

| Health and Safety Executive Board |                 | HSE/13/99   |      |
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## HSE review of the Control of Substances Hazardous to Health Regulations (2002) Approved Code of Practice

### Purpose of the paper

1. To request the Board's approval to seek Ministerial agreement to publish the revised ACOP (L5) *The Control of Substances Hazardous to Health Regulations 2002 (COSHH)*, following the 12 week public consultation which ended on 23 August 2013.

### Background

2. In December 2012, the Board agreed to proposals to revise the COSHH ACOP (HSE 12/94).

### Development of the draft ACOP

3. After the initial consultation, a draft of the revised COSHH ACOP was prepared with significant input from HSE occupational hygienists, and occupational health specialists.
4. The Board agreed in May 2013 to consult on the revised ACOP (paper HSE/13/50 refers) in summer 2013. The consultation was publicised in the usual ways through the HSE website, by e-bulletin and through other publicity.
5. The proposed revision makes no significant change to the advice provided to dutyholders as to what is required for legal compliance, but the language has been simplified and clarified with the use of bullet points and plain English wherever possible. The ACOP still provides practical advice to help dutyholders to comply with the requirements of COSHH.
6. The main revisions are:
  - a. Material supporting Regulations 7, 9, 10 and 11 has been updated to take account of legislative changes such as the introduction of the EU Regulations for the Registration, Evaluation, Authorisation and restriction of Chemicals (REACH)

and the Classification, Labelling and Packaging of substances and mixtures (CLP)

- b. Material has been updated and amended to reflect other ongoing reviews of technical guidance associated with COSHH, e.g. for Local Exhaust Ventilation (LEV), and on Health Surveillance;
- c. Advice provided in the appendices to the previous ACOP, e.g. guidance on the principles of good practice has been removed and either repositioned next to the relevant regulation (eg Regulation 7) or will be made available separately on the HSE website;
- d. Specialist terminology has been clarified where possible;
- e. References to other organisations, and the guidance they produce, has been reduced to future proof the ACOP;
- f. Information concerning worker involvement and consultation has been amended to be consistent with that in other ACOPs.

### **Outcome of the consultation on the draft ACOP**

7. The results of the consultation are provided in more detail at Annex 1. In brief, although the consultation document was downloaded from HSE's website over 4,000 times, only 74 responses were received which were sufficiently complete to include as formal responses. Those very familiar with the document and its use on a daily basis, including 11 trade associations, 3 professional bodies and 4 trade unions, made the majority of responses.
8. 49% (36 responses) of those who answered the question agreed that the draft revised ACOP now gives sufficient clarity on how to comply with the law. Of the 39% (29) who did not agree, most raised specific points on aspects of the ACOP they believed could be improved. All of these comments were considered and where appropriate they have been taken on board in the latest version. 12 (41%) of those who disagreed with the revision made comments related to the COSHH Regulations rather than the ACOP.
9. The changes made to the ACOP as a result of the consultation, include amendments to the text on worker involvement and consultation, and the section concerning biological agents.
10. One trade union expressed concern that important advice on the principles of good control practice had been reduced in the revised version of the ACOP. Whilst advice on this issue has been reduced in the publication, it will now be made more readily available as web material on the HSE website.
11. One trade association raised concerns about the ACOP and advice associated with Regulation 9 and local exhaust ventilation (LEV). As a consequence the text has been amended to make it clear that the legal duty 'to keep a suitable record of thorough examination and test' lies with the employer and not with any service provider or consultant.

## **Devolved Administrations**

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

## **Next steps**

13. If the Board is content to approve the revised ACOP we will seek Ministerial agreement to the publication of the revised ACOP.
14. Subject to Ministerial agreement, we will work with Communications Directorate to undertake the editorial and production work required in order to publish the revised ACOP by the end of November 2013.
14. A full analysis of the consultation responses will be prepared and published on the HSE website.

## **Clearance**

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

Annex 1 – Analysis of responses to consultation on proposed draft text - summer 2013

Annex 2 – Draft revised Control of Substances Hazardous to Health Regulations Approved Code of Practice (L5)

## Annex 1

### Analysis/summary of responses to the consultation on CD 259: L5 Control of Substances Hazardous to Health (fifth edition)

The COSHH ACOP is primarily read and used by Health and Safety Professionals, and those representing the interests of workers. The requirements of COSHH cover a broad industry spectrum, and deal with hazardous materials ranging from chemicals, bacterial and viruses and process generated dusts and fumes. Some of the advice provided in the ACOP is technical by necessity and consequently the revision was undertaken by an internal HSE policy lead working group consisting of occupational hygienists, and occupational health specialists.

#### **Original Proposal:**

The original proposal was to revise the COSHH ACOP to make it clear to dutyholders what they need to do to comply with legal requirements and to reduce any duplication with other targeted COSHH guidance. Areas of proposed change were:

- 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.
- Material provided in the appendices to the ACOP, e.g. Advice on the principles of good practice, to be removed and made available separately on the HSE website.

Improvements are also being made to the COSHH website to improve the clarity of advice and to provide additional guidance, particularly for low risk industries and the revised ACOP and website will both be published by the end of 2013.

#### **Summary of responses to questions 1.1 – 3.1 Q1.1 was the key indicative question**

| <b>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)</b> |                       |                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------|
| Option                                                                                                                                                                                                              | Number of respondents | Percentage of total (%) |
| Yes                                                                                                                                                                                                                 | <b>36</b>             | <b>49</b>               |
| No                                                                                                                                                                                                                  | <b>29</b>             | <b>39</b>               |
| <b>Did not answer</b>                                                                                                                                                                                               | <b>9</b>              | <b>12</b>               |
| <b>Total</b>                                                                                                                                                                                                        | <b>74</b>             |                         |

| <b>Sector Breakdown</b>     |    | <b>% respondees</b> |
|-----------------------------|----|---------------------|
| Industry                    | 24 | 32%                 |
| Local Government            | 5  | 7%                  |
| National Government         | 5  | 7%                  |
| Consultant                  | 6  | 8%                  |
| Academic                    | 5  | 7%                  |
| Charity                     | 2  | 3%                  |
| Trade Association           | 11 | 15%                 |
| Trade Union                 | 4  | 5%                  |
| NGO                         | 3  | 4%                  |
| Professional bodies         | 3  | 4%                  |
| Others -private individuals | 6  | 8%                  |

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

- Three respondents commented that it would be helpful to include regulation numbers on each page for easy cross referencing.
- Two respondents commented on the guidance associated with regulation 9 and said it mirrored guidance in HSG 258 and two respondents disliked the removal of guidance associated with schedule 2a.
- Several respondents went into detail about proposed amendments, some of which were included in the revised ACOP.

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

Thirty respondents answered this question. One respondent said that the ACOP had benefitted from information moving from Schedule 2a to the main body of the text. Individual comments included;

- “Instructions are clear and helpful providing useful definitions.”
- “The methods of compliance appear to be clear and concise”
- “The guidance on compliance with training & instruction was vague.” However, this respondent proposed inclusion on information which went beyond the law.

One response related to DSEAR and was passed on to the DSEAR ACOP team, one comment related to CLP regulations. Other comments related to LEV and the provision of thorough examination and test..

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

- Forty respondents answered this question although of these 19 stated they were unaware of any impact and 2 responses related to DSEAR.
- One respondent suggested that Schedule 2a should refer to guidance in Regulation 7; this suggestion has been taken up.
- One respondent commented on the accessibility of the new ACOP.
- One respondent commented on the use of the term “interim measures”. This has now been removed
- Several responses highlighted typing and reference errors
- Two respondents raised concerns about regulation 9 ACOP and guidance.
- Two respondents commented on the COSHH Regulations, which are not covered by this consultation.
- One respondent commented on implementation costs associated with CLP.

**Generic question - Is there anything you particularly liked or disliked about this consultation?**

- One respondent stated that “the new format was tested on new practitioners with limited practical application experience. It proved to be much more user friendly and more informative.”
- Two respondents raised concerns about accessibility for SMEs.
- Two respondents liked the guidance on competency.
- Two respondents would have liked to have seen a copy of the document with areas of change highlighted.

## Consideration of responses

### **Conclusions drawn from consultation responses about the level of support for the proposal**

The document is primarily used by health and safety professionals and dutyholders and is supported by a suite of COSHH guidance, including COSHH essentials and a comprehensive website.

Over 45,000 stakeholders were notified of the consultation via the COSHH e-bulletin and information, on the HSE website and 4780 copies of the consultation document were downloaded. In total 74 responses to the consultation were received that were sufficiently complete to include as formal responses.

49% (36) of consultees who responded supported the proposal and were content with the suggested amendments. There was a general view that the revised ACOP is sufficiently clear for duty holders to be confident about what they need to do to comply with the Control of Substances Hazardous to Health Regulations (COSHH).

12% (9) respondents did not directly answer the question, although two of these responses did indicate broad support for the proposals.

39% (29) respondents answered that the ACOP and associated guidance were not sufficiently clear. Of these 12 (41%) raised issues relating to regulation which was outside the scope of the review. Three of these responses are identical and focus on the definition of a hazardous substance contained in Regulation 2 of COSHH. 21% (6) respondents raised issues about navigation, these comments have been taken on board and the issues addressed.

The comments on thorough examination and test led to some re-drafting of the ACOP and a further legal check on the guidance to ensure accuracy, the revised version will address the concerns raised during the consultation period.

#### **Final review proposal following consideration of consultation responses.**

Overall the responses were supportive and helpful. The suggestions for changes in the text have largely been adopted where it has been possible to do so, and the revised ACOP will reflect the outcome of the consultation.

The ACOP will be published by the end of 2013 in conjunction with revisions and improvements to other HSE COSHH related guidance for low risk industries.