

Health and Safety Executive Board		HSE/14/97	
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Approval to publish the revised ACOP L113 Safe use of lifting equipment

Purpose of the paper

1. To seek the Board's approval to publish the revised Approved Code of Practice (ACOP) L113, Safe use of lifting equipment: Lifting Operations and Lifting Equipment Regulations 1998.

Background

2. The Löfstedt Report required HSE to review all of its Regulations and associated ACOPs, and following an initial review HSE agreed to do this by the end of 2014.
3. The Lifting Operations and Lifting Equipment Regulations (LOLER) provide guidance to and place duties on:
 - people (employers, self-employed, hirers etc) who have control of work equipment used primarily for lifting;
 - people who plan and/or carry out lifting operations;
 - people who provide such equipment for use by others; and
 - competent persons responsible for conducting the thorough examinations required under the Regulations.They only apply to equipment provided as work equipment.
4. The Regulations define lifting equipment, lifting operations, and a lift. They also place duties on the owners, users and operators to:
 - put in place safeguards to ensure the equipment is appropriate for the task;
 - ensure the task is carried out safely by appropriately trained staff; and
 - keep equipment in a safe condition by having it maintained and thoroughly examined either to timescales in the Regulations or to a scheme of examination.
5. The Regulations are not prescriptive because they cover a wide range of equipment, for example, ranging from the largest cranes, to a pulley used on a construction site to pull a bucket of mortar up scaffolding.

Consultation:

6. An initial public consultation, covering a number of ACOPs, identified the main concern as confusion about what is covered by LOLER particularly with regard to:
 - lifting equipment which is not been provided for work purposes, e.g. lifts for customers in shopping centres, even where there is some use by those at work, such as during postal delivery.
 - equipment provided for, or by, patients for their own use at home, but which may occasionally be used by someone whilst at work, e.g. a district nurse.
 - where a load is otherwise moved from one place to another, including between levels, on a conveyor belt or escalator.
7. There was also a request to clarify who could be a competent person for the purposes of thorough examination, and to clarify the relationship with other Regulations such as the Provision and Use of Work Equipment Regulations 1998 (PUWER).
8. The revised version tried to clarify these points by:
 - including a decision tree to aid the process of identifying equipment subject to LOLER;
 - giving further examples of equipment subject to and outside the remit of LOLER;
 - explaining the association with PUWER and other legislation, and clarifying that the requirements for each need to be considered (this includes specific reference to PUWER inspection;
 - clarifying that the competent person can be an internal person, including in some circumstances, the maintenance person where qualified; and
 - including specific sections relating to the health care sector.
9. The comments received suggest that this had largely been achieved, although there were examples given that have helped to further develop the decision tree. The paragraph relating to situations where the competent person is also the person with responsibility for maintaining the equipment raised a vociferous response from the organisations which provide competent persons. This section has been amended to further clarify the position.
10. A redrafted version was put for public consultation in mid-August for a period of 8 weeks, and consultation closed on 14 October. This paper introduces the revised version of the document, which has been further amended, where appropriate, to reflect the comments of those

responding to the consultation. An analysis of the responses is at Annex 1.

11. We believe the final revised ACOP achieves our objectives, and covers the majority of issues raised by stakeholders. Where issues raised have not been adopted it is because they were considered unnecessary, e.g. additional examples of equipment were raised, but this would have made the section too cumbersome; or because they related to issues outside the remit of the review, such as those issues identified in section 15 below. The revised ACOP is attached at Annex 2. This is currently with Communications Directorate for design.

Self-employed exemption

12. There is express reference to self-employed people within the Regulations. It will be necessary to review the need for changes to both the Regulations and this ACOP, in due course.

Costs and benefits

13. There are no new duties on employers as a result of this ACOP review. The revised ACOP may result in increased sales of the priced hard copy version and therefore revenue to HSE, but employers will not be obliged to buy it as there will be a free download version, as there is for the other ACOPs.

Financial/Resource implications for HSE

14. HSE will need to allocate resource to publish the ACOP, for example editorial services and online team resource. This resource has already been planned for.

Issues outside the scope of the ACOP review.

15. There were a number of issues raised that fell outside the scope of the ACOP review, but may need to be considered in any future review of the regulations:
 - There is pressure to apply LOLER across all lifting equipment, even where it is not work equipment. People do not understand, for example, why lifts provided for the public are not covered since they have the same risks.
 - There is also pressure to require a competent person to isolate or immobilise a piece of equipment where there is an imminent risk of injury identified during the thorough examination – currently that responsibility lies with the dutyholder. This has been challenged in court and the dutyholder's liability was upheld.
 - There is pressure to include both conveyors and escalators under LOLER, as both are currently outside the scope. Escalators are subject to the Workplace (Health, Safety and Welfare) Regulations 1992, regulation 19. This does not provide a lot of help and the

guidance does not go into the duties to any great degree. Industry is pointing out that newer escalators can rise several floors and be as technically complicated as modern lifts, requiring specialist examination such as is required under LOLER.

Recommendations:

16. The Board is asked to note the work undertaken to revise, update and consult on the ACOP L113 Safe use of Lifting Equipment and to approve its publication.

Paper clearance

This paper has been cleared by the Regulation Committee

Annex 1

1. The recent consultation received 39 email responses, 2 by post and a further 52 replied electronically on the Consultation page giving 91 in all. Included in these 91 are replies from the sectors largely involved with working with lifting equipment (utilities, construction, petroleum/chemical, agriculture and engineering):
 - utilities companies (National Grid, EON, Scotoil, Shell, Chevron);
 - the trade union Unite;
 - trading associations representing multiple organisations (freight, transport, engineering, lifting engineering, construction, petroleum industry, contractors and the NFU);
 - local authorities that have a major role in enforcing defective equipment, for example, where imminent failure is a possibility, and is reported to the relevant enforcer by the competent person (9 authorities including Westminster, Birmingham and Glasgow);
 - major stakeholders in safety for the industry (SAFed, INITA, LEEA and LEIA); and
 - other stakeholders involved in industry (Buxted Construction, Transport for London, MOD, BOC, and several plant companies).
2. These replies resulted in almost 450 comments in all. A large number of these simply answered the questions providing feedback but requiring no action (161), but there were lots of suggestions for additions or wording changes, mainly suggestions for additional examples of equipment not currently listed as subject to LOLER. There were also many explaining that new technology or equipment was in place, leading to novel risks.
3. In all about 100 changes were made to accommodate the proposed amendments; some of these were minor editorial changes, but the reduced number also reflects the repetition of suggestions for change.
4. Major issues that were identified related to:
 - The decision tree/flowchart: there were examples provided that would not be subject to LOLER but which could answer all three questions as yes. There were also some useful suggestions for making it clearer. This has been amended.
 - The majority of criticism for the new draft ACOP related to a new paragraph included to try to clarify the legal requirements relating to who can be a competent person under regulation 9 for conducting thorough examinations. The draft paragraph clarified that the regulations did not preclude the maintenance person, where qualified, from being the competent person. There was some strong objection and we have moderated the paragraph, clarifying that this should only be considered in low-risk situations and the decision process would need to be part of the risk assessment
 - The inclusion of equipment not currently subject to LOLER but carrying our similar **non-work** functions was raised primarily by the

‘competent person sector’. SAFed pointed to the final phrase in the definition of ‘work equipment’:

“work equipment” means any machinery, appliance, apparatus, tool or installation for use at work (whether exclusively or not).

SAFed suggested that this would mean any equipment, whether provided for work or not, would be subject to LOLER when it is, or is likely to, be used by someone at work (such as by a delivery person). The HSE line is that LOLER equipment doesn’t stop being LOLER equipment simply because it is sometimes used by people who are not at work. We have maintained our line and have legal support.

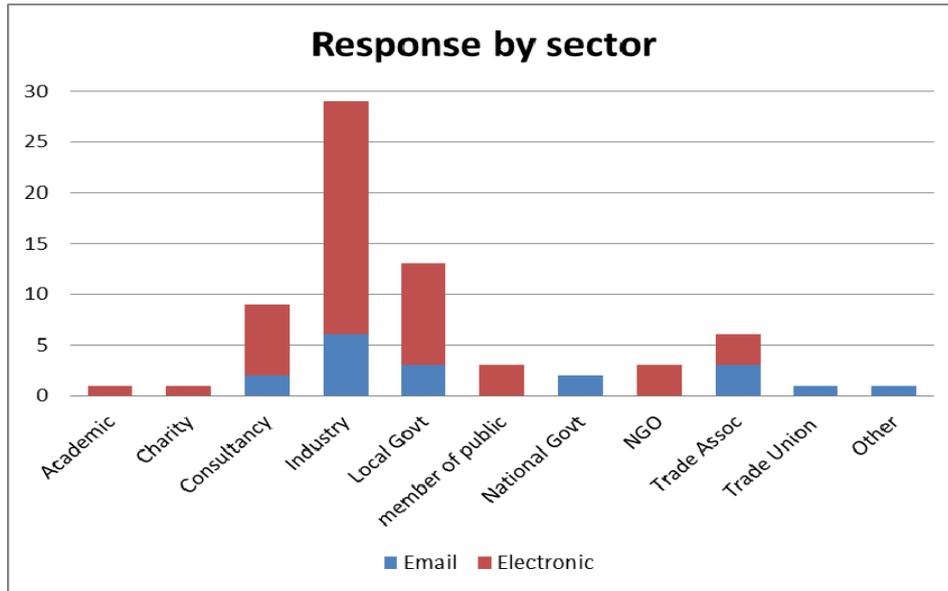
- Several different pieces of equipment were identified for inclusion into the list (para 28). There is merit in some of these, but the list is becoming unwieldy. We have accepted some of these where it will remove confusion that exists. For example, hand pallet trucks with liftable forks, are a relatively new piece of equipment. We have always concluded that the main purpose of hand pallet trucks was to move the load, and the raising was just to get it off the floor to allow this movement. The development of liftable forks (up to 2m in some cases) means we need to include this specifically.
 - The relationship between PUWER and LOLER has been clarified to clearly state that the requirements for examination and inspection are different, and that some equipment will need to be subject to checks under both. There is also reference to MOT testing imposing additional requirements for mobile equipment on the roads.
5. The attached version of the revised ACOP highlights, in yellow, all the changes resulting from suggestions made in the consultation.

Graphical analysis

6. These tables are based on the responses received; not all responders commented on all the questions. In the case of those replying by email it seems that they may have replied in this manner because they had a particular issue to raise; of the 41 email/postal responders only 21 completed the questionnaire.

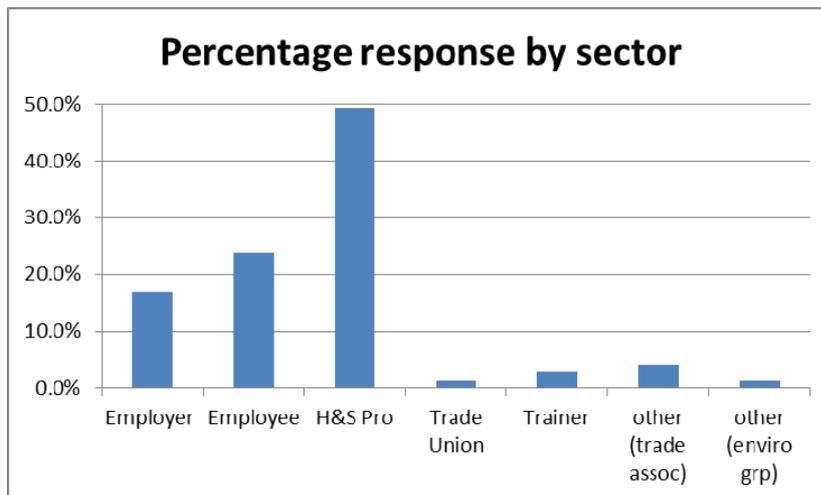
Responses by sector

7. Responses were received from several sectors, but mainly people described themselves as being from within industry affected by the Regulations, consultants or governmental. There were also representatives from trade associations and a trades union.

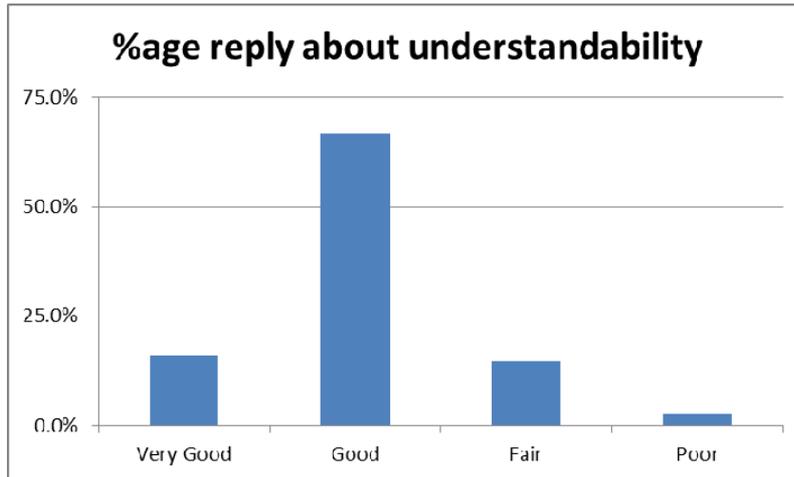


Responses by role

8. Within these responses, almost 50% described themselves as health and safety professionals, but there were employers (18%) and employees (24%) who responded as well as trade associations, trades union representatives and trainers.



Question 1 How would you rate the content in terms of ease of understanding?



9. Nearly 83% felt the new version was good or very good. Those who responded as 'poor' raised the issue of the new competent person paragraph and the difficulty in navigating around the draft because of all the new paragraphs.

Question 2 Do you think the additional explanation about which equipment is subject to LOLER and the decision tree on page 8, will make it easier to recognise such spaces?

10. More than 75% of responders were satisfied that the additional guidance, examples and the flowchart would make it easier to correctly identify a piece of equipment as subject to LOLER. The question raised 62 comments. The majority simply answered the question without substantive comment. However the replies included requests to add other examples (9 comments including pipe clamps, brick grabs, 5 making suggestions for improving the decision tree, and 4 promoting the inclusion or questioning the omission of items that are not subject to LOLER such as conveyors or passenger lifts in blocks of flats).

Question 3 Does the new guidance on the competent person make it clearer who can be a competent person and what you need to consider when selecting one?

11. More than 75% agreed that the new information was clear and understandable. However, there were 60 comments in feedback.
12. Substantive comments were largely about the new paragraph after paragraph 295. 17 comments expressed concern that this paragraph sanctioned 'in-house' examination and clarified that the Regulations do not prohibit an employer from using the person that maintains the equipment from also conducting the thorough examination and pointed out that there are additional risks in doing so and the decision should be included in the written risk assessment. Regulation 7(8) of the Management of Health and Safety at Work Regulations 1999 states that:

“(8) where there is a competent person in the employer’s employment, that person shall be appointed for the purposes of paragraph (1) in preference to a competent person not in his employment.”

13. There is guidance on the HSE website relating to competent person which states:

“When getting help, you should give preference to those in your own organisation who have the appropriate level of competence (which can include the employer themselves) before looking for help from outside.”

14. However, we have amended the wording to try to guide circumstances where there would be a difficulty establishing the independence of such a competent person in circumstances where there is a major risk from the failure of equipment and we have clarified that the person would have to meet the requirements for a competent person.

15. There were an additional 6 comments relating to the fact that there are two ‘types’ of competent person referred to, the person competent to plan a lifting operation and the person competent to carry out a thorough examination of the equipment. Unfortunately, this reflects the wording within the Regulations.

Question 4 Does the new draft document contain all the information you would need to recognise a piece of lifting equipment?

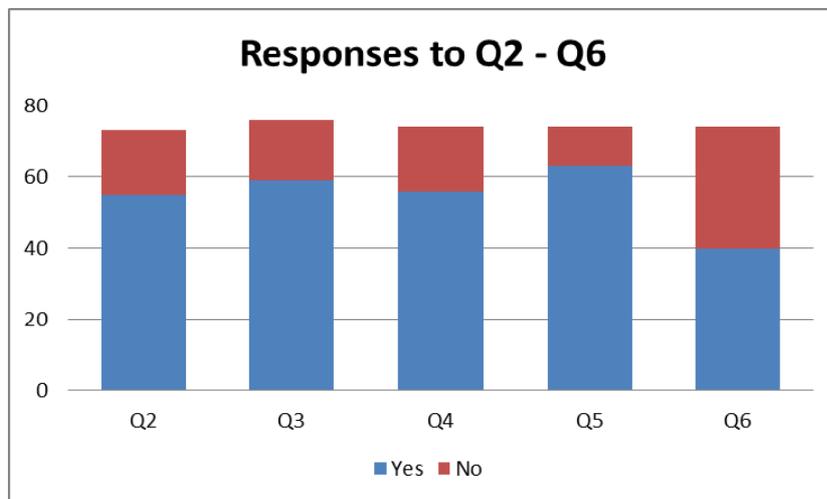
16. More than 75% felt the new guidance improved their ability to recognise lifting equipment subject to LOLER.
17. Within the 29 comments there were 9 requests to include additional items in the items subject to LOLER. This included consideration for the inclusion of hand pallet trucks that have the ability to raise a load to a height to allow items to be stacked. We have included this and another of these suggestions. There was also 4 requests relating to public lifts, escalators and fixed eyes for tying of ladders which would all be outside the remit of LOLER

Question 5 Does the new draft document clearly explain when you would need to have equipment thoroughly examined as required by Regulation 9?

18. 85% of respondents said that the new draft did clearly explain when a thorough examination was required. The 19 comments produced requests for a clearer statement of regularity of thorough examinations. However, this is included expressly in regulation 9 and apart from 9(3) there are no timescales involved, and 9(3) is already clear. There were two requests to clarify ‘dangerous situations’ one of these was from the NFU who identified circumstances where regulation 9 would not apply. We have tried to further clarify this.

Question 6 Are there any areas of the ACOP or guidance where you believe more work could be done to simplify or clarify the information provided (whether original material or where HSE has proposed revision)?

19. This produced an almost 50:50 split between people. There were 48 replies which covered lots of the sections of the ACOP. They included a further 7 examples and 5 asked about the definition or meaning of competent and the same number asked for better cross-referencing with other regulations such as including active links in the document to other regulations/guidance. 3 pointed out that (or asked about) the requirements on board ships are similar but there are differences. Others questioned guidance on the impact of wind on a lift, the strength of lifting points and the need or requirement for ‘testing’.



Question 7 Are there any further comments you would like to make on the issues raised in this consultative document?

20. Because the replies which came in by post and email where largely a series of comments not attributed to specific questions, they were included in this section. There are therefore a significant number of them (more than 200) and the majority of topics they raise have been covered already. The following table gives a brief breakdown of figures by topic:

Topic	Number
Typos or insignificant comments	45
Competence/competent person	11
Specific amendments or additions	50
Self-employed (duty under LOLER and removed reference to them in the guidance)	6
Clarification of terminology	25
Request for additional examples	15
Comments on the decision tree	12
Requests to include reference to non-LOLER equipment (public lifts, escalators etc)	21

21. Each of the comments was considered as part of the post-consultation review of the ACOP and many of the suggestions have been adopted and included, where they are appropriate.

Question 8 Is there anything you particularly like or dislike about this consultation?

22. There were 24 responses to this question. There were 6 who felt the changes had improved the document and 4 who felt it was good to have the opportunity to make comment on a draft document. 6 made negative comments 2 about the specific paragraph relating to the maintenance person also being the competent person (which has been amended), 2 felt the draft was difficult to navigate with all the minor changes, 1 thought it was not clear for those in the health care sector and the other requested more cross-referencing to other Regulations. The remainder were inconsequential simple replies to the question.