disadvantages of various options for the HSE was held at Rose Court, London on 23rd July 2009 and facilitated by Professor Ray Kemp. Four options in addition to a "do nothing" option have since been evaluated.*

*It is judged that the relevant legislation remains valid, but that the associated guidance has not sufficiently kept pace with stakeholder expectations given the changing nature of workplaces and working patterns, and amendments are now required.*

*Although there is a sound scientific justification for having minimum recommended working temperatures but not a corresponding maximum recommendation for those working indoors, it is suggested that the legislation and guidance can stay true to the scientific basis while better reflecting perceived concerns of key stakeholders. To that end it is recommended that further work is undertaken to assess whether upper temperature action levels could be specified at which employers should undertake risk assessments to determine whether and what form of action should be undertaken. These levels should be investigated with the involvement of key stakeholders with a view to specification in improved guidance, possibly supported by revisions to the wording of the Approved Code of Practice (ACoP) if deemed necessary.*

*Improved guidance can be also provided to address the corresponding effects - including seasonal variations - on those working outdoors, and this should be undertaken through joint working and tripartite discussions between government and employer and employee representatives. Of particular interest is the need to provide guidance for those working in "cab" type environments.*

*At the same time, improved guidance concerning workplace temperatures in the wider 'good work' context, for example in relation to access to drinking water and other facilities in the working environment are best developed through shared experience within and between industrial sectors.*

*On balance, it is suggested that the workplace temperature issue is not one that justifies active regulatory intervention but rather improved joint working between all parties to the issue – government, Trades Union and Employers. This best reflects the new HSE Strategy for the Health & Safety of Great Britain.*

*As a minimum, Option 2 Amend the Guidance should be pursued through joint working and tripartite discussions between government and employer and employee representatives. In addition, further consideration should be given to the practicality and regulatory impacts of implementing Options 3 or 4 whereby the wording of the ACoP is amended to ensure that employers follow the associated guidance.*

*It is clear that a focus on effective communication and dissemination of good practice advice is needed and should form a major part of any revised approach.*

Table 6.1. HSE Review of Workplace Temperatures: Overview of Options

Option	Description	Advantages	Disadvantages
0. <b>No Change: Retain Current Approach</b>	Maintain the status quo. No upper limit specified; ACOP supported by web-based and documentary guidance.	<ul style="list-style-type: none"> <li>The current approach is soundly based in science.</li> <li>Strong regulatory intervention does not appear to be justified in terms of the known health impacts of workplace temperatures.</li> <li>A majority of employers feel that the guidance is sufficient.</li> </ul>	<ul style="list-style-type: none"> <li>There are complaints that the guidance in relation to upper temperatures is not followed in some workplaces because there is no clear upper temperature referred to in the ACOP.</li> <li>Key stakeholders in particular Trades Union representatives will continue to be dissatisfied.</li> <li>There is a perception that the lack of an upper temperature disempowers workers when working environments become uncomfortable.</li> </ul>
1. <b>Amend ACOP to include a <i>Maximum Upper Temperature Limit</i> in addition to the current lower limit</b>	The TUC position. Action level set at 24° with strict lower (16 or 13°) and upper (30 or 27°) temperature limits, adjusted according whether strenuous work is undertaken.	<ul style="list-style-type: none"> <li>Responds to the express concerns of a key stakeholder group.</li> <li>Would provide a clear reference point for employer and employee organisations alike.</li> </ul>	<ul style="list-style-type: none"> <li>Not supported by the scientific evidence base – that temperature is only one indicator of potential thermal discomfort in the upper range.</li> <li>Change to a more interventionist strategy does not appear to sit well with the New HSE Strategy.</li> <li>The costs of regulatory intervention and of ensuring compliance in some sectors could be disproportionate to the benefits.</li> <li>Could provide a false sense of safety. Specified limits would not prevent heat stress from occurring and could be counterproductive from a health &amp; safety perspective if inaction occurred below the upper limit.</li> <li>Could lead to unnecessary work stoppages.</li> <li>Could lead to increased energy use for cooling workplaces.</li> <li>Regulatory impact assessment would be required to ensure no unnecessary burden on employers.</li> </ul>
2. <b>Amend Guidance and Engage with Stakeholders</b>	Continue with current ACOP wording but update associated guidance and support with an information campaign.	<ul style="list-style-type: none"> <li>Reflects the New HSE Strategy. Does not require legislative change.</li> <li>If clear action levels for different sectors were included in the guidance this would address several disadvantages currently identified.</li> <li>Campaign to raise awareness could target SMEs through opportunities identified as part of the review – will increase knowledge in these areas.</li> <li>There appears to be some appetite for cross-industry working on such an approach.</li> </ul>	<ul style="list-style-type: none"> <li>Will require continued HSE commitment for joint working with trades union and employer organisations.</li> <li>TUC case is that many employers unlikely to take action without a clearly specified upper temperature value.</li> </ul>
3. <b>Amend ACOP to include an <i>Upper Temperature Action Level</i> or levels</b>	Amend ACOP to include a range of “action levels”, yet to be specified, targeted at specific working environments / sectors, at which employers are required to undertake a risk assessment and act on the results.	<ul style="list-style-type: none"> <li>Responds to stakeholder concerns.</li> <li>Avoids a “no go” limit but encourages employers and employees to take action in advance of problems becoming apparent.</li> <li>More targeted approach with clear triggers and appropriate guidance for different sectors.</li> <li>Would highlight the need to allow for different working environments.</li> </ul>	<ul style="list-style-type: none"> <li>Given that temperature is only one indicator of potential thermal discomfort in the upper range, will require careful re-drafting of the ACOP to avoid confusion and simplistic interpretation.</li> <li>Would only be acceptable from a health &amp; safety perspective if required a risk assessment or mitigation plan to be undertaken, rather than require work stoppage or an immediate reduction in workplace temperature.</li> <li>Potential for Trade Unions to view an action level and a maximum temperature in the same way. This will require careful provision of supplementary guidance.</li> <li>May be difficult to specify for all sectors and has potential to become overly complex and difficult to communicate effectively.</li> <li>Given other priorities within HSE, such an initiative would have to demonstrate clear cost effectiveness in terms of risk reduction.</li> <li>Regulatory impact assessment would be required to ensure no unnecessary burden on employers.</li> </ul>
4. <b>Amend ACOP to refer to an <i>Acceptable Zone of Thermal Comfort</i></b>	Amend ACOP to include wording previously employed by HSE. Support with new information campaign and supplementary guidance.	<ul style="list-style-type: none"> <li>Introduces a perceived upper temperature limit while maintaining an element of flexibility to allow for different working environments.</li> <li>Consistent with a risk based approach.</li> </ul>	<ul style="list-style-type: none"> <li>Arguably compromises the scientific evidence base – that temperature is only one indicator of potential thermal discomfort in the upper range.</li> <li>The upper value is likely to be contentious (as too high) and will require consultation with key stakeholders.</li> <li>Could lead to misinterpretation without careful explanation and provision of supplementary guidance.</li> <li>Regulatory impact assessment would be required to ensure no unnecessary burden on employers.</li> </ul>