

Health and Safety Executive Board			HSE/12/96
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Proposed revocation of the Docks Regulations 1988 and future of the Approved Code of Practice on Safety in Docks Outcome of stakeholder meetings and proposed next steps

Purpose of the paper

1. This paper reports the outcome of HSE meetings with TU and Port Skills and Safety (PSS) representatives regarding the proposed revocation of the Docks Regulations 1988 and the implications for the associated Approved Code of Practice (ACOP). It seeks the Board's views on a proposed way forward.

Background

2. In August the Board considered the responses to the consultation on proposals to remove 14 legislative measures¹ and agreed that 13 could be recommended for revocation. The Board asked for additional information on the implications of the proposed revocation of the Docks Regulations 1988. This was discussed at the September meeting². The Board agreed that officials should meet with employee and employer representatives from the docks industry to discuss concerns about the removal of the Safety in Docks ACOP and intention to use a suite of jointly produced industry guidance in its place.
3. Board members also expressed an interest in visiting a port. A visit to Tilbury is taking place on 4 December.

Argument

Outcome of meetings with employer and employee representatives

4. Since the September Board there have been two constructive meetings between HSE, Hugh Robertson (TUC) and representatives from Unite and Port Skills and Safety (PSS).
5. During the discussions there was general agreement that:
 - the priority must be to improve health and safety in this sector;
 - the Docks Regulations 1988 are out of date and have been superseded by more modern cross-cutting legislative requirements. Their removal would not cause any particular problems for either the employers or the trade unions
 - there is a need for practical, authoritative guidance relating to the particular circumstances at docks and ports that can be used by employers, employee representatives and HSE inspectors; and
 - the guidance is one part of a broader package of measures (set out in the sector strategy) that includes proactive inspections and an industry led summit

¹ <http://www.hse.gov.uk/aboutus/meetings/hseboard/2012/220812/paugb1257.pdf>

² <http://www.hse.gov.uk/aboutus/meetings/hseboard/2012/260912/psepb1274.pdf>

to get high level commitment to improving the health and safety performance of the sector.

6. Various options for replacing the Safety in Docks publication (COP25) were considered. The main issue was the TUs' desire to have something that would provide authoritative guidance and carry the special legal status of an ACOP. Two draft documents developed by HSE were discussed at the second meeting.
7. The first was a revision of the Safety in Docks ACOP that related the material to relevant health and safety regulations and removed references to the Docks Regulations. HSE's review of the contents of the ACOP identified that a lot of the material needed to be removed as it was out of date, redundant or failed to satisfy the agreed criteria for guidance with ACOP legal status. The resulting document containing just the legal references and remaining ACOP material was much shorter and had patchy coverage of the health and safety issues. The second document was a draft of a Code of Practice (with three example sections) that would provide comprehensive, clear guidance on all key risks with signposting to the suite of more detailed PSS guidance. HSE proposed that this could be jointly developed and badged by HSE, PSS and trade unions. While the guidance would not have ACOP legal status it could be reviewed and revised easily to keep up with developments in the sector.

Proposed way forward and next steps

8. Following discussion of the two documents it was suggested that an alternative approach might be to develop a hybrid ACOP material/signposting guidance document to replace the current ACOP. This would cover the topics proposed for the new Code (set out in annex 1) but incorporate selected elements from the existing ACOP that are considered essential to maintain worker protection at ports and that meet the criteria for ACOP status. No additional ACOP material would be developed and no material from other ACOPs would be duplicated in the new guidance. The ACOP would be approved under a number of relevant health and safety regulations so clearing the way for the Docks Regulations 1988 to be revoked (subject to the necessary approvals).
9. The TU representatives and PSS agreed to advise HSE which core material should retain its ACOP status in the new Code, focusing only on docks-specific guidance that gives a preferred way of complying with the law.
10. If the Board wish to proceed in this way, rather than by withdrawing the ACOP and replacing it with HSE guidance (in the form of a code of practice), HSE would develop a draft signposting guidance document including the core ACOP material described above, particularly highlighted to show its special legal status. This could be ready for consultation in spring 2013 so that a final version could be published to coincide with the proposed revocation of the Docks Regulations and the withdrawal of the old ACOP in October 2013. The Board's approval to consult on the publication would be sought in due course.
11. HSE will work in partnership with the industry to organise a follow up summit to the one held in January 2011. We would aim to hold the event in October 2013 to launch the new publication. Meanwhile HSE will continue to work with PSS to complete the suite of detailed guidance.

Consequential amendments to other health and safety regulation

12. If the Board is now content to agree to recommend the revocation of the Docks Regulations, an amendment is needed to the Work at Height Regulations 2005 (WAHR) because they currently do not apply to “a place specified in regulation 7(6)³ of the Docks Regulations 1988 where persons are engaged in docks operations”. The consultation document stated that regulation 7 of the Dock Regulations would be covered by the general principles in the WAHR (regulation 6). HSE plans to amend the WAHR so that the intention of this disapplication and the requirements of regulation 7(6) are retained. As is commonplace with revocations, removing the Docks Regulations 1988 will also require some minor consequential amendments to other regulations, in order to remove spent provisions from the statute book.

Action

13. The Board is invited to:
- i. note the outcome of the meetings with industry representatives;
 - ii. advise on whether they wish to replace the existing Safety in Docks ACOP with a hybrid ACOP material/signposting guidance document (or with HSE guidance in the form of a Code of Practice);
 - iii. recommend (assuming a replacement for the existing ACOP is agreed) that the Docks Regulations 1988 should be revoked and the current Safety in Docks ACOP withdrawn; but with the implementation date delayed until October 2013 to ensure that the replacement guidance and suite of PSS guidance is in place.

Paper clearance

14. This paper has been cleared by Geoffrey Podger.

³ Regulations 7(6) states that: “*There shall be secure and adequate fencing at the following places where persons are engaged in dock operations, that is to say -*
(a) every break, dangerous corner and other dangerous part or edge of a dock, wharf, quay or jetty;
(b) every open side of a gangway, footway over a bridge, caisson or dock gate;
except in so far as such fencing is impracticable because of the nature of work carried out there and either the work is in progress or there is a short interruption for a meal or other purpose.”

Topics to be covered in new ACOP/guidance document

Management

Workplace Transport

Falls from Height

Lighting

Lifting operations

Dusty cargoes

Musculoskeletal disorders

Slips and trips

Confined spaces

Transport by water

Rescue, life-saving and means of escape

Welfare

Lone working

First aid

Accident reporting