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HSE review of Approved Code of Practice L8 – Legionnaires’ disease: the control of legionella bacteria in water systems

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Purpose of paper

1. To seek Board approval to recommend Ministerial agreement to publish the revised ACOP (L8) *Legionnaires’ disease: The control of legionella bacteria in water systems* following the 12 week public consultation which ended on 23 August 2013.
2. Annex 1 contains the revised post consultation text

Background

3. In December 2012, the Board agreed to proposals to revise Part 1 of the L8 ACOP and remove Part 2, making it separately available as revised technical guidance¹. This will provide greater clarity for dutyholders as to what constitutes legal requirements and what is guidance; and allow the updating of the technical guidance in a timely manner in the light of technological advancements.
4. An initial consultation on these proposals received significant support, with 71% of those responding (135 out of 191) agreeing to the proposals. The Board agreed to this proposal at its meeting of 22 May 2013².
5. HSE established an Industry Review Group which included key representatives from the main areas of the water industry with the appropriate technical expertise and knowledge of the topic to assist with the redrafting of the ACOP. Trade unions were not specifically involved in the working group but were invited to comment on the initial proposal and the revised ACOP text.

Development of the draft ACOP

¹ <http://www.hse.gov.uk/aboutus/meetings/hseboard/2012/051212/pdec1294.pdf>

² <http://www.hse.gov.uk/aboutus/meetings/hseboard/2013/220513/pmay1352.pdf>

6. Following the initial consultation, HSE worked closely with key representatives from the water industry, including the Industry Review Group and HSE's Legionella technical working group to produce the revised draft ACOP text.
7. The legal duties the ACOP covers and the nature of the method of compliance it describes are substantively unchanged. Dutyholders already complying with the law should therefore not need to change what they are doing. The ACOP continues to provide practical guidance to help dutyholders to comply with the legal requirements but in a simpler form. 70% of respondents commented that the revised ACOP was more succinct and provided greater clarity.
8. The significant revisions made to the draft ACOP included:
 - (a) Assigning ACOP status to some guidance following a critical review of the ACOP and guidance text to clarify legal requirements where there is an accepted Industry method of compliance;
 - (b) Changing some text from ACOP to guidance status – these changes are not deregulatory and do not impact on compliance requirements;
 - (c) Simplifying terminology, where possible;
 - (d) Limiting references to guidance published by external organisations that may quickly become outdated and because web searches are now the more usual method of researching up-to-date guidance;
 - (e) Identifying and removing ACOP and guidance text that might have required more than the regulations required
 - (f) Emphasis on proportionality in low risk scenarios.

Results of the Consultation

9. HSE carried out a public consultation on the revised ACOP text between 4 June and 23 August 2013. There were 7,178 downloads of the consultation document and 100 responses received in respect of the proposed changes that were sufficiently complete to include as formal responses. A range of stakeholders responded and Annex 2 provides a full analysis of the consultation responses.
10. The majority of responses were made by those very familiar with the document and its use on a daily basis with just over 50% of the responses from industry representatives and legionella consultants. The majority of respondents (70%) agreed that the changes made to the document gives greater clarity and supports their understanding of how to comply with their duties under the regulations. Of the 30% not agreeing, a significant proportion of their comments related to issues that the technical guidance will address; other responses were to advance minor changes to the document to improve clarity and most of these comments were very helpful and taken on board in the revised text. Others raised specific issues rather than an overall

disagreement with the content of the ACOP and these responses are further expanded in Annex 2.

Issues raised in the consultation

11. The majority of respondents were supportive of the changes to the ACOP and complimentary about the simpler language. Comments from trade associations, trade unions and dutyholders were supportive with comments such as *“ACOP is much clearer and succinct”, “this is technically spot on”, “welcome removal of unnecessary detail enabling the easy identification of legal duties”, “succinct document that clearly sets out the legal requirements”*.
12. When asked about things they either particularly disliked about the consultation, three respondents would have preferred all text changes to be identified in the revised text and six respondents found it difficult to consider the revised ACOP text without having the updated technical guidance. The remainder disliked the limit on the number of words on the online template but generally overcame this by submitting additional attachments.
13. There were a number of comments requiring minor alterations to the text. There were also recurring themes and specific issues raised in consultation responses, and further detail is in the analysis at Annex 2. Where appropriate, we have responded to these and updated the revised text to address these issues.

Risks & Issues

14. **Unions** – Four responses were received from different Trade Unions. Overall, the responses were complimentary on the revised draft ACOP but they each raised issues, which the revised text addresses, where appropriate. The following concerns were raised separately in relation to the current consultation:

- (a) Worker involvement and consultation

A TU respondent raised a concern in relation to guidance on worker involvement and consultation. The TU asked for all ACOPs to have a consistent form of words across all revised ACOPs that meet the codes of practice and guidance of the 1977 and 1996 worker consultation laws. HSE has checked the relevant draft text in all the revised ACOPs and, where necessary, amended to ensure consistency. HSE will respond directly to that Union regarding this issue.

- (b) ACOP status assigned as guidance

An objection was raised by one TU across all the revised ACOPs to the principle of assigning previous ACOP material to guidance. In the revised L8 ACOP HSE's view is that the changes made are in line with the principles agreed for the review of ACOPs and are not deregulatory and do not reduce compliance requirements. HSE will respond directly to that Union.

15. **Legionella technical guidance** – The revised ACOP L8 will replace the current ACOP version, which includes technical guidance. We are working with the Industry Review Group to revise and update the technical guidance (HSG274) and publish it separately. The technical guidance is 13 years old and significantly out of date, necessitating a detailed and thorough revision of its content. This guidance will comprise of three sections – Part 1: Evaporative Cooling Systems, Part 2: Hot and cold water systems and Part 3: Other Risk Systems. We are currently seeking views on Parts 1 and 3 and the intention is these will be available to the same publishing timescales as the revised ACOP. Part 2 is still currently being revised and updated in the light of technological advancements and to ensure cross-regulatory consistency but there remain several key issues requiring resolution.

Devolved Administrations

16. The Devolved Administrations were included as part of the consultation process and invited to comment on the initial proposal and the revised ACOP text.

Next steps

17. If the Board is content, we will seek Ministerial agreement to the publication of the revised ACOP.
18. Subject to Ministerial agreement, we will continue the editorial and production work required in order to publish the revised L8 by end November 2013. A communications strategy has been developed with Communications Directorate for the publication of the revised ACOP.
19. A full analysis of the consultation responses will be prepared and published on the HSE website.
20. We will continue to work with the Industry Review Group to revise and update the technical guidance.

Recommendation

21. To seek Board approval to recommend Ministerial agreement to publish the revised ACOP.

Clearance

The HSE Senior Management Team at their meeting on 2 October 2013 cleared this paper.

Annexes

Annex 1 – Proposed revised L8 ACOP – *Legionnaires' disease: The control of legionella bacteria in water systems*

Annex 2 – Analysis of responses to consultation proposal on L8 ACOP

Annex 1 – Draft revised ACOP L8 Legionnaires’ disease: The control of legionella bacteria in water systems

Annex 2 – Analysis and summary of responses to the consultation on CD258: L8 Legionnaires’ disease: The control of legionella bacteria in water systems Approved Code of Practice (ACOP) – final consultation

HSE established an Industry Review Group, which included key representatives from the main areas of the water industry with the appropriate technical expertise and knowledge of the topic to assist with the redrafting of the ACOP. Trade unions were not specifically involved in the working group but were invited to comment on the initial proposal and the revised ACOP text.

[Question 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)]		
Option	Number of respondents	Percentage of total (%)
Yes	70	70%
No	30	30%
Total	100	

Sector breakdown	Number of respondents	% respondents
Academic	1	1%
Charity	7	7%
Consultancy	21	21%
Industry	35	35%
Local government	13	13%
Member of the public	3	3%
National government	1	1%
Non-departmental public body	1	1%
Non-governmental organisation	3	3%
Pressure group	0	0%
Trade Association	11	11%
Trade Union	4	4%
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responses from industry representatives and legionella consultants. The majority of respondents (70%) agreed that the changes made to the document gives greater clarity and supports their understanding of how to comply with their duties under the regulations. Of the 30% not agreeing, a significant proportion related to issues that the technical guidance will address; other responses were to advance minor changes to the document to improve clarity and most of these comments were very helpful and taken on board in the revised text. Others raised specific issues rather than an overall disagreement with the content of the ACOP and these are summarised below.

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

Those respondents not in agreement with Q1.1 on clarity suggested a number of minor iterations to scientific terms; references and some were in relation to issues that the technical guidance will address. Other responses were on specific issues rather than overall disagreement with the ACOP including removal of the 'two year' frequency for review of risk assessments, guidance for landlords, record keeping for less than 5 employees, clearer definition of 'low risk' scenarios, clarification of dutyholder and responsible person, consistency of terminology, and lack of availability of technical guidance.

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

59 respondents answered this question and 15 of those commented that the methods of compliance are clearer than the current ACOP. Most of the issues raised by the other respondents were the same as those included in responses to Q1.2 for example, landlords responsibilities, removal of two-year assessment review, clarification of dutyholder and responsible person roles. Seven respondents made comments on issues that are more appropriate for the technical guidance. One respondent (trade union) commented on the guidance in the document on consistency of words across all ACOPs relating to worker involvement and consultation.

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

81 respondents answered this question and 72 did not think there are any impacts from the revision of this ACOP. However, 14 of those who responded positively did so with the caveat 'with the exception of the removal of the two year assessment review period'. Seven respondents thought there was an impact of the revision of the ACOP, five respondents did not offer any explanation and the other two were in relation to the assessment review frequency.

Question 4.1 Do you think the aspects of guidance elevated to ACOP status are helpful?

91% of respondents agreed that the aspects of guidance elevated to ACOP status raise the overall standards of compliance and that it gave dutyholders greater confidence in complying with the law. The remaining respondents did not think that it had made any significant difference to the current ACOP.

Question 4.2 Do you agree with the ACOP material that now constitutes information or guidance?

74 responded to this question and the majority were content with the ACOP material that now constitutes guidance, as this does not impact on regulatory compliance. One respondent (Trade Union) raised specific concerns that this is a deregulatory move and found it unacceptable.

Question 5.1 Do you think there is a need for additional web or ACOP guidance, please explain briefly?

47 respondents answered this question, of which 9 did not think there was any additional guidance needed. Of the other 38 respondents, all agreed the need for updated technical guidance to be made available to compliment the ACOP and most requested further information which will be included in the revised technical guidance,

Question 6 Is there anything you particularly like or dislike about this consultation?

46 respondents answered this question. 21 respondents liked the consultation and welcomed the opportunity to comment on the revised ACOP, liked the new structure of the ACOP and found it easier and simpler to read and navigate round the document. The 25 respondents that disliked the consultation fall into one or more of the following categories: not having the technical guidance available, not having the changes to the draft ACOP highlighted so having to compare the 'old' with the 'new' ACOP, and the limit on the number of words in the online questionnaire

Summary of key issues from consultation responses and action taken

There were recurring themes and specific issues raised in consultation responses to questions 1.2, 2.1 and 4.2 and where appropriate, we have responded to these and updated the revised text to address these issues.

(a) Clearer definition of low risk systems

Respondents welcomed the emphasis on proportionality in low risk scenarios but seven respondents asked for the text to be expanded further for greater clarity. The revised text has been revised to address this issue.

(b) Greater clarification between key roles of responsibility ie dutyholder, responsible person

17 respondents asked for greater clarity of the roles and responsibilities of the dutyholder and the responsible person and consistency of terms used through out the document. The comments and suggestions were very helpful and the text revised to address this issue.

(c) Risk assessment – removal of '2 year review' from guidance

17 respondents raised concerns that the specific frequency of reviewing risk assessments every two years from the current guidance has been removed. Four respondents commented that the removal was a positive step forward especially where, for example, consultants refer to this as a 'requirement' thus adding unnecessary financial burdens on business who are unsure what the law requires.

The revised wording removes the potential for confusion and is consistent with the legislation and other ACOPs. Legal advice was sought on the revised draft text prior to consultation. The revised text encourages a risk-based approach and provides more information for duty holders on when a risk assessment should be reviewed and specific examples of when a review is needed.

(d) Record keeping for less than 5 employees

Two respondents asked for the text concerning record keeping to be strengthened where there are less than five employees by providing guidance that would go beyond what the law requires. There is no statutory duty to keep and maintain records where there are less than five employees but the revised draft text states “if the employee has less than five employees, there is no requirement to write anything down, although it may be useful to keep a record of what has been done.” We believe the revised text is sufficient.

(e) Guidance for landlords ie those in control of premises

10 respondents asked for further information in relation to landlords and their responsibilities. The HSE legionella web pages already include specific information for landlords (which has significantly reduced the number of queries to HSE on this topic) and the revised technical guidance (HSG274 Part 2 Hot and cold water systems) will provide further detailed information specifically aimed at landlords. A reference has been inserted in the revised text to signpost dutyholders to the additional information in both the technical guidance and on the HSE website.

(f) References to British Standards

Three respondents requested that references to British Standards be included in the revised ACOP. We have limited the number of references to external publications but, where appropriate, key British Standards are now included in the ‘References and Further Reading’ section.

(g) Clarification of duties and responsibilities of designers, manufacturers, importers, suppliers and installers

Two respondents asked for greater clarification of the duties and responsibilities on those involved in the supply of water systems. HSE policy, enforcement, technical and legal colleagues considered the ACOP and guidance text and concluded that some of the guidance text should be elevated to ACOP status as this gave clear, practical advice and described the preferred methods to be used to comply with the law.

(h) Removal of technical guidance from L8

There was significant support from the initial consultation on the review of all ACOPs on this proposal (71%). The majority of responses welcome this proposal, as confusion exists as to what constitutes legal requirements and what constitutes guidance. The splitting out of these two documents adds greater clarity in these areas and welcomed by the majority of respondents. However, five respondents raised concerns regarding the separation of the technical guidance from the ACOP and therefore found it difficult to comment on the ACOP.

(i) Worker involvement and consultation

One TU respondent raised the issue of consistency of wording across all ACOPs regarding worker involvement and consultation. The HSE lead on worker involvement and consultation considered and revised the wording in all the revised ACOPs to ensure consistency resulting in a minor amendment to the L8 ACOP.