Health and Safety Executive Board			HSE/13/50
Meeting Date:	22nd May 2013	**FOI Status:**	Open
Type of Paper:	Below the line 2013/114922	**Exemptions:**	

Consultation on draft revised Approved Codes of Practice (ACOP) Control of Substances Hazardous to Health Regulations 2002 (as amended)

Purpose of paper

1. To seek the Board's agreement to publish a consultation document on the draft revised Control of Substances Hazardous to Health ACOP.

Background

2. The Löfstedt Review recommended that HSE should review its ACOPs to address a range of issues indentified by his Review and that the initial phase of HSE's review should be completed by June 2012. Following initial review of its ACOPs HSE launched a consultation[1] on 25 June on proposed changes to a number of its ACOPs between June and September 2012. The Board considered the outcome[2] of that consultation at their December 2012 meeting and agreed in the light of comments received HSE should take forward work on the proposed revisions and consolidations.

3. For the Control of Substances Hazardous to Health ACOP (L5) the following proposal was consulted upon:

To revise the ACoP in combination with improvements to other HSE COSHH guidance targeted at low risk industries, to be published by end-2013. It is proposed that L5 is retained and revised to make it clearer what dutyholders need to do to comply with legal requirements and to reduce any duplication with other more targeted guidance.

4. The proposal received 151 responses and of these 135 (89%) supported the proposal. An analysis of the responses to the proposal and its supporting questions is provided in Annex 1.

The draft ACOP and consultation document

In accordance with the outcome of the initial consultation a revised Control of Substances Hazardous to Health ACOP has been prepared. This paper seeks the Board's agreement to consult on the draft document (there is a statutory requirement under Section 16 of the Health and Safety at Work Act to consult on revisions made to ACOPs prior to their approval). The proposed consultation document which includes the draft ACOP is provided at Annex 2.

[1] CD241 – Consultation on proposals to review HSE's Approved Codes of Practice (ACOPs)
[2] HSE/12/94 – Outcome of the consultation on proposals to review HSE's Approved Codes of Practice

If agreed, the intention is to commence a 12 week public consultation on 3rd June 2013 which will close on 23rd August 2013.

5. The draft ACOP provides practical guidance on how dutyholders can comply with the requirements of The Control of Substances Hazardous to Health Regulations 2002 (as amended). During its preparation consideration has been given to consultation comments, the criteria for where it may be appropriate to provide advice as ACOP, and HSE's principles for producing guidance, including the principles for producing ACOPs identified from the initial consultation. Stakeholder views were also sought during drafting through the Advisory Committee on Toxic Substances (ACTS).

A summary of significant revisions and other changes of note from the previous ACOP is provided in paragraph 16 of the consultation document. The revised ACOP takes account of the introduction of the Classification, Labelling and Packaging Regulation (CLP) Regulations.

Publicising the consultation

6. The consultation will be publicised through the HSE website, HSE's e-bulletin, trade magazines and through HSE stakeholder networks. A link will be provided on the webpage for the current ACOP to draw attention to the consultation and an email alert will be sent to the respondents to the previous consultation. Where appropriate, coordinated communications will cover this and the other consultations on draft ACOPs that are due to be launched at the same time.

Next steps

7. If agreed for publication as proposed, the outcome of the consultation exercise will be brought to the Board in October 2013 alongside the final draft of the ACOP for approval.

Recommendation

8. The Board is asked to agree the attached consultation document on the draft revised Control of Substances Hazardous to Health ACOP for publication on 3rd June 2013.

Annexes

Annex 1 – Analysis of responses to initial consultation proposal

Annex 2 – Draft consultation document on the revised Control of Substances Hazardous to Health ACOP

Annex 1 – Analysis summary from initial consultation

Consultation proposal: To revise this ACOP in combination with improvements to other HSE COSHH guidance targeted at low risk industries, to be published by end-2013.

Summary of responses

Question 1.5.1. Do you agree with the proposal to revise this ACOP (L5) in combination with improvements to other HSE COSHH guidance for low risk industries?

Option	Number of respondents	Percentage of total (%)
Yes	136	91%
No	13	9%
Total	149	

A further 12 responses were received which provided no clear view on the proposal.

There were 161 responses to this proposal in total. Of these 129 represented the views of individuals or individual organisations and 32 were responses from representative organisations.

Of the 32 representative organisations that responded to the proposal:

- 25 supported the proposal (2 charities, 5 professional bodies, 12 trade associations, 6 trades unions)
- 1 did not support the proposal (1 trade association)
- 6 provided a response but did not provide a clear view on the proposal (2 employers' organisations, 1 professional body, 3 trades unions).

Objections to proposal identified (Question 1.5.2)

Although most respondents were supportive of the proposed changes, two raised concerns that the ACOP will become diluted. Seven respondents raised concerns about the creation (or perceived creation) of a two tier risk-based system and reported concerns that organisations could assume themselves to be low risk where that was not the case. Some of these concerns appeared to reflect a perception that existing guidance for low risk industries was going to be incorporated into the ACOP. Two respondents raised concerns about the loss of useful guidance.

Negative impacts of proposal identified (Question 1.5.3)

Concerns centred on the loss of guidance for higher risk industries, a high volume of complex information being provided and the possibility of misunderstandings relating to low risk industries. Other negative impacts included additional time spent searching for information and the cost of reproducing several guidance documents. Three respondents raised concerns that HSE had not updated the COSHH related guidance document EH40 since 2005.
Six major stakeholders and three individual respondents commented that the principles of good practice should be retained within the ACOP and raised concerns about accessibility if they are placed on the website.

Positive impacts of proposal identified (Question 1.5.4)

Most respondents focused on the benefits of simplification and clarification of the current ACOP and the inclusion of up to date related regulations such as REACH and the Chemical, Labelling and Packaging Regulation. Eight respondents were keen to retain a single document as a point of reference and for HSE to reduce duplication.

Other comments on how proposal should be taken forward (Questions 1.5.5 and 1.5.6)

Eleven respondents stressed the importance of taking into account the CLP regulation and Global Harmonisation (GHS) as well as REACH. Others referred to using the EU guidance document *Practical guidelines of a non-binding nature on the health and safety of workers from the risks related to chemical agents at work* as a substitute for the COSHH ACOP.
Two respondents also commented that the use of flow charts to identify actions, and avoid

over complicated risk assessments would be useful; another suggested the use of case studies. Seven respondents (1 large stakeholder and 6 industry respondents) commented that the proposed 32 page limit should not be applied to the COSHH ACOP.

Consideration of responses

Conclusion drawn from consultation responses
To proceed with the proposal to revise this ACOP and make improvements to other HSE COSHH guidance for low risk industries to be published by end-2013. 91% of respondents support the proposal and are content with the suggested amendments. No significant issues have been raised and concerns about the creation of a two tier system of high and low risk industries will be addressed during the drafting of the revised publication. The principles of good practice set out in Schedule 2a of the regulations will be retained in the ACOP, the proposal is to remove the guidance associated with this schedule and make it available on the HSE COSHH website, making it more widely accessible. This will be considered again taking account of the opinions received.

Consultation on draft revised Approved Codes of Practice (ACOP) Control of Substances Hazardous to Health

Contents

How to Respond

The proposals and the consultation questions can be found at the end of this document and also at --------- web address. You are welcome to comment on any issue raised by this document.

You can:

Complete the online questionnaire;

Respond by email – you should send this to COSHHACOPconsultation@hse.gsi.gov.uk**;**
or
Respond on paper – you can do this either by:

- Printing the online questionnaire; or
- Making a written response in whatever format you wish.

Send your completed response to:

Gill Smart
Health and Safety Executive
5s1Redgrave Court
Merton Road
Bootle
L20 7HS

We would be grateful if you could provide an email address when you provide your response so that we may contact you if, for example, we have a query in respect of your response.

Responses must be received by **23 August 2013**.

If you require a more accessible format of this document please send details to creative@hse.gsi.gov.uk and your request will be considered.

What happens next?

We will provide a summary of those who responded to this consultation and produce a summary of the relevant views expressed to each question; this information will be placed on the HSE's website.

Consultation principles

HSE is committed to best practice in consultation and to the Government's Consultation Principles. The Government is improving the way it consults by adopting a more proportionate and targeted approach, so that the type and scale of engagement is proportional to the potential impacts of the proposal. The emphasis is on understanding the effects of a proposal and focussing on real engagement with key groups rather than following a set process. The key Consultation Principles are:

- Departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- Departments will need to give more thought to how they engage with and consult with those who are affected;
- Consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- The principles of the Compact between government and the voluntary and community sector will continue to be respected.

How your responses will be handled

HSE will give full consideration to the substance of arguments in the responses received and then decide on how best to take the proposals forward based on an interpretation and analysis of those responses.

We will acknowledge all responses where possible to do so.

Queries and complaints

If you do not believe that this document or the consultation on these proposals meet the criteria on consultations set out above, or if you are not satisfied with the way this consultation exercise has been conducted, please either write to:

Teresa Farnan at:
Health and Safety Executive
7th Floor
Caxton House
6-12 Tothill Street
London
SW1H 9NA

Or send an email to teresa.farnan@hse.gsi.gov.uk

We aim to reply to all complaints within 10 working days. If you are not satisfied with the outcome, you can raise the matter with HSE's Chief Executive, Geoffrey Podger, at Health and Safety Executive, Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS. You can also write and ask your MP to take up your case with us or with Ministers. Your MP may also ask the independent Parliamentary Commissioner for Administration (the Ombudsman) to review your complaint.

Summary

1. This consultative document invites views on the revised Control of Substances Hazardous to Health Approved Code of Practice (ACOP). This ACOP provides practical guidance on how to comply with the requirements of the Control of Substances Hazardous to Health Regulations 2002 (as amended). It is relevant to health and safety professionals.

2. This consultation is undertaken in compliance with Section 16 of the Health and Safety at Work etc Act 1974 which requires HSE to consult on revisions to ACOPs prior to seeking Minister's consent to approve the revised ACOP.

3. This revised ACOP will replace the fifth edition of the Control of Substances Hazardous to Health Approved Code of Practice.

4. The consultation presents the draft revised ACOP and associated guidance as prepared by HSE and seeks views on some specific questions. These are set out at the end of this consultation document.

Background to the revised ACOP

5. On 28 November 2011 Professor Ragnar Löfstedt published his independent review of health and safety legislation 'Reclaiming health and safety for all'. The review reported that overall a wide range of stakeholders supported the principles of ACOPs

and saw them as a vital part of the system, forming a key link between goal setting legislation and guidance, though many also felt there was room for improvement.

6. In his report Professor Löfstedt made the following recommendation:
'HSE should review all its Approved Codes of Practice (ACOPs). The initial phase of the review should be completed by June 2012 so businesses have certainty about what is planned and when changes can be anticipated'.

7. The Government accepted this recommendation and asked HSE to review its ACOPs to the timetable recommended by Professor Löfstedt.

8. Following an initial review of 32 ACOPs, HSE launched a consultation on 25 June 2012 on proposals for the review of 30 of those ACOPs. The consultation closed on 14 September 2012. That consultative document is available here on the HSE website alongside an analysis of responses.

The outcome of the initial consultation on proposals to review this ACOP

9. The initial consultation sought views on the following proposal for reviewing this ACOP:

   To revise this ACoP in combination with improvements to other HSE COSHH guidance targeted at low risk industries, to be published by end-2013. It is proposed that L5 is retained and revised to make it clearer what dutyholders need to do to comply with legal requirements and to reduce any duplication with other more targeted guidance. Areas of change proposed are:

   - Material supporting Regulations 7, 9, 10 and 11 to be updated to take account of regulatory changes such as the introduction of the EU regulations for REACH and CLP.

   - Material to be updated, amended and removed to reflect other ongoing reviews of technical guidance associated with COSHH, e.g. for Local Exhaust Ventilation (LEV) and Health Surveillance.

   - Guidance material provided in the appendices to the ACoP, e.g. Guidance on the principles of good practice, to be removed and made available separately on the HSE website.

   - Improvements will also be made to the HSE COSHH website to improve the clarity of guidance and provide additional guidance, particularly for low risk industries

10. The consultation received 151 responses which provided a view on the proposal. Of these 135 (89%) supported the proposal.

11. The HSE Board considered the outcome of the initial consultation in December 2012 and agreed that the proposed revision of the ACOP could be taken forward.

12. Most consultees were supportive of the proposed changes; however, two raised concerns that the ACoP will become diluted. Seven consultees raised concerns about the creation (or perceived creation) of a two tier system, and the fact that some organisations will assume themselves to be low risk where this is not the case. Two respondents raised concerns about the loss of useful guidance. Six major stakeholders and three individual consultees commented that the principles of good practice should be retained within the ACoP and raised concerns about accessibility if they are placed on the website

The draft ACOP

13. The draft ACOP is provided at annex 1. We are seeking views on the whole publication, i.e. the advice provided as ACOP and the associated guidance material. The differences in presentation and status of the different contents of the publication are explained in the draft ACOP.

14. The significant revisions and other changes of note that have been made are as follows:

    a. Revision of the text to make it easier for duty holders to understand and comply with their legal duties;

    b. Revision of the text to take account of the introduction of the Classification, Labelling and Packaging Regulation (CLP);

    c. Moving information on the principles of good control practice from an annex to the guidance associated with Regulation 7;

    d. Clarification of the requirements of Regulation 9, relating to thorough examination and test of control measures.

Impact of changes

15. In line with the findings of the Löfstedt review the ACOP has been primarily reviewed to bring it up to date and to make it clearer and more understandable for users. The legal duties it provides advice on and the nature of the method of compliance it describes are substantively unchanged other than to update their descriptions to reflect current positions. Dutyholders already complying with the law should not therefore need to change what they are doing. The benefits arising from the revised ACOP will predominantly be realised by new users seeking advice on achieving compliance or those accessing it to refresh their knowledge.

Consultation questions

16. We are interested in your views on the following questions:

Q 1.1 Is the draft ACOP and associated guidance sufficiently clear for you to be confident about how you can comply with the Control of Substances Hazardous to Health Regulations 2002 (as amended)?

Q 1.2 If not, which parts are not clear and why?

Q 2.1 Are there any comments you wish to make on the method(s) of compliance described in the draft publication?

Q 3.1 Are there any impacts from the revision of this ACOP that we should be aware of?

Next steps

17. Following consultation a final draft of the ACOP will be prepared for approval by the HSE Board and subsequent publication. The ACOP is due for publication by November 2013. The outcome of this consultation will be made available on the HSE website.