

Health and Safety Executive Board		HSE/12/77	
Meeting Date:	26 September 2012	FOI Status:	Open
Type of Paper:	Above the line	Exemptions:	None

Preliminary analysis of the response to the consultation on proposals to review HSE's Approved Codes of Practice (CD241)

Purpose of paper

1. To provide the Board with early feedback from the recently ended consultation on proposals to review HSE's Approved Codes of Practice (ACOPs)¹. The paper reports the outcome of a preliminary analysis of the responses and, where the results of the analysis allows, provides interim conclusions on how the review proposals might be taken forward. The full analysis of the outcome will be brought to the December 2012 Board meeting.

Background

2. The Löfstedt Review recommended that HSE should review its ACOPs to address a range of issues identified by the Review and that the initial phase of the review should be completed by June 2012. Following an initial review of 32 ACOPs, HSE launched a consultation 25 June on proposals for the review of 30 of those ACOPs. The consultation closed on 14 September.

The response to the consultation

3. Initial analysis indicates that the consultation received around 430 responses in a variety of formats. More than 40 of these were written submissions from representative organisations including professional and trade bodies, trades unions and voluntary sector organisations. Given the provisional nature of the analysis being reported upon rounded figures have been used for this update.

Proposals to revise and consolidate ACOPs to be delivered by end 2013

4. There were high levels of support for these six proposals :
- **Dangerous substances and explosives atmospheres (DSEAR)**
The proposal to consolidate these five ACOPs (L134-138) into a single revised ACOP received about 140 responses of which some 90% supported the proposal.
 - **Legionella**
The proposal to revise part 1 of this ACOP and remove part 2 and make it separately available as revised technical guidance received about 200 responses of which some 70% supported the proposal.
 - **Asbestos**
The proposal to consolidate these two ACOPs (L127 and L143) into a single revised ACOP received about 170 responses of which some 85% supported the proposal.
 - **Gas safety**

¹ <http://www.hse.gov.uk/consult/condocs/cd241.htm>

The proposal to consolidate these two ACOPs (L56 and COP20) into a single revised ACOP received about 115 responses of which some 90% supported the proposal.

- **Control of Substances Hazardous to Health (COSHH)**

The proposal to revise this ACOP (L5) and make improvements to other HSE COSHH guidance for low risk industries received about 160 responses of which some 90% supported the proposal.

- **Workplace health, safety and welfare**

The proposal to revise this ACOP (L24) and review other HSE publications that provide guidance on related workplace health, safety and welfare issues received about 190 responses of which some 90% supported the proposal.

5. For these proposals the initial conclusion is that the proposed changes should go ahead. While there were some objections none appear to present sufficient argument for not proceeding with the proposals and there are steps that can be taken to address some of the concerns raised.

6. Given the tight timescale set for the review and the clear indication of the way ahead for most of the proposals provided by the preliminary analysis, we plan to start work on revising these ACOPs while completing the full analysis of responses, if the Board is content with this approach.

7. A preliminary analysis has not been undertaken for the proposals in section 2 of the consultation which were to make minor revisions or no changes to a further 15 ACOPs. As these are to be delivered over a longer timescale (by end 2014) the feedback from the consultation on these will be reported to the Board when the full analysis has been completed.

Proposals to withdraw ACOPs

8. The proposal to withdraw the **Management of health and safety at work ACOP (L21)** in favour of a suite of tailored guidance received around 220 responses; analysis of these indicates there is no overall clear majority either in favour of, or against, the proposed withdrawal.

9. Respondents supporting the withdrawal generally did so on the basis that in attempting to deal with a wide variety of circumstances the ACOP is too generic and generates bureaucracy and confusion so its withdrawal would make compliance with the Management Regulations easier. Of those opposed to withdrawal a significant proportion had concerns that the removal of the ACOP status for this information could lead to an impression that the requirements themselves had changed or were somehow less important. A further third felt that the ACoP was fine as it was and should be left unchanged. Only a very small number of respondents offered any suggestion as to how improvements could be made should the ACOP be revised.

10. The proposal to withdraw the **Preventing accidents to children in agriculture ACOP (L116)** and review other HSE publications that provide guidance on child safety within agriculture received about 55 responses. Around half of respondents supported the proposal with a further number of respondents neither strongly in favour or opposed although from their further comments they appeared to be broadly supportive. Objections to the proposal identified child safety as an important issue that needed to continue

to be treated as a priority (both by HSE and industry) and there were concerns that the withdrawal of the ACOP might send unintended messages to the industry leading to poorer compliance and lower standards.

11. The proposal to withdraw the **Design, construction and installation of gas service pipes ACOP (L81)** and replace it with guidance received about 50 responses. Around 65% of respondents supported the proposal with a further number (some.10%) not indicating a preference but providing comments that could be inferred as supportive. Objections to the proposal identified concerns that withdrawal of the ACOP would cause confusion and lack of clarity for dutyholders and potentially impact on compliance.

12. Recommendations on how these proposed withdrawals might be taken forward will be provided to the Board in December alongside the full analysis.

Proposal to introduce a limit on the length of ACOPs

13. The proposal that all ACOP documents be limited to a maximum length of 32 pages other than in exceptional circumstances was not well supported. Of some 270 responses to this question, less than 30% supported the introduction of such a limit. Furthermore, nearly all representative organisations opposed this proposal.

14. Objections to this proposal, often strongly expressed, were consistently of the view that limiting guidance by a predetermined number of pages was an arbitrary constraint and stressed the need for the length of ACOPs to instead reflect the nature of legal requirements, the complexity of the subject area or the risks to be managed. Other concerns commonly identified were that in pursuing shorter documents useful guidance would become too generic in nature or be lost from the ACOP and burdens would be introduced by a need to also refer to other sources of guidance for further detail.

15. Of the reasons cited in support of this proposal many were not necessarily outcomes of limiting the length of the documents. These reported benefits, such as the simplification and clarification of language, presentation of information in a more concise form and reduction of duplication, are reflections of other drafting principles which are already being applied by the review with the aim of producing more succinct and accessible documents.

Other issues raised by the responses to the consultation

16. A number of respondents, including some large organisations representing employers, employees or health and safety professionals raised concerns about the timescale for the review. They suggested that the pace of the review would not allow for sufficient engagement on the content of any revised ACOPs and guidance and would also present too much change for business over too short a timescale.

Recommendation

17. The Board is asked to note the response to the consultation and the interim conclusions from the preliminary analysis of the responses.