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Outcome of the consultation on proposals to remove fourteen legislative measures

Purpose of the paper

1. This paper invites the Board to:
 - consider the outcome of the consultation on the proposals to remove 14 legislative measures; and
 - make recommendations to the Minister.

Background

2. In March 2012 the Chair agreed, on behalf of the Board, that HSE should undertake a statutory consultation on proposals to remove 14 legislative measures. The consultation document (CD), published on 3 April (<http://www.hse.gov.uk/consult/condocs/cd239.htm>) set out the rationale for each proposal and sought views on the proposals and details to inform the Impact Assessments (IAs). The consultation closed on 4 July.
3. This work forms part of HSE's programme of wider reforms to help employers understand quickly and easily what they need to do to manage workplace risks in order to increase levels of compliance.

Argument

Overview of the consultation responses

4. A summary of the general responses and those for each set of legislative measures is attached at Annex A. The CD was structured to allow people to consider the areas that interested them so the number of responses for each section varied.
5. There were 122 responses. This was low in relation to the 3681 copies of the CD that were downloaded and compared with other recent consultation exercises (the consultation to amend RIDDOR to increase the period for reporting injuries that lead to a worker being incapacitated from over three days to over seven days received 776 finalised responses and the Fee for Intervention Scheme received 295).

Consideration of responses

6. The analysis of responses is presented in two parts. Part A covers those proposals that were substantially supported and Part B those with support but for which concerns were also expressed.

Part A – Proposals with substantial support

7. For the following legislative measures, the responses are summarised in Annex A. HSE has considered all of them and no evidence was received that undermined the rationale for removal set out in the CD. For each of these measures a

substantial majority of those who replied to the specific question agreed with the proposal to remove them. A summary of these responses is set out below¹.

Legislative measure	Number answering the question that agreed with the proposed revocation	Percentage
Celluloid legislation	39	91%
NIHHS Regulations	39	87% (86% agreed the amending Regulations should be revoked)
Gasholders Order (and section of Factories Act)	35	87.5%
Shipbuilding and ship-repair Regulations	28	97%
Metrication Regulations	33	94%

Recommendations

8. HSE therefore recommends that the following legislation should be repealed or revoked without a reduction in health and safety protections in the workplace:
- Celluloid and Cinematograph Film Act 1922
 - Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations 1980
 - Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974
 - Notification of Installations Handling Hazardous Substances Regulations 1982
 - Notification of Installations Handling Hazardous Substances (Amendment) Regulations 2002
 - Gasholders (Record of Examinations) Order 1938 and a related provision (section 39 (2)) in the Factories Act 1961
 - Shipbuilding and Ship-repairing Regulations 1960
 - Docks, Shipbuilding etc (Metrication) Regulations 1983
 - Locomotives etc Regulations 1906 (Metrication) Regulations 1981
 - Gasholders and Steam Boilers (Metrication) Regulations 1981

Actions required if the above legislative measures are approved for removal

9. If the proposal is agreed HSE proposes to remove the **celluloid legislation** using powers under section 15 of the Health and Safety at Work etc Act 1974 using the proposed draft Statutory Instrument (SI) - the Health and Safety (Miscellaneous Repeals, Revocations and Amendment) Regulations 2013 - at Annex B.
10. The revocation of the **Notification of Installations Handling Hazardous Substances Regulations 1982 (NIHHS)** and **Notification of Installations Handling Hazardous Substances (Amendment) Regulations 2002** needs a consequential amendment to the Dangerous Substances (Notification and Marking of Sites) Regulations 1990 (NAMOS). This will require notification (to the Fire and Rescue Services) of ammonium nitrate (as defined in the NIHHS amending Regulations 2002) at a threshold level of 150 tonnes or more. This will be achieved through the revoking SI.

¹ Annex A gives details of written responses received, some of which did not support the proposals.

11. If the revocation of both the **Gasholders (Record of Examinations) Order 1938 and a related provision (section 39 (2)) in the Factories Act 1961** is approved (because they have been overtaken by more up to date Regulations and will be supported by a recognised and trusted industry technical standard) HSE will work with the Institution of Gas Engineers and Managers (IGEM) and industry to make any changes to the standard that are required. This will take a goal setting approach to ensure the standards in place are both adequate and appropriate.
12. Most of the **Shipbuilding and Ship-repairing Regulations 1960** are covered by more recent goal setting legislation and enforcement action can be taken without having to apply these Regulations². If the revocation is agreed, HSE will use the revoking SI to amend the Workplace (Health, Safety and Welfare) Regulations so that comparable duties under them will apply to a “workplace which is or is in or on a ship”. This is specifically in respect of Regulation 8 (Lighting) and Regulation 12 (Condition of floors and traffic routes) for ships under repair since the Regulations already apply to ships under construction. The guidance relating to Regulation 4 (Requirements under these regulations) of the Workplace (Health, Safety and Welfare) Regulations will be updated to include a reference to owners of ships as people other than employers who may have responsibility for lighting.
13. The **Locomotives etc Regulations 1906 (Metrication) Regulations 1981** are now redundant. The legislation to which they refer has been revoked by the Health and Safety (Miscellaneous Revocations) Regulations 2012, due to come into force on 1 October 2012. They can therefore be revoked without any adverse impact. If the Shipbuilding and Ship Repair Regulations 1960 and Gasholders (Records of Examinations) Order are revoked following consultation, their 'metrication' Regulations (**the Docks, Shipbuilding etc (Metrication) Regulations 1983 and the Gasholders and Steam Boilers (Metrication) Regulations 1981**) can also be revoked without risk.

Presentational issues

14. HSE will alert stakeholders to the proposed changes as outlined below. HSE will:
 - work with stakeholders to update the guidance on the storage of celluloid and cinematographic film;
 - ensure industry is aware of the changes arising from the revocation of NIHHS. This communication will include the fact that a consequential amendment for Ammonium Nitrate has been made to the NAMOS Regulations but will not require the additional marking of sites. It will also reflect that a small number of former NIHHS sites where petrol is dispensed (eg for on-site vehicles rather than using a petrol filling station) which are not covered by the COMAH Regulations, will be subject to the petroleum legislation and therefore subject to the licensing regime;

² HSE has examined its records on the use of these sets of Regulations over the last 13 years. During this time 14 of the regulations have been cited on 4 Notices issued. None were issued in the last 10 years. Only one of these 4 Notices contained a regulation that has not subsequently been revoked, namely regulation 6 “Safe Access” (The circumstances under which this notice was issued are not now known). They have not been cited in any approved prosecution activity in the same period. In addition HSE has examined enforcement activity within the Shipbuilding sector (SIC code 3011) for the same period. During this time a total of 589 Notices were issued and 59 prosecutions approved of which 51 were successful. These figures suggest that this set of Regulations is not necessary for enforcement purposes. There have been two recent prosecutions at shipbuilding and repair premises in addition to a recent prosecution in a boat building yard. None of these cited any of the remaining Shipbuilding and Ship-repairing Regulations.

- ensure stakeholders are alerted to the proposed changes and update HSE’s web pages to provide signposts to key guidance for the gas distribution sector;
- update the website to signpost dutyholders to other relevant guidance that provides details of how to comply with the more recent legislation that applies to shipbuilding and ship-repair.

Part B – Proposals which were supported but for which concerns were raised

15. For the following proposals the consultation has raised a number of issues. HSE’s analysis of these is set out in the attached annexes and summarised below.

Construction (Head Protection) Regulations 1989

16. Of the total 77 responses received a substantial majority were in support of the proposal to revoke the Construction (Head Protection) Regulations (CHP) (Annex A gives details of the responses). A significant minority disagreed. Respondents refer to the Löfstedt Report which recommends revocation on the basis that the consultation does not identify any evidence that reduced protection would result and oppose revocation on the basis that protection will be reduced.
17. Further details of the concerns raised and HSE’s analysis of the comments is attached at Annex C. Our conclusion is that these arguments do not provide sufficient evidence to recommend retention of the Regulations. The key issue for HSE is that the proposal to revoke the CHP Regulations and rely on the Personal Protective Equipment at Work Regulations 1992 will have no impact on the legal requirements to provide and wear head protection on construction sites.

Notification of Conventional Tower Cranes Regulations 2010 and Notification of Conventional Tower Cranes (Amendment) Regulations 2010

18. This proposal received 86 responses (either written comments or replies on the questionnaire). The details of the responses are summarised in Annex A. HSE’s analysis of these is at Annex D.
19. Taking account of all responses, there was no overall clear majority either in favour, or against, the proposal to revoke the Regulations. Those against include a significant number of responses that appear to be part of an organised campaign. Nevertheless, in considering the number of respondents, the results of consultation provide no clear support, or otherwise, for revocation to proceed. It is of course important to consider also whether the arguments put forward by those who disagree with the rationale in the CD are persuasive. Our analysis is that these arguments represent assertion of the perceived benefits of the Regulations and its associated Register more than evidence for what the benefits actually are. We have therefore concluded that they are not sufficient to recommend retention of the Regulations.

Docks Regulations 1988 and associated Approved Code of Practice

20. Of the thirty three respondents who answered the question 28 (85%), agreed with the proposal to revoke the Docks Regulations while a small number raised concerns. A summary of the issues and HSE’s analysis of them is at Annex E.
21. HSE’s recommendation, on the basis of this analysis is that the Docks Regulations can be revoked without any lowering of standards in this sector.

Recommendations

22. Based on a consideration of HSE's expert views and the responses to the public consultation HSE recommends that the following legislation can be revoked without reducing health and safety protections in the workplace:
- Construction (Head Protection) Regulations 1989
 - Notification of Conventional Tower Cranes Regulations 2010 and Notification of Conventional Tower Cranes (Amendment) Regulations 2010
 - Docks Regulations 1988

Actions required if the above legislative measures are approved for removal

23. If the proposal to revoke the **Construction (Head Protection) Regulations 1989** is approved the SI (at Annex B) revokes Regulation 3(3)(f) of the Personal Protective Equipment (PPE) Regulations 1992 (which disapply certain requirements relating to the provision and use of PPE where the CHP Regulations apply) so that the requirement to wear head protection will be within the scope of the PPE Regulations and all of the requirements will be applicable to head protection.
24. The removal of the **Notification of Conventional Tower Cranes Regulations 2010** and the Notification of Conventional Tower Cranes (Amendment) Regulations 2010 will require the revocation of regulation 21 and Schedule 16 of the Health and Safety (Fees) Regulations 2012. These set a fee for each notification made under the Tower Crane Regulations. This will be done through the revoking SI.

Presentational issues

Construction (Head Protection) Regulations 1989

25. If the recommendation to revoke these Regulations is approved, HSE will carefully target publicity at smaller construction companies to ensure that the message that head protection must still be provided and worn is not misunderstood. We plan to:
- work with stakeholders (including those who have usefully volunteered their help) in re-publicising the need to provide and wear head protection on construction sites;
 - produce a free leaflet in the 'Busy Builder' series; copies of which will be made available to trade associations, trade unions and other stakeholders for distribution to their members and for use by Working Well Together groups;
 - publicise the change through the Construction Infonet, Construction Forum and press releases;
 - in 2013, add the wearing of head protection and other PPE to the other issues (e.g. working at height, asbestos and good order) on which our annual refurbishment initiatives focus and to our work on smaller projects.
26. Furthermore, recognising the challenge of reaching small construction businesses HSE will look for support from the full spectrum of stakeholders to deliver this message throughout construction supply chains.

Notification of Conventional Tower Cranes Regulations 2010

27. If the regulations are revoked, HSE will take action to ensure that duty holders are aware that from the common commencement date there is no longer a requirement to register tower cranes. This would involve contacting dutyholders for whom HSE

has contact details through their entry in the Register, as well as putting a message on the front page of the online Register itself.

Docks Regulations 1988

28. Work is already underway on industry guidance to replace guidance found in the Approved Code of Practice (ACOP) and this should be completed by April 2013.

Impact Assessments

29. Impact Assessments (IAs) for the Construction (Head Protection) Regulations and the Notification of Tower Cranes Regulations have been updated to reflect the consultation responses. For the rest of the measures post consultation IAs have been completed, though they have not yet been externally validated (where appropriate). The full documents will be published in due course. The analysis has estimated that there will be no costs or (approximately) no net cost to business associated with the removal of all the legislative measures except for the Docks Regulations, the Notification of Tower Cranes Regulations and the Construction (Head Protection) Regulations, where there are minor costs or cost savings.

Equality Impact Assessment

30. An Equality Impact Assessment has been prepared and confirms that no groups are likely to be impacted by these changes. The proposals make no changes to sections 11 & 12 of the Employment Act 1989, which exempts turban-wearing Sikhs from wearing head protection whilst on construction sites. This exemption applies to any statutory provision, so would continue to apply to the provisions of the PPE Regulations.

Next steps

31. If the Board agrees to recommend to the Minister that the legislative measures should be revoked, we will move quickly to seek the relevant Government approval so that the repealing and revoking legislation can be included in the fifth Statement of New Regulation. The aim is for this to come into force in April 2013, subject to Parliamentary scrutiny. A draft of the Health and Safety (Miscellaneous Repeals, Revocations and Amendment) Regulations 2013 is at Annex B.

Action

32. The Board is invited to:

- a. agree, on the basis of expert analysis and the consultation responses, that the legislative measures in paragraphs 8 and 22 can be removed without lowering health and safety protections in the workplace; and, if so
- b. agree that the consequential legislative changes should be made; and
- c. recommend to the Secretary of State that the measures should be repealed/revoked and that he approves the withdrawal of the Safety in Docks Approved Code of Practice.

Paper clearance

33. The paper has been cleared by Geoffrey Podger.

Summary of consultation responses

Introduction

This is a summary report of the outcome of the HSE's formal, statutory consultation on the proposals to remove fourteen legislative measures. This analysis is intended to support the HSE Board's decision making process.

Consultation document CD 239 invited responses to the specific proposals to remove fourteen legislative measures as part of HSE's programme of wider reforms to help employers understand quickly and easily what they need to do to manage workplace risks. HSE's consultation was published on the HSE website on 3 April and lasted three months. Respondents came from a wide-range of backgrounds, though the majority were health and safety professionals in the public and private sectors, trades unions and professional bodies and associations.

Respondents were asked to complete an on-line questionnaire or download a word document version of this and return this by e-mail or post. E-mailed responses and letters giving general comments on the proposal were also received. There were a total of 122 responses (and two nil responses) with 3681 copies of the consultative document downloaded.

Sixty eight replied using the on-line questionnaire and a further 54 submitted either completed questionnaires or provided written responses by email or post. The responses ranged from emailed comments on one particular proposal through to those who address most if not all aspects of the consultation in detail.

The numbers of responses to the specific questions have been presented in the following tables together with a summary of all the written comments.

Summary of general comments

Respondents were given the opportunity to answer the question '*Are there any further comments you would like to make on the issues raised in this consultation document that you have not already responded to in this questionnaire?*' This was used by some respondents (19) to comment on specific measures covered earlier in the CD and their views have been considered for each set of legislative measures. Five of those who made specific comments were generally opposed to the measures and a further five respondents who had some concerns or objected in principle to a reduction in legislation. Some of those that had specific concerns had no further comments to make on the majority of the measures. A further twelve respondents were generally supportive of the general approach and felt that there were benefits to removing out of date regulation.

Section A - Celluloid and Cinematograph Film legislation

Table A1 - General information

a) Type of organisation

Option	Number of respondents	Percentage of total ³ (%)
Consultancy	5	9
Local government	9	17
Industry	11	21
Trade association	3	6
National government	2	4
Non-departmental public body	1	2
Charity	3	6
Academic	3	6
Trade union	4	8
Non-governmental organisation	1	2
Member of the public	1	2
Pressure group	0	0
Other (please specify)	5	9
Not stated	5	9
Total	53	

b) Capacity of respondent

Option	Number of respondents	Percentage of total (%)
Health and Safety professional	23	43
An employer	2	4
An employee	8	15
Trade union official	5	9
Training provider	1	2
Other (please specify)	10	19
Not stated	4	8
Total	53	

³ Due to rounding, the percentages in this and following tables do not always add up to 100%.

Summary of responses to each question

Table A2: Responses to question 1.1 - Do you agree with the proposal to revoke the Celluloid and Cinematograph Film Act 1922, the Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974 and the Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations 1980?

Option	Number of respondents	Percentage of total (%)
Yes	39	91
No	4	9
Total	43	

Comments made to support the responses
<p>‘Yes’ respondents’ comments</p> <p>We received 24 comments both via the questionnaire and written responses. Amongst these comments, these key points were raised:</p> <ul style="list-style-type: none">▪ 4 expressed general agreement to the proposal.▪ 8 suggested that the nitrate film medium is virtually obsolete and therefore the legislation is also no longer required.▪ 10 said that this issue is adequately covered by more modern legislation; two of these confirmed that this is also the case in Scotland.▪ 2 said that guidance on this issue should remain available, and one of these suggested current guidance should be improved.▪ 1 advised that any film stocks still in domestic premises would further decline over time, and that these householders would not be aware of the current legislation so it would not be affecting their behaviour.▪ 1 said that this change would not decrease the legislative burden on industry.▪ 1 said that this change would not impact on the ports industry.
<p>‘No’ respondents’ comments</p> <p>We received one comment via the questionnaire, which suggested that keeping the legislation could provide leverage in influencing people to dispose of nitrate film, although it did acknowledge that people were unlikely to be aware of either the legislation or the dangers of nitrate film.</p> <p>One respondent provided a comment without having answered Question 1.1, which said that they did not wish to comment based on their lack of experience of this issue.</p>

Table A3: Responses to question 1.2 - To the best of your knowledge, are there any groups or individuals who keep or store raw celluloid or cinematograph film in non-workplace premises, and therefore have duties under this legislation?

Option	Number of respondents	Percentage of total (%)
Yes	3	8
No	36	92
Total	39	

<p>If you have answered 'Yes', please can you provide contact details for any groups/ individuals who do keep or store raw celluloid or cinematograph film so they can be contacted to discuss the impact of this proposal?</p>
<p>'Yes' respondents' comments</p> <p>We received two comments via the questionnaire raising these points:</p> <ul style="list-style-type: none"> ▪ That archive organisations are still offered nitrate films, although less frequently, but there is no list of contacts, because these offers are dealt with straight away. ▪ Whether HSE had considered the incidence of private collections. <p>One respondent provided a comment without having answered Question 1.2, which said that they could not estimate how much film may be stored in individual collections and film clubs, but understand that it is stored in some museum and library collections. They acknowledged that these workplaces are covered by DSEAR, but suggested that guidance for workplace situations should be improved, and that they would be keen to contribute to this work.</p>

Table A4: Responses to question 1.3 - To help HSE prepare the Impact Assessment we would be grateful if you would answer the following questions:

<p>a) What impact would the removal of the legislation have on the health and safety of these groups / individuals?</p>
<p>We received 17 comments via the questionnaire raising these points:</p> <ul style="list-style-type: none"> ▪ 10 comments said either no or low impact as other more modern legislation applies, and guidance is also available from both HSE and archive organisations. ▪ 5 said either that they did not know, were unaware of any groups/individuals affected, had nothing to add, or felt this was not applicable to them. ▪ 1 said that any groups storing film will be at risk if they are not considering the issue in light of DSEAR. ▪ 1 suggested that the change would mean that a best practice approach would remain, requiring a risk management process. ▪ 1 argued that the legislation should not be removed but adapted to suit different sectors and sized companies.
<p>b) What additional costs or savings do you estimate the removal of the legislation would impose on these groups / individuals, e.g. in terms of monetary costs, or in time spent?</p>

We received 15 comments via the questionnaire raising these points:

- 8 said either no or low costs or savings due to the limited number of groups/individuals affected.
- 2 said this would depend on the individual circumstances.
- 2 said they were unaware of any groups/individuals affected, or had nothing to add.
- 1 suggested that those familiar with the current legislation may take time to acclimatise, but they should already be up to speed with more modern legislation.
- 1 suggested there could be significant savings for SMEs if the legislation were adapted to suit differing sectors and organisations sizes.
- 1 raised the point that it took 10 minutes to complete the consultation so this could be multiplied by several thousand.

Additional comments received

General Question across all 14 legislative measures being consulted on: 'Are there any further comments you would like to make on the issues raised in this consultation document that you have not already responded to in this questionnaire?'

We received 14 comments, both via the questionnaire and written responses, which either relate to the general consultation or specifically to celluloid legislation. Amongst these comments, these key points were raised:

- 8 comments are supportive, and broadly agree with reducing burdens on business by removing red tape. 1 of these acknowledged that the small number of the proposals that impact on fire hazards and/or fire fighting have largely been superseded by more modern legislation.
- 1 said that removing the legislation would not reduce burdens on business.
- 2 comments are opposed to the proposals to remove legislation, although 1 does acknowledge that in some cases the measures have been superseded by more modern legislation.
- 3 have no specific comments to make on celluloid, but have made comments on other parts of the consultation.
- 1 comment expressed disappointment that an Impact Assessment had not been prepared, and another 1 raised the need for an evidence base analysis before final judgement on removal is taken.
- 1 questioned how the authorities might tackle domestic enforcement following the removal of the legislation.

Section B - Construction (Head Protection) Regulations

Table B1 – General information

a) Type of organisation

Type of organisation	Number of respondents	Percentage of total (%)
Consultancy	13	17
Local government	7	9
Industry	20	26
Trade association	5	6
National government	4	5
Non-departmental public body	1	1
Charity	2	3
Academic	3	4
Trade union	5	6
Non-governmental organisation	0	0
Member of the public	2	3
Pressure group	1	1
Other (please specify)	1	1
Not stated	13	17
Total	77	

Table B1 shows responses by type of organisation. However, local knowledge indicates the majority of respondents who selected industry are larger construction businesses rather than smaller ones.

b) Capacity of respondent

Capacity of respondent	Number of respondents	Percentage of total (%)
Health and Safety professional	38	49
An employer	5	6
An employee	10	13
Trade union official	5	6
Training provider	2	2
Other (please specify)	4	5
Not stated	12	16
Total	77	

Summary of responses to each question

Table B2: Responses to question 2.1 - Do you agree with the proposal to revoke the Construction (Head Protection) Regulations 1989? If no, what are your objections?

Response	Number of respondents	Percentage of total (%)
Yes	51	77
No	15	23
Total	66	

The table shows substantial support for the proposal from those who answered this question. Those who agree the rationale for revocations set out in the CD largely fall into three groups: industry, health and safety consultants or government. Others who support the proposal include trade associations, a professional body, academics and professionals (such as architects). A few who agree do so but on the basis that any potential misunderstanding about the provision and wearing of head protection is vigorously counteracted through publicity.

Additional comments

11 further comments were received in narrative responses

- 4 clearly did not agree with the proposal to revoke the Regulations, 2 agreed.
- The background of respondents who disagree is more varied and includes UCATT, Unite and respondents from pressure groups, industry, trade associations, government, health and safety consultants, academics, a training provider and a member of the public. The main concern they raise is that revocation would reduce safety standards. They refer to the fact that Professor Löfstedt's recommendation for revocation is conditional on consultation not identifying any evidence that would lead to reduced safety standards. They believe that it is the simple, prescriptive approach of the CHP Regulations that explains its past success in reducing the number of head injuries on construction sites and that the PPE Regulations are less straightforward, with the potential for confusion and lower levels of compliance. There are particular concerns that revocation would lead to a misunderstanding that the provision and wearing of head protection was no longer required. They also question the benefits of revocation if the estimated costs of the change seem to be more than those if the Regulations were left in place. Lastly, they question the adequacy of HSE's publicity plans to ensure there is no misunderstanding over the need to continue providing and wearing head protection, should the revocation go ahead.
- 5 do not explicitly express support one way or the other but have concerns with the proposal. This includes the TUC and GMB. Analysis shows that they express similar concerns to those who disagree, but say that, should the Regulations be revoked, there should be significant action to publicise the fact that this will not change the need for employers to provide, and workers to wear, head protection.

Table B3: Responses to question 2.2 -If the proposal is agreed, HSE plans to publicise the change to help ensure the construction industry understands that it will still require employers to provide, and workers to wear, head protection where there is a risk of head injury. Can you suggest ways in which your industry could help to achieve this?

The response to this question was mixed.

- Many of those who were in favour of the proposal made useful offers of help to publicise the change. These included providing tool box talks and placing posters on site, including publicity in newsletters, provision of advice from health and safety consultants, inclusion of the message in training courses and help in distributing, or drawing attention to, any guidance that HSE produces.
- Others suggested ways of publicising the change that HSE should carry out or co-ordinate with the industry.
- Many of those who were opposed to, or had concerns about, the proposal, thought that (were the Regulations to be revoked) HSE’s plans for publicity set out in the CD were inadequate. The TUC, for example, suggests that HSE should run a major campaign backed up by a strong inspection and enforcement strategy.
- However, a few industry respondents suggested that publicity plans should be low key because there was a risk that any significant campaign might be counter-productive, undermining the culture of wearing hard hats which has become embedded in the industry.

Impact Assessment (IA)

Table B4: Responses to question 2.3 - Do you agree with the IA’s assessment of the costs and benefits of the proposed revocation of the CHP Regulations?

Response	Number of respondents	Percentage of total (%)
Yes	39	71
No	16	29
Total	55	

The table shows that a majority of respondents who responded to the questionnaire agree with IA. The background of those who agree is similar to those who responded to question 2.1. Some who completed the questionnaire chose not to answer this specific question (10), along with one who did not explicitly express agreement one way or the other.

Additional information
Of the 11 respondents who submitted narrative responses <ul style="list-style-type: none"> a. 54% (6) did not respond and b. 45% (5) did not explicitly answer the question but expressed concerns

about the IA.

Of those who disagree with the IA a number of respondents (in particular health and safety consultants and respondents from industry) comment that the costs to industry are too high. They do not believe familiarisation costs will be as high given that revocation will mean that they comply with the PPE Regulations (with which they are already familiar) and will not lead to any change in the provision and wearing of head protection in practice.

On the other hand, some believe the costs will be higher than indicated in the draft IA, particularly the costs to HSE which, they believe, will need to do much more work to publicise the change to ensure there is no misunderstanding about the need to continue to provide and wear head protection on construction sites. Others comment that the estimated costs suggest that it would cost industry more to revoke the Regulations than leave them in place, though no additional evidence was provided to support this argument.

Section C - Notification of Conventional Tower Cranes Regulations

Table C1 – General information

a) Type of organisation

Type of organisation	Number of respondents	Percentage of total (%)
Consultancy	7	8
Local government	7	8
Industry	19	22
Trade association	5	6
National government	1	1
Non-departmental public body	-	0
Charity	2	2
Academic	4	5
Trade union	7	8
Non-governmental organisation	1	1
Member of the public	2	2
Pressure group	1	1
Other (please specify)	5	6
Not stated	25	30
Total	86	

The table shows a broad mix of respondents and that after those 'not stated', industry had the highest number of respondents.

b): Capacity of respondent

Capacity of respondent	Number of respondents	Percentage of total (%)
Health and Safety professional	27	31
Employer	6	7
Employee	9	10
Trade union official	9	10
Training provider	1	1
Other (please specify)	6	7
Not stated	28	33
Total	86	

This table shows a broad mix of respondents, and that after those 'not stated', most responded in the capacity of health and safety professionals.

Summary of responses to each question

Table C2: Responses to question 2.7 - Do you agree with the proposal to revoke the Notification of Conventional Tower Cranes Regulations 2010 and the Notification of Conventional Tower Cranes (Amendment) Regulations 2010. If no, what are your objections?

Response	Number of respondents	Percentage of total (%)
Yes	43	75
No	14	25
Total	57	

Of those who answered this question there was a significant majority in support of the proposal

Those who agree the rationale for revocation, mainly come from four groups: those who categorise themselves as industry, government, consultants or from trade associations.

Of those who submitted written responses, 29 did not answer this question specifically. However, it is clear from what they said that they did not agree with the proposal to revoke the Regulations. One respondent agreed with the proposal.

Additional Comments:

- Two respondents acknowledged the information within the CD relating to the small number of enquiries from the public as reason to revoke the Regulations, while a few believed the Regulations had had no health and safety impact
- Many of the written respondents that did not agree (19) were individuals who did not categorise themselves, but the group also includes trade union responses from the TUC, UCATT, Unite, GMB and Unison, along with pressure groups (such as the Battersea Crane Disaster Action Group and Construction Safety Campaign). A small number of academics and some from industry, also disagreed, as well as a trade association, a professional body, a local government respondent and members of the public.
- The main concern raised was that the safety of workers and the public should not be compromised given the relatively small costs to business and HSE.
- Many considered that the Regulations were introduced as a result of a number of deaths and should remain in place, particularly as they only came into force in April 2010, and there has been very limited time to allow proper evaluation of their effectiveness.
- The trades' union respondents felt that poor publicity for the Regulations was the reason for the lack of public awareness and enquiries of the Register. They additionally called for the Regulations to be extended to cover all cranes rather than be revoked.
- There was also the view that the Regulations have had a positive effect

in that they have focused the minds of duty holders on good management of tower cranes and the requirements of the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER), which will be lost. It was also felt that it will be detrimental should HSE lose the ability to identify where tower cranes are located.

Table C3: Responses to question 2.8 - In addition to HSE's continued work with the industry to improve standards, can you suggest cost-effective, non-regulatory ways in which the public could be reassured that tower cranes on construction sites are being used to high standards of safety?

- Only 37% of the respondents suggested ways in which the public could be reassured. However, some suggestions could not be classed as cost-effective and/or non-regulatory. Suggestions made could be categorised in three ways: work by the industry; work by HSE; and, joint work by both industry and HSE.
- A number of respondents thought that industry could do more at a local level. Suggestions included involving the public and local groups during planning of tower crane erections, the provision of free information sessions and newsletters for the public, providing up to date information about a tower crane on a site and site specific notices posted on site hoardings with appropriate certificates displayed was also suggested. Other suggestions for the industry included improving inspection regimes by tower crane suppliers and the understanding of the requirements for lifting by those responsible for cranes. Another suggested introducing a 'safe cranes' scheme equivalent to the considerate contractor scheme administered and funded by major contractors and their clients..
- Suggestions for HSE included improving guidance and regular updates on its website about industry's performance, highlighting good and bad practice, prosecutions, etc. more HSE audits of tower crane suppliers and more HSE spot checks on tower cranes.
- Suggestions for joint HSE/industry working included a new set of guidance notes or ACoP covering safety without the need to register, with one respondent stressing the importance of the involvement of trade unions, local authorities and professional bodies. Another supported continuing work by the Construction Plant-Hire Association's Tower Crane Interest Group, in conjunction with other stakeholders, to prepare and disseminate guidance on the safe use, maintenance, inspection and through examination of tower cranes.

Impact Assessment

Table C4: Responses to question 2.9 - Do you agree with the IA's assessment of the costs and benefits of the proposed revocation of the Notification of Conventional Tower Crane Regulations and their Amending Regulations? If no, please explain your objections.

Response	Number of respondents	Percentage of total (%)
Yes	40	77
No	12	23
Total	52	

A significant majority of those who answered this question agree with the IA. This is a similar number and proportion to those who are in support of revocation. A small number (3) who completed the questionnaire did not answer this question specifically, along with a further 31 who submitted written responses, most of whom were opposed to the proposal to revoke the Regulations.

Additional comments:

Of the minority who do not agree with the IA,

- 2 (a consultant and a trade union), believe the figures are speculative and negligible.
- 6 believe that the costs are minimal compared to the costs of accidents and incidents to society and industry when they occur.
- Others (a pressure group and a trade association) criticise the IA for not accounting for costs of fatalities/injuries and incidents,
- while another (a member of the public) questions why there is no reference to the impact on accidents/incidents following the introduction of the Regulations.

Section D - Notification of Industries Handling Hazardous Substances Regulations

Table D1 – General information

a) Type of organisation

Type of Organisation	Number of respondents	Percentage of total (%)
Industry	11	25
Local Government	8	19
National Government	2	4
Non-governmental organisation	1	2
Non-departmental public body	0	0
Trade union	0	0
Charity	1	2
Trade Association	4	9
Academic	3	7
Consultancy	5	11
Member of the public	1	2
Pressure Group	0	0
Other	7	15
Not stated	2	4
Total	45	

b) Capacity of Respondent

Capacity of Respondent	Number of respondents	Percentage of total (%)
An employer	4	9
An employee	7	15
Trade union official	1	2
Health and Safety Professional/Safety representative	21	47
If other, please specify	9	20
Not stated	3	7
Total	45	

c) No Comments

Response	Number
No comments on NIHHS	3

Summary of responses to each question

Table D2: Responses to question 3.1 (a) and (b) - Do you agree with the proposal to revoke:

a) The Notification of Installations Handling Hazardous Substances Regulations 1982? and

b) The Notification of Installations Handling Hazardous Substances (Amendment) Regulations 2002?

Responses to Q3.1a		
Option	Number of respondents	Percentage of total (%)
Agreed	39	87
Disagreed	6	13
Total	45	
Responses to Q3.1b		
Option	Number of respondents	Percentage of total (%)
Agreed	37	86
Disagreed	6	14
Total	43	
If you have answered 'no' to either of the above, what are your objections?		
<p>Several respondents supported the proposals provided health and safety standards were not reduced. One respondent raised questions about the transfer of enforcement responsibility to the LAs for some sites. Another respondent felt the revocation would have unintended consequences and burdens for ports in terms of requiring additional signage and would create a mismatch between the threshold levels in other regulations. The same respondent also expressed concerns that it would result in the Planning Act ceasing to be a functioning entity and made an observation that the PHS Regulations are more complex than NIHHS.</p>		

Table D3: Responses to question 3.2 - Do you agree that a consequential amendment should be made to the Dangerous Substances (Notification and Marking of Sites Regulations 1990) to ensure there is a specific notification requirement for Ammonium Nitrate if both the 1982 and the 2002 NIHHS Regulations are revoked?

Option	Number of respondents	Percentage of total (%)
Agreed	36	95
Disagreed	2	5
Total	38	
If you have answered 'no', what are your objections?		
<p>Although in support, one respondent caveated the response with the fact that it should not inadvertently reduce the protection of workers. The same</p>		

respondent felt that well-established systems of notification were being disturbed. A query about whether the Health and Safety (Enforcing Authority) Regulations 1998 would be changed was also raised. One respondent thought the NAMOS Regulations should also be revoked and that “a real challenge would be to merge PHS with COMAH”.

Table D4: Responses to question 3.3 - Do you agree that in the consequential amendment the threshold limit for Ammonium Nitrate should be 150 tonnes (i.e. the threshold limit in NIHHS)?

Option	Number of respondents	Percentage of total (%)
Agreed	31	79
Disagreed	8	21
Total	39	
If you have answered ‘no’, what are your objections?		
The majority of respondents who did not agree with the proposed consequential amendment did so because they felt the threshold limit for AN should be 25 tonnes (as for other dangerous substances in NAMOS) rather than the proposed 150 tonne threshold. Another respondent thought, “a single unified approach to meet all interest groups is needed for each single substance, such as Ammonium Nitrate”.		

Impact Assessment

Table D5: Responses to question 3.4 - To help HSE prepare the IA we would be grateful if you would answer the following questions:

a) Does your business have to complete notifications under these Regulations?

Option	Number of respondents	Percentage of total (%)
Yes	5	14
No	31	86
Total	36	
If you have answered ‘Yes’:		
i) How long does it take to complete a notification under the NIHHS Regulations and submit it to HSE		
5 respondents answered this question: Responses as follows:		
<ol style="list-style-type: none"> 1. “not directly involved with this notification process” 2. “Half a day” 3. No new NIHHS applications for many years so cannot answer this 		
ii) What is involved		
2 respondents answered this question: “Gathering information and preparing documentation” “No individual data available”		

iii) Who in the organisation (level/grade) will do this?		
2 respondents answered this question: “Director and manager”, “No individual data available”		
b) What do you think are the benefits of revoking the NIHHS Regulations?		
11 respondents answered this question: The majority of respondents saw the benefit as a simplification of the legislation which would allow duty holders to concentrate on current legislation. Some particularly endorsed the proposal for the consequential amendment to be made to the NAMOS Regulations. One respondent thought it could be a step towards aligning the thresholds in the PHS and COMAH Regulations. Another thought it may have a ripple effect on other safety and planning legislation.		
c) Do you agree that all the information notified under NIHHS is repeated in other legislation?		
Option	Number of respondents	Percentage of total (%)
Yes	28	93
No	2	7
Total	30	
If you have answered No please explain what information is not repeated		
4 respondents answered this question: <ul style="list-style-type: none"> One respondent who answered no to this question did so because they felt “Other legislation requires notification of AN at different quantities than NIHHS and NAMOS and requires the 'classification' and not the 'name' of the substance to be notified”. Another respondent felt that transferring the requirements in NIHHS would “formalise the contradiction between different interest groups, such as Industrial Safety, Fire and Planning”. Also thought a single approach was needed for each substance to meet all interest groups. 		
d) Will there be any extra costs of notifying Ammonium Nitrate (as defined in the NIHHS Amendment Regulations 2002) under the NAMOS Regulations 1990 rather than under the amendment regulations?		
Option	Number of respondents	Percentage of total (%)
Yes	3	10
No	26	90
Total	29	
If you have answered ‘Yes’ please explain what they will be?		
<ul style="list-style-type: none"> One respondent thought there could be some extra costs in terms of familiarisation, awareness raising for the FRS and “a reinvigoration of the enforcement of NAMOS”. Two respondents thought there would be additional costs because marking of sites for AN would be required. Another respondent thought there would be extra costs because of an attempt to” meet the variety of limits of different interest groups such as Industrial Safety, Fire and Planning, without a mechanism for integrating all these needs into a single requirement”. 		
e) How long will it take to familiarise yourselves with the revocation of		

the NIHHS Regulations?		
Approximately 20 minutes	5 (19%)	
Approximately 40 minutes	9 (35%)	
Approximately 60 minutes	2 (8%)	
Approximately 90 minutes	3 (12%)	
Other (please specify)	7 (27%)	
Comments from respondents who completed the 'Other' option: Some respondent's comments included "N/A", "Not used", "Not relevant to my work". Another thought some procedures would need to be updated which would take managers and others about 10 minutes. Another respondent thought it would take 32 hours.		
f) How many people in your organisation will be involved with the familiarisation?		
15 respondents answered this question 1. "7 managers (overview only not directly effected), 2. 30 Operational staff and LNG Storage Manager. 3. 5 staff. 4. Approx 10 – UK LNG Assurance Manager. Other responses were 400 x 2, 1, employees 3, contractors 10, 10, 6, 2, 5. Four respondents indicated zero.		
g) What level/grade of staff will be involved?		
15 respondents answered this question: Firefighters, Crew Managers, Watch Managers, Station Managers, Group Managers, Area Managers (All operational staff and fire control) H & S Manager, Managers, Directors, Supervisors, Operators, Officers, H&S advisors and officers and the CDM-C Senior (Technical) Consultants. 3 respondents indicated zero and one indicated N/A.		
h) Does your site dispense petrol but is not covered by COMAH?		
Option	Number of respondents	Percentage of total (%)
Yes	2	8
No	22	92
Total	24	
If you have answered 'Yes'		
i) Do you know what is required to comply with the Petroleum legislation and licensing regime?		
Option	Number of respondents	Percentage of total (%)
Yes	3	30
No	7	70
Total	10	
If you have answered 'Yes' can you estimate what compliance with this legislation might cost?		
4 respondents answered this question: "£5-10k", "30mins to 1 hour", "No individual data available", "N/A".		

If you have answered ‘No’ how long do you think it will take to find out and who in your organisation will have to do this?

6 respondents answered this question:
 “½ hour”, “approx 20 mins”, unsure – HSE manager would do, “4 hours”, “½ hour of my own time so no cost”. One response was zero.

i) Will there be any other costs from the proposed revocation of the NIHHS Regulations?

Option	Number of respondents	Percentage of total (%)
Yes	1	4
No	25	96
Total	26	

If you have answered ‘Yes’ please explain what these will be.

2 respondents answered this question:
 One respondent thought there would be other costs because certain sites will return from HSE enforcement to the jurisdiction of local authorities, which would require local authorities to have appropriate resource training for this role.
 The other respondent was not aware of any other costs but was unable to answer yes or no.

**Section E – Gasholders (Record of Examinations) Order and a related provision
(section 39 (2)) in the Factories Act**

E1 – General Information

a) Type of organisation

Option	Number of respondents	Percentage of total (%)
Consultancy	4	10
Local government	7	18
Industry	10	25
Trade association	4	10
National government	2	5
Non-departmental public body	0	0
Charity	1	3
Academic	2	5
Trade union	3	8
Non-governmental organisation	0	0
Member of the public	0	0
Pressure group	0	0
Other (please specify)	5	13
Not stated	2	5
Total	40	

b) Capacity of respondent

Option	Number of respondents	Percentage of total (%)
Health and Safety professional	22	56
An employer	2	5
An employee	7	18
Trade union official	2	5
Training provider	1	3
Other (please specify)	2	5
Not stated	4	10
Total	40	

Summary of responses to each question

Table E2: Responses to question 4.1 - Do you agree with the proposal to revoke the Gasholders (Record of Examinations) Order 1938 and section 39 (2) for the Factories Act 1961?

Option	Number of respondents	Percentage of total (%)
Yes	35	88
No	4	10
No comment	1	3
Total	40	

If “No” what are your objections?

One respondee asked whether HSE had accounted for the likely re-introduction of such installations in the near future when north sea natural gas is depleted.

Table E3: Responses to question 4.2 -To help HSE prepare the Impact Assessment please estimate what changes to your business would you make (if any) as a result of the Order being revoked?

HSE received 16 responses to this question; however no respondees offered any information to inform the Impact Assessment. Twelve respondents answered ‘none’ and the other four responses were - ‘no comment’; ‘0’; ‘no impact’; and ‘no individual data available’.

Table E4: Responses to question 4.3 - Would this revocation have any implications (positive or negative) for businesses, workers or others that HSE has not identified?

Option	Number of respondents	Percentage of total (%)
Yes	4	14
No	24	86
Total	28	

If you have answered “Yes” please explain what these are.

1. It is not clear from the CD if there had been consideration of the use of water-sealed gasholders outside the gas distribution networks. For example the use of water-sealed gas holders at: waste water treatment plants, and steel manufacturing plants is a common occurrence. Whilst gas distribution networks will be familiar with the wide range of industry guidance produced by IGEM, this would be less likely with other groups. Unclear how non-gas networks users will be used.
2. It is not clear what current regulation would ensure that gasholders are included in the remit of gasholders, as Provision of Use of Work Equipment Regulations 1998 (PUWER) is imprecise on the matter. PUWER 98 differs from PUWER 92 in a number of ways. They are: (a) an extension of the definition of “work equipment” to include installations”. And leaves it unclear as to whether gasholders would be considered as work equipment.
3. This revocation could have negative implications if duty holders are no longer clear on how they should inspect gasholders. PUWER and its ACoP support appropriate gasholder inspection, however there is no prescriptive requirement so the specifics of the duty may no longer be clear to duty holders. It is noted that HSE will work with IGEM to modify the technical standard publication, but as this is a voluntary code, much work will be needed to promote and communicate the requirements, such that duty holders understand and comply with the standard.

Section F - Docks Regulations and Approved Code of Practice

Table F1 - General information

a) Type of organisation

Option	Number of respondents	Percentage of total (%)
Academic	4	12
Consultancy	0	0
Local government	5	15
Industry	12	36
Trade association	3	9
National government	0	0
Non-departmental public body	2	6
Charity	2	6
Trade union	0	0
Non-governmental organisation	0	0
Member of the public	0	0
Pressure group	0	0
Other (please specify)	0	0
Not stated	5	15
Total	33	

In addition to the breakdown of the responses above, of the 6 written responses we received, 5 were from Trade Unions and 1 was from a Trade Association.

b) Capacity of respondent

Option	Number of respondents	Percentage of total (%)
Health and Safety professional	5	15
An employer	12	36
An employee		
Trade union official		
Training provider	4	12
Other (please specify)	7	21
Not stated	5	15
Total	33	

In addition to the breakdown of responses above, of the 6 written responses we received, 5 were from Trade Union Officials and 1 was from a Trade Association.

Summary of responses to each question

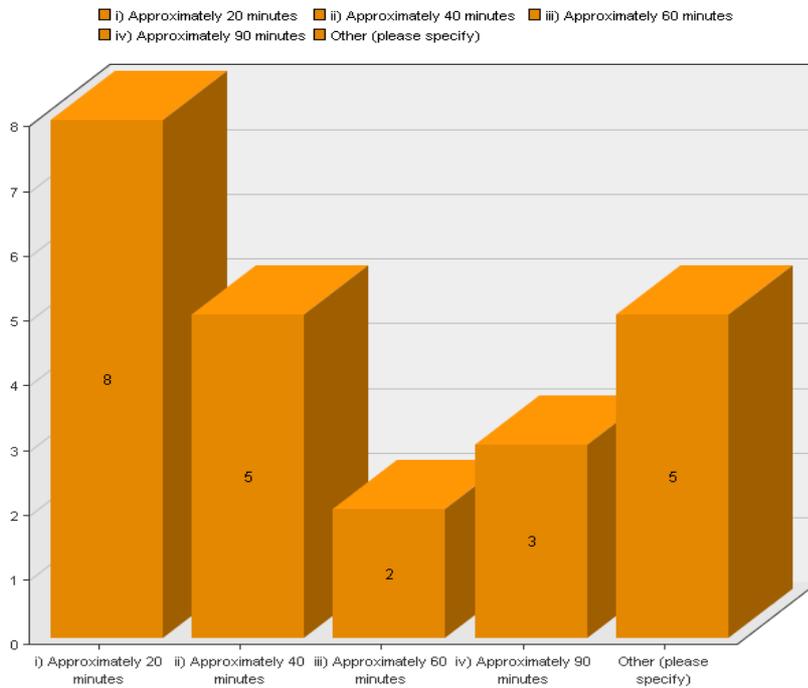
Table F2: Responses to question 5.1 - Do you agree with the proposal (as outlined in the Annex) to revoke the Docks Regulations 1988 and for HSE to withdraw its approval of COP25

Option	Number of respondents	Percentage of total (%)
Yes	28	85
No	5	15
Total	33	

In addition six written responses were received that did not specifically answer Question 5.1. Two of these expressed the view that these Regulations should not be revoked. A further three call for a revision of the regulations and retention of those parts that are still required to maintain current legal standards.

Comments made to support the responses
<p>‘Yes’ respondents’ comments</p> <p>We received 3 additional comments both via the questionnaire and written responses.</p> <p>Amongst these comments, these key points were raised:</p> <ul style="list-style-type: none"> • Yes provided there is no lowering of health and safety standards – 2 responses • Need to ensure that there is an appropriate awareness-raising and communication exercise – 1 response <p>‘No’ respondents’ comments</p> <p>We received 10 comments both via the questionnaire and written responses that were against revocation.</p> <p>Amongst these comments, these key points were raised:</p> <ul style="list-style-type: none"> • Lack of evidence to allow responders to make a judgement – 7 responses • Docks Regulations will be replaced by guidance – 8 responses • Contravenes HSWA, S.1(2) as there would be a reduction in standards – 1 response • Use of more general regulations will result in difficulties in interpretation – 3 responses • Docks should have specific regulations due to their hazardous nature – 9 responses • Revocation might send out the signal that the wider safety culture promoted by Regulations and ACOP is being relaxed – 4 responses • Significant enforcement is undertaken using the Regulations so they are still relevant – 5 responses

Table F3: Responses to question 5.2 -To help HSE prepare the Impact Assessment please consider how long you estimate it will take for an employer to appreciate that this revocation will not change their day to day operations?



Comments made to support the responses
<p>Within the “Other” category, the following responses were received:</p> <ul style="list-style-type: none"> • None - 2 responses • Not applicable – 1 response • No experience – 1 response • 2-3 hours – 1 response

Table F3: Responses to question 5.3 - Would this revocation and the withdrawal of the ACoP have any implications (positive or negative) for businesses, workers or others that HSE has not identified?

Option	Number of respondents	Percentage of total (%)
Yes	23	88
No	3	12
Total	26	

Comments made to support the responses
<p>‘Yes’ respondents’ comments</p> <ul style="list-style-type: none"> • it will take time for an employer to read and understand the revocations and introduce general confusion. • Safety standards could be affected with no clear guidelines for employers managers and employees

- it will take time for an employer to read and understand the revocations and introduce general confusion.
- it will be especially beneficial as regards medical fitness.
- After revocation, regulations affecting ports will be Goal-Seeking instead of Prescriptive, which allow greater flexibility to provide management interventions that work for each individual situation.

'No' respondents' comments

- No comments received

Other comments received in written form

- It might send out a signal that the wider safety culture promoted by the existence of the Regulations and ACoP is being relaxed.
- If it is proposed to replace the ACoP with an industry code, could have an implication for safety going forward depending both on the drafting of the code and the seriousness with which it is regarded by businesses and others concerned.

Section G - Shipbuilding and Ship-repairing Regulations

Table G1 - General information

a) Type of organisation

Type of organisation	Number of respondents	Percentage of total (%)
Consultancy	3	9
Local government	6	19
Industry	10	31
Trade association	1	3.
National government	1	3.
Non-departmental public body		
Charity	1	3
Academic	2	6
Trade union	1	3
Non-governmental organisation		
Member of the public		
Pressure group		
Other (please specify)	2 (not specified)	6
Not stated	5	16
Total	32	

b) Capacity of respondent

Capacity of respondent	Number of respondents	Percentage of total (%)
Health and Safety professional	16	50
An employer	2	6
An employee	4	13
Trade union official	2	6
Training provider	1	3
Other (please specify)	2 (not specified)	6
Not stated	5	16
Total	32	

Summary of responses to each question

Table G2: Responses to question 5.4 - Do you agree with the proposal (as outlined in the Annex) to revoke the Shipbuilding and Ship-repairing Regulations 1960?

Option	Number of respondents	Percentage of total (%)
Yes	28	97
No	1	3
Total	29	

If you have answered ‘No’ what are your objections?
<p>5 people made comments on this proposal (although none of them had responded ‘no’)</p> <p>2 qualifying their ‘yes’ response</p> <ul style="list-style-type: none"> • Provided there is no lowering of health and safety standards, we agree with the proposal (as outlined in the Annex) to revoke the Shipbuilding and Ship-repairing Regulations 1960. • Yes, provided there is no lowering of health and safety standards and the Workplace (Health, Safety and Welfare) Regulations 1992 are amended so that they apply to a “workplace which is or is in or on a ship” <p>1 providing support from industry</p> <ul style="list-style-type: none"> • With regard to the Ship Building and Ship Repair Regulations I had intended sending you the extract of the minutes along with a paragraph outlining how we as a group examined the regulations and concluded that their revocation would have little or no impact on our undertakings. The consensus of the meeting was that the regulations have been overtaken by newer regulations such as Work at Height, DSEAR, Confined Spaces Regs, and the Dock Regs etc. to the extent that they are rarely if ever looked at, indeed several members commented that they no longer use or refer to them at all. The NIG as a whole was supportive of the initiative to remove the regulations from the Statute. <p>1 providing qualified support</p> <ul style="list-style-type: none"> • Yes, conditionally. It is noted that "HSE believes that these Regulations can be revoked without reducing health and safety protections". Revoking these regulations would create a gap in workplace protection in respect of workplaces in or on ships in respect of lighting requirements. A similar point is made in the consultation document specifically in relation to lighting requirements on ships (Regulation 69 refers). The HSE offers to explore closing any such gaps in the revoking SI. The Chartered Institute of Environmental Health (CIEH) argues that it is essential to ensure that there should be no gap in safety requirements for workers and workplace visitors arising out of the proposed revocation. <p>1 raising concerns about the proposals</p> <ul style="list-style-type: none"> • A number of changes and alternative provisions are suggested in the CD and we mention a few below. We are concerned that revocation is being proposed without ensuring that equivalent protection is first in place. All of the

changes and alternative provisions must be brought together to provide clear and explicit guidance concerning shipbuilding and repairing that sets out legal requirements, guidance etc. (Examples provided - that need to be implemented before revocation takes place).

Table G3: Responses to question 5.5 - To help HSE prepare the Impact Assessment please consider how long you estimate it will take for an employer to appreciate that this revocation will not change their day to day operations?

- i) Approximately 20 minutes**
- ii) Approximately 40 minutes**
- iii) Approximately 60 minutes**
- iv) Approximately 90 minutes**
- v) Other (Please state)** _____

23 people responded to this question

(i) 9 (39%)

(ii) 4 (17%)

(iii) 2 (9%)

(iv) 4 (17%)

(v) 4 (17%) These four responses were none, 0, no experience and not applicable

Table G4: Responses to question 5.6 - Would this revocation have any implications (positive or negative) for businesses, workers or others that HSE has not identified?

26 people answered this question – 1 - answered yes and 25 answered no

If you have answered 'Yes' please explain what these are

Although only one person answered 'yes' to Q5.6 - four people responded to this question.

- The fact that there is acknowledgement of possible gaps in statutory protection if this revocation goes ahead demonstrates the need for great care in reassuring all who work in and visit workplaces covered by these Regulations that standards are not being allowed to drop.
- No, on the basis that HSE can meet its intended aim in para 5.19 Annex 5-13 of amending WHSWR1992 to cover gaps caused by revoking SSRR1960.
- We do not believe so.
- It will take time for an employer to read and understand the revocations and introduce general confusion.

Additional comments received

General Question across all 14 legislative measures being consulted on: 'Are there any further comments you would like to make on the issues raised in this consultation document that you have not already responded to in this questionnaire?'

We received 16 comments, both via the questionnaire and written responses which relate either to the general consultation or refer to the shipbuilding and ship-repairing regulations.

- 8 comments were generally supportive of the revocation package
- 1 comment offering qualified support if evidence based
- 2 had no comments on majority of revocations including shipbuilding
- 2 people mention shipbuilding and ship repair in general terms, as being dangerous workplaces.
- 3 provided comments that were generally opposed to the revocation.

Section H - Metrication Regulations

Table H1 - General information

a) Type of organisation

Type of organisation	Number of respondents	Percentage of total (%)
Consultancy	3	8
Local government	8	22
Industry	10	27
Trade association	3	8
National government	1	3
Non-departmental public body	1	3
Charity	1	3
Academic	2	5
Trade union	0	0
Non-governmental organisation	0	0
Member of the public	1	3
Pressure group		0
Other (please specify)	4	11
Not stated	3	8
Total	37	

b) Capacity of respondent

Capacity of respondent	Number of respondents	Percentage of total (%)
Health and Safety professional	21	57
An employer	3	8
An employee	4	11
Trade union official	1	3
Training provider	1	3
Other (please specify)	4	11
Not stated	3	8
Total	37	

Summary of responses to questions

Table H2: Responses to question 6.1 - Do you agree with the proposal (as outlined in the Annex) to revoke the:

- Docks, Shipbuilding etc (Metrication) Regulations 1983; and
- Gasholders and Steamboilers (Metrication) Regulations 1981;
- Locomotives etc Regulations 1906 (Metrication) Regulations 1981

Option	Number of respondents	Percentage of total (%)
Yes	33	94
No	2	6
Total	35	

If you have answered 'No' what are your objections?
<p>3 people made comments on this proposal (although none of them had responded 'no')</p> <p>1 qualifying their 'yes' response</p> <ul style="list-style-type: none"> • Yes, we agree with the proposal (as outlined in the Annex) to revoke the regulations listed above if the statutory instruments they relate to are revoked. <p>1 giving qualified support to the proposal</p> <ul style="list-style-type: none"> • If the Shipbuilding and Ship-repairing Regulations 1960 are revoked (as proposed in Annex 5) then the Docks, Shipbuilding etc (Metrication) Regulations 1983 have no legislation on which to "bite" and can be revoked without effect. <p>If the Gasholders (Record of Examinations) Order 1938 is revoked (as proposed in Annex 4), then the Gasholders and Steam Boilers (Metrication) Regulations 1981 are redundant and can be revoked without effect.</p> <p>If the Locomotives etc Regulations 1906 (Metrication) Regulations 1981 for use of locomotives and wagons on lines and sidings in or used in connection with premises under the Factory and Workshop Act 1901 (1906) (1906 No.679), included in HSE's consultation 'Proposals to revoke seven Statutory Instruments' (CD238), are revoked then these Regulations have no legislation on which to "bite" and can be revoked without effect.</p> <p>1 was a nil response</p> <ul style="list-style-type: none"> • We do not have enough experience in this area to give appropriate answers the questions

2013 No.

HEALTH AND SAFETY**The Health and Safety (Miscellaneous Repeals, Revocations and Amendment) Regulations 2013***Made* - - - -

Laid before Parliament

Coming into force - - -6th April 2013

The Secretary of State makes these Regulations —

(a) in exercise of the powers conferred by sections 15(1) and (3)(a) and 49(1) and (4) of the Health and Safety at work etc. Act 1974⁽⁴⁾ (“the 1974 Act”); and

(b) for the purpose of giving effect without modification to proposals submitted by the Health and Safety Executive under section 11(3) of the 1974 Act after carrying out consultations in accordance with section 50(3) of the 1974 Act.

Citation and commencement

1. These Regulations may be cited as the Health and Safety (Miscellaneous Repeals, Revocations and Amendment) Regulations 2013 and come into force on 6th April 2013.

Extension outside Great Britain

2. This Regulation to be completed.

Repeals and Revocations

3. The enactments specified in column 1 of Table 1 of the Schedule are repealed to the extent specified in the corresponding entry in column 3 of that table.

4. The instruments referred to in column 1 of Table 2 of the Schedule are revoked to the extent specified in the corresponding entry in column 3 of that table.

Consequential Amendments

5. The Dangerous Substances (Notification and Marking of Sites) Regulations 1990 are amended as follows —

(a) in regulation 2(1) before the definition of “CDG 2007” insert —

““ammonium nitrate 15.75%” means ammonium nitrate and mixtures containing ammonium nitrate where the nitrogen content exceeds 15.75% of the mixture by weight;”;

⁽⁴⁾ 1974 c. 37; section 11 is substituted by S.I. 2008/960; sections 15(1) and 50(3) are amended by the Employment Protection Act 1975 (c. 71), Schedule 15, paragraphs 6 and 16 respectively and section 50(3) is further amended by the Health Protection Agency Act 2004 (c. 17), Schedule 3, paragraph 5(1) and (3) and by S.I. 2008/960.

- (b) in regulation 2(3) —
 - (i) after the words “the total quantity of dangerous substances” insert “or ammonium nitrate 15.75%”;
 - (ii) for “such substances” substitute “dangerous substances or ammonium nitrate 15.75%”; and
 - (iii) after “any dangerous substances” insert “or ammonium nitrate 15.75%”.
- (c) after regulation 4(3), insert —
 - “(4) The person in control of a site shall ensure that there is not present at any one time a total quantity of 150 tonnes or more of ammonium nitrate 15.75% at the site unless there has been notified in writing to the fire authority the particulars specified in Part I of Schedule 2.
 - (5) Where a notification has been made under paragraph (4) and a change specified in Part II of Schedule 2 takes place, the person in control of the site shall forthwith notify that change in writing to the fire authority.
 - (6) Where a change specified in paragraph 1 or 2 of Part II of Schedule 2 has been notified under paragraph (5), any resumption in the presence of a total quantity of 150 tonnes or more of ammonium nitrate 15.75% at the site shall be subject to a fresh notification under paragraph (4).”;
- (d) in regulation 8(a), for “regulation 4”, substitute “regulation 4(1) and 4(2)”;
- (e) in paragraph 4 of Part I of Schedule 2, after “substances” insert “or ammonium nitrate 15.75%”;
- (f) in paragraph 1 of Part II of Schedule 2, after “substances” insert “or ammonium nitrate 15.75%”;
- (g) in paragraph 5 of Part I of Schedule 2, after “substances” insert “or 150 tonnes or more of ammonium nitrate 15.75%”.
- (h) in paragraph 2 of Part II of Schedule 2, after “substances” insert “or 150 tonnes or more of ammonium nitrate 15.75%”.

6. The Workplace (Health, Safety and Welfare) Regulations 1992⁽⁵⁾ are amended as follows —

- (a) in regulation 3(1)(a), substitute “within the meaning assigned to that word by regulation 2(1) of the Docks Regulations 1988” with —
 - “save that regulations 8(1) and (3) and 12(1) and (3) apply to such a workplace where the work involves any of the relevant operations of—
 - (i) a shipyard whether or not the shipyard forms part of a harbour or wet dock; or
 - (ii) dock premises not being work done —
 - (aa) by the master or crew of a ship, or
 - (bb) on board a ship during a trial run, or
 - (cc) for the purpose of raising or removing a ship which is sunk or stranded, or
 - (dd) on a ship which is not under command, for the purpose of bringing it under command.”; and
- (b) at the end of regulation 3, add —
 - “(6) for the purposes of this regulation —
 - (a) “dock premises” means any dock, wharf, quay, jetty or other place at which ships load or unload goods or embark or disembark passengers, together with neighbouring land or water which is used or occupied, or intended to be used or occupied, for those or incidental activities, and any part of a ship when used for those or incidental activities;
 - (b) “relevant operations” means, in relation to a ship or vessel, its repairing, refitting, painting and finishing, the scaling, scurfing or cleaning of its boilers (including combustion chambers or smoke boxes) and the cleaning of its bilges or oil-fuel tanks or any of its tanks last used for carrying oil;
 - (c) “ship” includes all vessels and hovercraft which operate on water or land and water;
 - (d) “shipyard” means any yard or dry dock (including the precincts thereof) in which ships or vessels are constructed, reconstructed, repaired, refitted or finished; and

⁽⁵⁾ S.I. 1992/3004 amended by S.I. 2007/320, 1995/2036, 1995/2036; there are other amending instruments, but none is relevant

- (e) “vessel” means any description of craft used for the transport of goods or passengers or the storage of goods or the accommodation of passengers on water, whether used in navigation or not.”.

Signed by authority of the Secretary of State for Work and Pensions.

Address
Date

C Grayling
Minister of State
Department

SCHEDULE

Regulations 3 and 4

Table 1 - Repeals

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Short title</i>	<i>Chapter</i>	<i>Extent of repeal</i>
The Celluloid and Cinematograph Film Act 1922	c. 35	The whole Act
The Petroleum (Consolidation) Act 1928	c. 32	Section 25A(1)(b)
The Factories Act 1961	c. 34	Section 39(2)
The Health and Safety at Work etc. Act 1974	c. 37	In Schedule 1 omit the entry relating to the Celluloid and Cinematograph Film Act 1922

Table 2 - Revocations

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Title</i>	<i>Reference</i>	<i>Extent of revocation</i>
The Petroleum-Spirit (Motor Vehicles, etc) Regulations 1929	1929/952	Regulation 15A(b)
The Gasholders (Record of Examinations) Order 1938	1938/598	The whole Order
The Shipbuilding and Ship-repairing Regulations	1960/1932	The whole Regulations
The Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974	1974/1981	The whole Regulations
The Petroleum (Consolidation) Act 1928 (Enforcement) Regulations	1979/427	Regulation 2(4)(c)
The Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations 1980	1980/1314	The whole Regulations
The Gasholders and Steam Boilers	1981/687	The whole Regulations

Regulations (Metrication) Regulations 1981

The Locomotives etc. Regulations 1906 (Metrication) Regulations 1981	1981/1327	The whole Regulations
The Petroleum-Spirit (Plastic Containers) Regulations 1982	1982/630	Regulation 8(b)
The Notification of Installations Handling Hazardous Substances Regulations 1982	1982/1357	The whole Regulations
The Docks, Shipbuilding etc. (Metrication) Regulations 1983	1983/644	The whole Regulations
The Docks Regulations 1988	1988/1655	The whole Regulations
The Electricity at Work Regulations 1989	1989/635	Paragraph 3 of Part II of Schedule 2
The Construction (Head Protection) Regulations 1989	1989/2209	The whole Regulations
The Dangerous Substances (Notification and Marking of Sites) Regulations 1990	1990/304	Paragraph 2(a) of Schedule 1
The Personal Protective Equipment at Work Regulations 1992	1992/2966	Regulation 3(3)(f) and Paragraphs 5, 23, 24, 25 of Schedule 2
The Pipelines Safety Regulations 1996/825	1996/825	Part II of Schedule 6
The Diving at Work Regulations 1997	1997/2776	Paragraph 3 of Schedule 2
The Provision and Use of Work Equipment Regulations 1998	1998/2306	Regulation 12(5)(e)
The Lifting Operations and Lifting Equipment Regulations 1998	1998/2307	Regulations 9(7)(b), 13 and 14 and the entry relating to the Shipbuilding and Ship-repairing Regulations 1960 in Schedule 2
The Notification of Installations Handling Hazardous Substances (Amendment) Regulations 2002	2002/2979	The whole Regulations
The Merchant Shipping (Safe Loading and Unloading of Bulk Carriers) Regulations 2003	2003/2002	Regulation 12(2)(b)
The Work at Height Regulations 2005	2005/735	Omit the first row in the table in Schedule 8
The Factories Act 1961 and Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations	2009/605	Regulation 4(1)
The Notification of Conventional Tower	2010/333	The whole Regulations

Cranes Regulations 2010

The Notification of Conventional Tower Cranes (Amendment) Regulations 2010 2010/811 The whole Regulations

The Health and Safety (Fees) Regulations 2012 2012/1652 Regulation 21 and Schedule 16

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations repeal, revoke and amend various primary and secondary legislation. Most of the legislation is old and the provisions of some have in large part been repealed or revoked by other instruments or contain amendments to legislation which has subsequently been revoked or superseded by more modern legislation.

The Celluloid and Cinematograph Film Act 1922 is repealed because its provisions have been largely repealed, or superseded by more modern legislation. Two sets of Regulations (1974/1981 and 1980/1314) are revoked as a consequence. The Health and Safety at Work etc. Act 1974 is amended to remove The 1922 Act from the list of existing enactments which are relevant statutory provisions in schedule 1 of the 1974 Act.

Following revocation of the Notification of Installations Handling Hazardous Substances (Amendment) Regulations 2002, the Dangerous Substances (Notification and Marking of Sites) Regulations 1990 are amended to bring Ammonium Nitrate and mixtures containing Ammonium Nitrate where the nitrogen content exceeds 15.75% of the mixture by weight, at or above the threshold quantity of 150 tonnes within scope of the 1990 regulations.

The Workplace (Health, Safety and Welfare) Regulations 1992 are amended:

1. to provide an explicit definition of “ship”, instead of its definition being by reference to the also revoked Docks Regulations 1988.
2. to bring workplaces on ships that are in a shipyard or dock within the ambit of the 1992 regulations, a consequence of revocation of the Shipbuilding and Ship-repairing Regulations 1960 and the Docks Regulations 1988.

These Regulations revoke the Construction (Head Protection) Regulations 1989 and regulation 3(3)(f) of the Personal Protective Equipment at Work Regulations 1992 (PPE Regulations). The effect of those revocations is that the health and safety requirements for head protection for construction work will continue to apply by virtue of the PPE Regulations, including regulations 4 and 6 - 12 of those Regulations rather than the Construction (Head Protection) Regulations 1989. The other amendments to the PPE Regulations are consequential to the revocation of regulation 3(3)(f).

CONSIDERATION OF RESPONSES

CONSTRUCTION (HEAD PROTECTION) REGULATIONS 1989

Analysis of comments

1. The responses to the consultation show a substantial majority in support of the proposal to revoke the CHP Regulations (see Annex A). However, a significant minority disagreed. They refer to the Löfstedt Report which recommends revocation on the basis that the consultation does not identify any evidence that reduced protection would result and disagree on the basis that this would in fact occur. A number of reasons are cited – including their belief that:
 - a) the CHP Regulations have been successful in reducing numbers of head injuries on construction sites, so why revoke regulations that work;
 - b) the simpler, more prescriptive approach of the CHP Regulations make them more straightforward to understand than the PPE Regulations and reliance on the latter would create uncertainty about the circumstances that head protection should be provided and worn;
 - c) the costs to industry of revocation, while not large, are greater than those incurred by leaving the CHP Regulations in place;
 - d) HSE's plans for publicising the change as set out in the CD are inadequate and would lead to misunderstandings about whether the provision and wearing of head protection was still required.
2. The conclusion of our analysis of the responses is that these arguments are not sufficient to recommend retention of the Regulations. Our reasons for doing so are set out below.
3. HSE agrees that the CHP Regulations were successful in reducing head injuries on construction sites during their first years of operation. However, many respondents argued that the use of site rules to impose a strict requirement on the wearing of head protection as a condition of employment on sites is now widespread in the industry. That this is now important in ensuring that head protection is worn is supported anecdotally by Inspectors and by the few times the Regulations have been cited in enforcement action⁶.
4. Whilst this reduction in head injuries was a most important outcome, the purpose of the consultation is to establish whether the revocation of the CHP Regulations would have a negative impact on the behaviour of construction workers. What is more relevant is the argument that the provision and use of head protection is now widely and firmly embedded in the safety culture of many parts of the construction industry. The evidence from consultation suggests that revocation of the CHP Regulations and their replacement by the PPE Regulations would not undermine this culture, particularly at the medium to larger end of the industry. Whilst many employers, particularly those in this sector of the industry are familiar with the requirements of the PPE Regulations, they already adopt similar approaches to the

⁶ The CHP Regulations have been cited 33 times on Notices issued in the previous 13 years and 3 times in approved prosecution activity in the same period.

wearing of other PPE as they do the wearing of head protection, that is, the imposition of general site rules.

5. However, the evidence provided by consultation, which is echoed in the supporting Impact Assessment, confirms that there is a risk that businesses, in particular smaller ones, might misunderstand the nature of the changes either inadvertently, or through deliberate attempts to avoid compliance, and would believe that there was no longer a requirement to provide and wear head protection. This risk is non-negligible, though the likelihood may be low. However, many of those seeking to deliberately misinterpret the changes would probably not be compliant with the existing requirements. Furthermore, those that are compliant may not be primarily motivated to wear head protection by legislative requirements but by a general understanding that to do so on construction sites is now the accepted norm. Nonetheless, HSE concludes that it would need to work closely with key industry stakeholders, including trade unions to mitigate this risk.
6. Some expressed the view that prescriptive regulations are more straightforward to comply with than goal-setting regulations and that, reliance on the PPE Regulations would lead to less compliance with the need to provide and wear head protection on construction sites. HSE's view is that the risk-based approach taken by the PPE Regulations will not result in a reduced level of worker protection as the risk of head injury on construction sites is, arguably, ubiquitous, and, in any case, the use of head protection is generally mandated through site rules regardless of any regulatory requirements.
7. In relation to the objections to the costs on industry of the revocation, the IA (revised post-consultation) estimates that there would be an annual equivalent net saving to businesses of £37,000. While this is a modest net saving, it is a saving nonetheless and if the CHP Regulations are retained it could be viewed as an unnecessary cost to businesses.

Presentational issues

8. HSE considers that revocation will not result in reduced safety standards for large and medium sized construction companies. However, there remains a risk that smaller companies may wrongly believe that revocation, should it be agreed, would mean that there was no longer any requirement to provide and wear head protection. As made clear in the CD, HSE recognises it is important that there is publicity to mitigate the risks of such misunderstanding. The responses from consultation and the results of supplementary research which sought the views of small contractors have confirmed this.
9. If the recommendation to revoke these Regulations is approved, HSE will carefully target publicity at smaller construction companies to ensure that the message that head protection must still be provided and worn is not misunderstood. We plan to:
 - work with stakeholders (including those who have usefully volunteered their help) in re-publicising the need to provide and wear head protection on construction sites;
 - produce a free leaflet in the 'Busy Builder' series; copies of which will be made available to trade associations, trade unions and other stakeholders for distribution to their members and for use by Working Well Together groups;
 - publicise the change through the Construction Infonet, Construction Forum and press releases;

- in 2013, add the wearing of head protection and other PPE to the other issues (e.g. working at height, asbestos and good order) on which our annual refurbishment initiatives focus and to our work on smaller projects.
10. Furthermore, recognising the challenge of reaching small construction businesses HSE will look for support from the full spectrum of stakeholders to deliver this message throughout construction supply chains.

CONSIDERATION OF RESPONSES

NOTIFICATION OF CONVENTIONAL TOWER CRANES REGULATIONS 2010 AND NOTIFICATION OF CONVENTIONAL TOWER CRANES (AMENDMENT) REGULATIONS 2010

Analysis of comments

1. Taking account of all responses, there was, overall, no clear majority either in favour, or against, the proposal to revoke the Regulations. Those in favour include many of those parts of the construction industry that are involved in the hire and use of tower cranes. Those against include a significant number of responses that appeared to be part of an organised campaign. Nevertheless, in terms of the number of respondents only, the results of consultation provide no clear support, or otherwise, for revocation to proceed. In deciding whether to proceed with revocation, this lends greater weight than usual to considering whether the arguments put forward by those who disagree with the rationale in the CD are persuasive. (It should be remembered that responses to a public consultation cannot be considered to be representative of the views of the population in general, only of those who were aware of the consultation and decided to respond). The conclusion is that these arguments are not sufficient to recommend retention of the Regulations. Reasons for this conclusion are set out below.
2. The main concerns raised by those who disagreed with the proposal were that the Regulations and associated Register:
 - a. were important in helping control the safety risks arising from the use of tower cranes and in providing reassurance to the public;
 - b. the costs on industry to comply and on HSE to maintain the Register were small and worth the perceived gain in terms of better safety standards and improved reassurance for the public; and
 - c. had only been in place for just over two years and this was insufficient time to make an adequate evaluation of their impact.

Control of safety risks and public reassurance through the Regulations

3. Many who disagreed with the proposal put forward a general view that revocation would automatically lead to lower safety standards but without providing evidence to support this view. Little acknowledgement was given to the considerable work that the industry, trade unions and HSE have carried out (and will continue to do so) to improve safety standards such as improving the level of competence of those erecting and dismantling tower cranes. There was a common misunderstanding that the Regulations were the only legal controls on the use of tower cranes. There was little discussion of what value was added by the Regulations over and above other legal requirements (in particular, those set out in the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER)) which would remain in place. There was, for example, much comment that tower cranes should have an 'MOT' believing that the Regulations provided this, when, in fact, it is a requirement of LOLER that a thorough examination is carried out and for a report to be made.
4. However, a number of respondents (including key stakeholders such as UCATT and Unite) did support their views with detailed arguments about the value of the Regulations in ensuring safety standards are maintained. They argue that notification of cranes to HSE provides an incentive to duty holders to ensure that

they comply with other requirements such as those in LOLER. In addition, they believe the Register provides the basis for HSE to pick up on those tower cranes where the thorough examination has revealed major defects that need to be corrected and, more generally, provide the information to allow HSE to run a major enforcement campaign on tower cranes.

5. The evaluation HSE carried out (and updated in the IA) found only limited evidence that the requirement to notify tower cranes had resulted in changes by duty holders in the way they managed crane safety. All the Regulations do is require the registration of certain details about the cranes being used: they do not add to the provisions in LOLER requiring their safe use. Nor has the Register had a significant effect in helping HSE to target its enforcement effort or help alert HSE of tower cranes where thorough examinations have found significant defects. LOLER requires notification of such cranes and HSE's follow-up of notifications via LOLER or the Tower Cranes Regulations find that the defects are rectified before use (as LOLER requires) suggesting this is now not a major issue. HSE nevertheless plans to continue its work with industry to improve standards in this and other areas related to the safe use of tower cranes e.g. promulgating industry guidance already published.
6. Many respondents who disagree with the proposal also consider that the Regulations and Register are useful in providing reassurance to the public. This is despite the minimal use of the Register by members of the public in the period since the Regulations came into force (3 enquiries in more than 2 years). They argue that this is because of a lack of publicity HSE has given to the Register – a number believing HSE should undertake a major publicity campaign. HSE publicised the Register at the time the Regulations came into force in a proportionate way that was cost effective and targeted (e.g. publicising the existence of the Regulations and Register on its website, and the production of free posters for industry to place on hoardings). However, the minimal use of the Register by the public and the lack of take-up of the poster gives little confidence that further significant publicity would be effective in reaching the public. Nevertheless, should revocation be agreed, HSE will discuss with industry whether they might adopt posters along the lines of the considerate contractors scheme as suggested in the consultation.
7. Other suggestions made, such as extending the Regulations to other types of crane or requiring the compulsory licensing of tower crane examiners, have not been addressed, as they are not pertinent to the proposal considered by the consultation.

Costs on Industry and HSE

8. HSE agrees that the costs industry incur in order to comply with the Regulations are relatively small, although the post-consultation IA estimates that the costs are a little higher than originally estimated. HSE also agrees that its own costs arising from setting up and maintaining the Register are not large (again estimated a little higher in the post-consultation IA) and would, in any case, be gradually recovered through the fee for each notification if the Register was retained. Nevertheless, the costs are not necessary if, as seems clear, the Regulations do not contribute to ensuring the safe use of tower cranes.

Length of time Regulations have been in force

9. Although the Regulations have only been in force for a little over two years, the evaluation carried out after one year (and reflected in the IA), showed clearly that it was very unlikely that the Regulations and Register would contribute to ensuring

safety standards in the use of tower cranes over and above other requirements in place.

Presentational issues

10. If the regulations are revoked, HSE will take action to ensure that duty holders are aware that from the common commencement date there is no longer a requirement to register tower cranes. This would involve contacting dutyholders for whom HSE has contact details through their entry in the Register, as well as putting a message on the front page of the online Register itself.

CONSIDERATION OF RESPONSES**DOCKS REGULATIONS 1988**Analysis of comments

1. The summary of the responses is provided in Annex A. Of the 33 responses to the question 28 (85%) agreed with the proposal to revoke the Docks Regulations 1988 and for HSE to withdraw its approval of COP25 and 5 (15%) said No. There were also 6 written responses that did not directly answer any of the questions, three of which disagreed with the proposal. Five of the six written responses were from trade unions.
2. The following issues and concerns were given either by direct response to this question or via the general written responses:
 - It would result in the Docks Regulations being replaced with guidance;
 - Contravenes HSWA, S.1(2) as there will be a reduction in standards;
 - Use of more general regulations will result in difficulties in interpretation;
 - Revocation might send out signal that wider safety culture promoted by Regulations and ACOP is being relaxed;
 - Docks should have specific regulations due to their hazardous nature;
 - Significant enforcement is undertaken using the Regulations so they are still relevant.
3. There was also a concern raised by 7 responders that there was a lack of evidence in the CD about what will replace the Docks Regulations and ACOP to make a reasoned judgement.
4. Each of these concerns is addressed below.

Lack of evidence

5. Within the CD, a table was provided listing the requirements of the Docks Regulations and ACOP and identifying existing legislation that would cover the provision in the event of revocation of the Docks Regulations.

It would result in the Docks Regulations being replaced by guidance

6. There were 8 respondents who raised concerns that HSE are proposing to revoke the Docks regulations and withdraw the ACOP and then replace with guidance.
7. The legal provisions table also showed where guidance covered the areas concerned and this has potentially led to some confusion. The removal of the Docks Regulations would still require dutyholders to comply with other existing pieces of legislation including:
 - Health and Safety at Work etc Act 1974;
 - Management of Health and Safety at Work Regulations 1999
 - Provision and Use of Work Equipment Regulations 1998
 - Lifting Operations and Lifting Equipment Regulations 1998
 - Workplace (Health, Safety and Welfare) Regulations 1992
 - Work at Height Regulations 2005
 - Control of Substances Hazardous to Health Regulations 2002

- Manual Handling Operations Regulations 1992
 - Noise at Work Regulations 1989
 - Personal Protective Equipment at Work Regulations 1992 and
 - some Merchant Shipping Regulations.
8. On this basis, HSE judged that revocation would not compromise the health and safety standards required in docks by legislation.
 9. It is important to stress that these other Regulations are already being used extensively by HSE in the enforcement of health and safety in docks and further analysis of enforcement can be found later in the document.
 10. If the Docks Regulations are revoked then the ACOP will have no legal standing and will need to be withdrawn. Much of the guidance (in the ACOP) is very specific to docks and although the content is covered generally in other Regulations and ACOPs, the dock-specific detail may be perceived to be “downgraded” to standard guidance.
 11. HSE has been working with industry via Port Skills and Safety (PSS) for some time to produce a suite of guidance documents. These documents will provide signposts to relevant legislation and up-to-date guidance on good practice and current health and safety standards. It is intended that any guidance currently in the ACOP which is still useful will be incorporated into this guidance and PSS have carried out a gap analysis for this purpose. It is of interest that PSS actually answered ‘No’ to Question 5.1. They stated that “whilst supporting revocation in principle from a regulation of Safety in docks perspective, there are issues in respect of the consultation material which leave unanswered questions”.
 12. Unite the Union submitted a written response to the consultation document which did not specifically answer the questions. However it is clear from the content of the response that they are opposed to the revocation. One of their particular concerns is the “downgrading of regulation to guidance”. Unite are a member of the PSS guidance working group and have been included in all correspondence on the subject.
 13. Further forms of replacement guidance were included in the initial table including guidance from international organisations such as the International Cargo Handling Co-ordination Association (ICHCA).

Contravenes HSWA, S 1(2) as there will be a reduction in standards

14. One response to the consultation identified that the replacement of ACOP status guidance with that ordinary HSE/industry guidance would lead to a reduction in standards which would conflict with the requirements of section 1 (2) of the Health and Safety at Work Act (HSWA s.1(2)). We do not consider that there is any contravention of the requirements of the HSWA s.1(2).

Use of more general regulations will result in difficulties in interpretation

15. Three consultees expressed concern that the removal of the Docks Regulations and associated ACOP would cause confusion within the industry because currently all the information is in one place.
16. Whilst it is true that at present all the information for docks is in one package, “Safety in Docks” (COP 25), there is already some confusion with its use because certain parts of the Regulations have already been revoked. In addition, some of the practices covered are out-of-date. Revocation of the Docks Regulations will

see a move from the prescriptive framework of the existing Regulations to a goal setting legislative framework. Goal setting legislation allows duty holders to choose the most appropriate methods or equipment available to meet the legal requirements.

Docks should have specific regulations due to their hazardous nature

17. Concern was raised in nine responses about the hazardous nature of docks. HSE is investing resource in engaging the industry through the Ports and Logistics Strategy Forum, where key health and safety issues can be addressed on a broader basis. We are also responding on an evidence-based approach to tackle specific issues as they emerge, such as safety of cranes in port operations, through targeted inspection activity.

Revocation might send out a signal that the wider safety culture promoted by the Regulations and ACOP is being relaxed

18. Concern was raised in four responses that revocation of the Docks Regulations will send out the wrong message to the Docks industry in that health and safety standards in docks are being relaxed. Therefore, it will be important to communicate any changes to the industry and advise them of the other equally applicable regulations that will still be relevant. We propose to continue working with PSS for this purpose.
19. Five respondents stated that significant enforcement is undertaken using the Regulations so they are still relevant – An analysis has been carried out of HSE records on the use of the Docks Regulations and enforcement action in companies with a Docks Standard Industrial Classification (SIC) code over the last 13 years. During this time, the Docks Regulations have been cited 56 times on Notices and 38 times in approved prosecution activity. However, the use of the Docks regulations is often in conjunction with other sets of regulations. In the instances where the Docks Regulations alone have been cited in enforcement action, there are other existing legal provisions that would cover the circumstances. Furthermore, analysis shows that the enforcement action taken under the Docks Regulations is mainly historic: the majority occurred more than 5 years ago. Over the last 13 years, legislation other than the Docks Regulations has been used extensively in enforcement action against companies with a Docks SIC code. Accordingly, HSE judged that revocation of the Docks regulations will not affect HSE's ability to enforce health and safety standards in the docks industry.

Other issues raised

20. A general concern was raised in nine responses about the hazardous nature of docks and the recent spate of fatalities in the industry. Unions identified that there had been five fatalities in docks and docks-related businesses between Oct 2011 and Jan 2012. Although these accidents occurred within the confines of the dock, not all of these related to dock operations. However, all of these fatalities have or are being investigated by HSE.
21. There was also a general concern that docks have been classified as lower-risk in the Ministerial Statement of 2011. However, as was made clear at the time, this was a matter more of categorisation in respect of proactive inspection rather than risk. Docks was identified as a sector where more emphasis would be placed on strategic interventions at the sector level. In addition we also stated: "No industrial areas will be exempted from maintaining good standards of health and

safety. Employers who do not take the protection of their employees, or those affected by their work activities, seriously will still face intervention by HSE.”

22. No sector is free from inspection, and the classification of different sectors can change in response to evidence of poor performance. HSE has been and will continue to keep under review its intervention approach in ports and docks, and we will continue to actively work with unions and the industry to secure better management of risks. Indeed the development and promulgation of the new guidance will provide a very significant platform for influencing relevant stakeholders.