

Health and Safety Executive Board		HSE/13/52	
Meeting Date:	22 May 2013	FOI Status:	Fully open
Type of Paper:	Below the line	Exemptions:	
TRIM REF:	2013/174158		

**Consultation on draft revised Approved Code of Practice (ACOP)  
Legionnaires' disease: The control of legionella bacteria in water  
systems**

### **Purpose of paper**

1. To seek the Board's agreement to publish a consultation document on the draft revised Legionella ACOP (L8).

### **Background**

2. Professor Löfstedt's report recommended that HSE review all of its ACOPs to address a range of issues identified in his report, particularly to make it easier for dutyholders to read, understand and meet their legal obligations. Following an initial review of its ACOPs, HSE launched a consultation<sup>1</sup> on 25 June 2012 on the proposed changes to a number of ACOPs. The Board considered the outcome<sup>2</sup> of that consultation at its December 2012 meeting and agreed in the light of comments received HSE should take forward work on the proposed revisions and consolidations.
3. The consultation proposal for the Legionella ACOP was to revise Part 1 of the ACOP and to remove Part 2, which would be made available separately as revised technical guidance, with the aim of publishing both documents by end 2013. The revised ACOP text provides clarification for duty holders to help them understand and comply with their legal duties and gives proportionate advice in low risk scenarios. The revised document will include suitable navigation to enable the dutyholder to find advice relevant to their particular work situation. Providing Part 2 as a separate publication will help address the misconception that it represents legal requirements and has the significant advantage that HSE can easily keep the technical guidance updated in a timely manner.
4. Seventy-one percent of respondents were in favour of the consultation proposal; Annex 1 contains an analysis of the responses.

### **The draft ACOP and consultation document**

5. In accordance with the proposal and outcome of the initial consultation, a revised Legionella ACOP has been prepared. This paper seeks the Board's agreement to consult on the draft ACOP prior to approval of final revisions (in

---

<sup>1</sup> [CD241 – Consultation on proposals to review HSE's Approved Codes of Practice \(ACOPs\)](#)

<sup>2</sup> [HSE/12/94 – Outcome of the consultation on proposals to review HSE's Approved Codes of Practice](#)

accordance with Section 16 of the 1974 Act). The proposed consultation document, which includes the draft ACOP, is at Annex 2. If agreed, the intention is to commence a 12 week public consultation on 3 June 2013 ending on 23 August 2013.

6. The attached draft ACOP provides practical guidance on how dutyholders can comply with the requirements of the Health and Safety at Work etc. Act 1974, the Control of Substances Hazardous to Health 2002, and the relevant parts of the Management of Health and Safety at Work Regulations 1999. In reviewing the source material, the revised draft differentiates and clarifies what constitutes ACOP material and that which is guidance. In preparing the revised ACOP, due consideration has been given to:

- i) Consultees' responses
- ii) External views from an industry review group - this group does not represent individual companies but is a collective of organisations, including the Water Management Society (WMS), British Association for Chemical Specialities (BACS) and Legionella Control Association (LCA); and Government regulatory bodies including Department of Health, Drinking Water Inspectorate and Public Health England (formerly Health Protection Agency); and
- iii) Internal views from HSE's Legionella technical working group, HSE's Legionella Committee (includes HID, FOD, OPSTD and HSL representatives) and TSol.

7. A summary of the revisions and other changes of note from the previous ACOP is provided in paragraph 16 of the consultation document. The revised ACOP reflects discussions that suggested the need for clarification and retention of appropriate detail rather than significant re-editing of the text. The ACOP text in some areas has been reduced to improve readability.

8. Some parts of the original guidance have been accorded ACOP status in the redraft. This is to clarify legal requirements where there is an accepted industry method of compliance. However, the ACOP material contains no significant changes in what constitutes compliance with the Regulations.

9. The principles for compliance remain unchanged and work to update and revise the technical guidance in the light of technical developments progresses; the aim is for publication to coincide with that of the ACOP. In addition, as part of HSE's review of external guidance, related legionella guidance has been revised, updated and simplified. There was also a thorough review of HSE's legionella webpages to provide structured, simplified information for dutyholders and legal clarification, particularly in low risk scenarios. This is reflected in the revised ACOP and will be included in the technical guidance.

### **Publicising the consultation**

10. The consultation will be publicised through the HSE website, Legionella e-bulletin, Biocides e-bulletin, trade magazines and through a series of scheduled HSE stakeholder networks. A link will be provided on the webpage

for the current ACOP to draw attention to the consultation and an e-mail 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**

11. If agreed, the outcome of this consultation exercise will be reported to the Board in October 2013 alongside the final draft of the ACOP for approval.

### **Recommendation**

12. The Board is asked to agree the attached consultation document on the draft revised ACOP L8 'Legionnaires' Disease: The control of legionella bacteria in water systems' for publication in June 2013.

### **Annexes**

Annex 1 – Analysis of responses to initial consultation proposal

Annex 2 – Draft consultation document on the revised ACOP L8 'Legionnaires' Disease: The control of legionella bacteria in water systems'

Appendix 1 - Draft 'L8 'Legionnaires' disease: The control of legionella bacteria in water systems' - Approved Code of Practice and Guidance

## Analysis summary from initial consultation

### L8 – Legionnaires’ disease

**Consultation proposal:** To revise Part 1 of this ACOP to be published end 2013 and remove Part 2, making it separately available as revised technical guidance with the aim of publishing it with the revised ACOP.

### Summary of responses

#### Question 1.2.1 - Do you agree with the proposal to revise Part 1 of this ACOP (L8) and remove Part 2 and make it separately available as revised technical guidance?

Option	Number of respondents	Percentage of total (%)
Yes	135	71%
No	56	30%
Total	191	

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

There were 200 responses to this proposal in total. Of these 170 represented the views of individuals or individual organisations and 30 were responses from representative organisations.

Of the 30 representative organisations that responded to the proposal:

- 21 supported the proposal (1 charity, 6 professional bodies, 9 trade associations, 5 trades unions)
- 6 did not support the proposal (2 employers’ organisations, 2 trade associations, 2 trades unions)
- 3 provided a response but did not provide a clear view on the proposal (1 charity, 1 trade association, 1 trades union).

#### *Objections to proposal identified (Question 1.2.2)*

Splitting the ACOP in to two documents - The primary concern for those objecting and for a number of those supporting the proposal is that having information in separate documents could make it harder and more confusing for duty holders and others to access all the information they may need.

- Contradiction in HSE’s approach to different ACOPs - Six responses believed there to be a contradiction between the merging of some ACOPs into one document and splitting the legionella ACOP.

#### *Negative impacts of proposal identified (Question 1.2.3)*

There were 44 responses to this question. Impacts identified were:

- The separation of the ACOP into two documents makes it more difficult to access information and offers the potential for confusion or for one of the documents to be overlooked.
- An increase in costs for those purchasing hard copies.

*Positive impacts of proposal identified (Question 1.2.4)*

There were 27 responses to this question. Significant impacts identified were:

- The ability to keep technical advice up-to-date in a timelier manner.
- The separation of the legal requirements in part 1 from the technical guidance in part 2 should make it easier for duty holders to understand their legal duties as opposed to the means of achieving them. Eight responses made reference to the current document causing confusion that part 2 of the current ACOP represented legal requirements. Six responses also suggested the proposal would help address issues of third parties promoting the use of unnecessary control measures or advising that use of such measures were legal requirements.

**When accessing the ACOP do you refer to part 1 or part 2 or both (Question 1.2.5)**

137 out of the 157 (87%) who responded to this question indicated they referred to both parts of the current ACOP, 13 indicated they referred only to part 1 and seven indicated they referred only to part 2.

**Other comments on how proposal should be taken forward (Questions 1.2.6 and 1.2.7)**

There are a number of individual technical observations that will be considered in the technical review of part 2 of the current ACOP. Eleven respondents including 5 Trade Unions raised issues over the way the relative risks of different situations will be expressed. Seven respondents noted the opportunity to improve clarity on the duties and roles for those involved in managing the risks from legionella.

**Consideration of responses**

**Conclusion from analysis of consultation responses**

To proceed with the proposal to split the current legionella ACOP in to two separate documents: i) a revised ACOP and general guidance (from the old ACOP part 1) and ii) revised and updated technical guidance (from the old ACOP part 2).

The proposal to split the current ACOP in to two separate documents of different status is supported by a clear majority of respondents (71% of those who expressed a view).

The primary objection to the proposal, that splitting the documents would make it more difficult for information to be accessed, is to be addressed by incorporating cross references into the ACOP and technical guidance and by providing cross-links on the HSE website where the documents will be available to download for free.

We do not consider the splitting of this ACOP into its two constituent document types to be inconsistent with the approach taken in other proposals where related ACOPs are to be consolidated as has been suggested by some respondents. The approved guidance for legionella will remain as a single ACOP as the merging of other ACOPs will achieve. For other technical issues, HSE have provided separate guidance and this is the approach the legionella guidance will follow. It gives a significant advantage in the ability to keep the technical guidance updated in a timely manner.

**Consultation on draft revised Approved Codes of Practice (ACOPs)  
Legionnaires' disease: The control of legionella bacteria in water  
systems**

**Contents**

How to Respond .....	7
What happens next? .....	7
Consultation principles.....	7
How your responses will be handled .....	8
Queries and complaints .....	8
Summary .....	9
Background to the revised ACOP .....	9
The outcome of the initial consultation on proposals to review the Legionella ACOP .....	10
The draft ACOP .....	10
Impact of changes .....	11
Consultation questions .....	11
Next steps.....	<b>Error! Bookmark not defined.</b>

## How to Respond

The proposals and the consultation questions can be found at the end of this document and also at [[website address of consultation](#)]. You are welcome to comment on any issue raised by this document.

You can:

Complete the online questionnaire - the preferred method;

Respond by email if you cannot complete online– you should send this to **legionella.ACOPconsultation@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:

### **LEGIONELLA ACOP TEAM**

Health and Safety Executive

5 S1 Redgrave 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](mailto: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  
7<sup>th</sup> Floor  
Caxton House  
6-12 Tothill Street  
London  
SW1H 9NA

Or send an email to [teresa.farnan@hse.gsi.gov.uk](mailto: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 Approved Code of Practice (ACOP) 'Legionnaires' disease: The control of legionella bacteria in water systems – Approved Code of Practice and Guidance'.
2. This ACOP provides practical guidance on how to comply with the requirements of the Health and Safety at Work etc. Act 1974 (the HSW Act), and the Control of Substances Hazardous to Health 2002 (COSHH). The Code also gives guidance on the compliance with the relevant parts of the Management of Health and Safety at Work Regulations 1999 (MHSWR).
3. The ACOP is principally relevant to dutyholders, including employers and those in control of premises (ie landlords) where the risk of exposure to legionella bacteria may occur. The ACOP also sets out the responsibilities of suppliers of services such as water treatment and maintenance companies; and manufacturers, importers, suppliers and installers of such systems.
4. This consultation is undertaken in compliance with Section 16 of the HSW Act, which requires HSE to consult on revisions to ACOPs prior to seeking the Minister's consent to approve the revised ACOP.
5. The proposed draft includes:
  - Revision of the text to provide clarification for duty holders to understand and comply with their legal duties
  - Revision of the text to provide proportionate advice in low risk scenarios

Part 2 of the original ACOP contained technical guidance and has been removed and is being updated before publishing it separately as three-part technical guidance for evaporative cooling systems, hot and cold water systems and other risk systems.

6. The consultation presents the draft revised ACOP L8 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

7. 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.

8. 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.
9. The Government accepted this recommendation and asked HSE to review its ACOPs to the timetable recommended by Professor Löfstedt.
10. Following an initial review of 32 ACOPs, HSE launched a consultation on 25 June on proposals for the review of 30 of those ACOPs. The consultation closed on 14 September. 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 the Legionella ACOP**

11. The initial consultation sought views on the following proposal for reviewing the Legionella ACOP:
12. To revise Part 1 ACOP and remove Part 2, making the latter separately available as revised technical guidance. Both documents to be published by end 2013.
13. The consultation received 191 responses that provided a view on the proposal. Of these 135 (71%) supported the proposal. A further nine responses were received which provided no clear view on the proposal.
14. The HSE Board considered the outcome of the initial consultation in December 2012 and agreed that the proposed revision of the ACOP should be taken forward.
15. The consultation responses were generally supportive. The main concern of respondents who opposed the proposal was that it might potentially be more difficult to access information. This will be addressed by incorporating cross references in both the ACOP and the technical guidance and by providing cross-links on the HSE website where the technical guidance documents will be available to download for free, either collectively or as individual sections.

### **The draft ACOP**

16. The draft ACOP is at Appendix 1. Views are sought on the whole publication, i.e. the advice provided as ACOP and the associated guidance material. The draft ACOP explains the differences in presentation and status of the contents of the publication ie ACOP material and guidance.

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

- Following a critical review of the ACOP and guidance text, some guidance assigned ACOP status ie to clarify legal requirements where there is an accepted Industry method of compliance.
- Some text has changed from ACOP to guidance status. These changes do not impact on practical compliance requirements.
- Terminology simplified where possible.
- There are limited references to guidance published by external organisations because such references may quickly become outdated and web searches are now a more usual method of researching up to date guidance.
- The review included identification of any ACOP text that might have required more than the regulations required, and the need for proportionality in low risk scenarios has been emphasised.

18. HSE gratefully acknowledges the help given by a number of professional organisations during the development of the revised ACOP.

19. In addition to the revision of the guidance in this ACOP, related legionella guidance has been revised, updated, consolidated and simplified as part of HSE's review of external guidance. There was also a thorough review and update to HSE's legionella webpages to provide structured, simplified information for dutyholders and legal clarification, particularly in low risk scenarios. The associated guidance and webpages will continue to be updated in the light of the ACOP review and technical developments reflected in the revised technical guidance.

## **Impact of changes**

20. In line with the recommendations of the Löfstedt review, revision of the ACOP will bring it up to date and make it clearer and more understandable for users. The legal duties it covers 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 and those accessing it to refresh their knowledge.

## **Consultation questions**

21. 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 requirements of the HSW Act, COSHH Regulations 2002 and MHSWR 1999?
- 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?
- Q4.1 Do you think the aspects of guidance elevated to ACOP status are helpful?
- Q4.2 Do you agree with the ACOP material that now constitutes information or guidance?
- Q 5.1 If you think there is a need for additional web or ACOP guidance, please explain briefly.

22. Please note that this consultation is not seeking views on the regulations with respect to which this ACOP is approved.

### **Next steps**

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