

HEALTH AND SAFETY EXECUTIVE			
CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)			
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Löfstedt Review of Regulations – update on progress to implement recommendations

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For information and discussion

This paper provides an update on HSE's work to implement the recommendations in the report 'Reclaiming health and safety for all'

Background

1. [CONIAC paper M2/2012/3](#)¹ provides background to the Löfstedt review of health and safety regulations and work to deliver its recommendations. This paper provides a further update on work streams of interest to the construction industry.
2. DWP continues to publish [regular updates](#)² on progress with implementing the recommendations of the report, most recently in June.
3. Overall, progress against the recommendations is good, although not all of the recommendations fall to HSE for delivery. Six recommendations which do fall to HSE will be of particular interest to the construction industry.

Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)

4. Although amendments to RIDDOR came into force on 6 April 2012, Professor Löfstedt recommended that a more fundamental review should be carried out. HSE consulted on a range of changes aimed at simplifying reporting requirements whilst ensuring that operational needs of regulators would still be met. The consultation closed on 28 October.

¹ <http://www.hse.gov.uk/aboutus/meetings/iacs/coniac/140312/m1-2012-3.pdf>

² <http://www.dwp.gov.uk/docs/progress-report-health-safety-reforms-june-12.pdf>

5. HSE has not yet completed its analysis of the responses to the consultation. The HSE Board will be considering this analysis early in 2013 with the intention that any changes would come into force in October 2013.

Review of Work at Height Regulations 2005 (WAHR) and associated guidance

6. Over the summer HSE consulted informally with industry stakeholders on WAHR and the guidance which supports the regulations. This review was driven by Professor Löfstedt's observation that the Regulations are poorly understood by dutyholders. HSE has concluded that there is no compelling evidence to support changes to the Regulations. However, it is felt that more work is needed to work with stakeholders to review and as necessary update guidance to improve its understanding.
7. It is proposed that the mechanism for engaging the construction industry in this further work should be through the CONIAC Safety Working Group. This work is planned for 2013.

Self-employed exemption

8. Work to deliver the exemption for self-employed workers in low-risk activities will require amendment of the Health and Safety at Work, etc. Act 1974. It will therefore require a Parliamentary Bill to effect this change. No formal agreement has yet been reached as to the vehicle for delivering this amendment.
9. HSE consulted from early August to late October on a proposal to exempt self-employed persons whose work in low risk sectors does not affect others from health and safety law. The HSE Board will consider the findings early in the new calendar year.
10. HSE further needs to consider how the limits of the exemption will be defined. Whilst it is not intended to apply the exemption to the construction industry, careful consideration will be needed of the mechanism used to define the scope of the exemption to avoid unwanted consequences.

Revocation of Statutory Instruments

11. At its meeting in August, the HSE Board considered the conclusions of the consultation on proposals to revoke fourteen sets of regulations. These included the Construction (Head Protection) Regulations 1989 and the Notification of Conventional Tower Cranes Regulations 2010 and their amending Regulations.
12. The Board agreed to thirteen of the revocations, and it is planned that revocation will take place on 1 April 2013.

13. The revocation of the Construction (Head Protection) Regulations will not change standards of worker protection, as essentially the same requirements arise under the Personal Protective Equipment at Work Regulations 1992. These are currently disapplied on construction sites, and the revocation will remove the disapplication.
14. It is important that HSE and construction industry stakeholders communicate the message effectively that the revocation will not change the circumstances in which workers are required to wear head protection. CONIAC members have a key role in supporting this work. A further discussion is planned on this matter at the March 2013 meeting of CONIAC.

Review of regulatory provisions imposing strict liability

15. This recommendation commits the Government to review regulatory requirements which impose strict liability, and to their qualification with 'reasonably practicable' where strict liability is not necessary, or their amendment to prevent civil liability being attached to a breach of those provisions.
16. Delivery of this recommendation will require, in the first instance, amendment of s47(2) of the Health and Safety at Work, etc. Act 1974 (HSWA). This provision currently creates a default position whereby breach of statutory duties under HSWA or regulations made under it, giving rise to damage, are actionable in civil proceedings, unless regulations specifically provide otherwise. Several sets of regulations – including CDM 2007 – limit civil liability in certain cases. The amendment to HSWA will reverse this position, making the default that breach of statutory duty is not actionable unless regulations provide otherwise.
17. It is intended that the amendment will be delivered through an amendment made to the Enterprise and Regulatory Reform Bill which had its first parliamentary debate on 16 October. If successful, the amendment will be made during the current Parliamentary session.
18. This significant change to the civil liability provisions in HSWA should be considered in the broader context of changes to the handling of civil cases, in particular, changes to the 'no win no fee' system.

Review of Approved Codes of Practice (ACoPs)

19. HSE's consultation on proposals for review of 30 ACoPs closed on 14 September 2012. The HSE Board considered the preliminary analysis of the consultation responses at its meeting on 26 September in paper [HSE/12/77](#)³. Whilst the Board is yet to consider the full analysis, it

³ <http://www.hse.gov.uk/aboutus/meetings/hseboard/2012/260912/psepb1277.pdf>

noted broad support for a number of proposals to revise and consolidate ACoPs by the end of 2013:

- consolidation of five ACoPs supporting the Dangerous Substances and Explosive Atmospheres Regulations 2002;
 - the revision of Part 1 and the re-issuing as guidance of Part 2 of the Control of Legionella ACoP;
 - the consolidation of the two ACoPs concerned with asbestos;
 - the consolidation of the two ACoPs concerning the installation, use and training for gas systems and appliances;
 - the revision of the ACoP supporting the Control of Substances Hazardous to Health Regulations 2002 (COSHH) and the improvement of other HSE COSHH guidance for low-risk industries;
 - the revision of the ACoP regarding workplace health, safety and welfare.
20. Opinion was divided on other proposals, including the proposal to withdraw the Management of Health and safety at Work ACoP and the Design, Construction and Installation of Gas Service Pipes ACoP and to replace both of these with tailored guidance.
21. The proposal to ordinarily limit the length of ACoPs to 32 pages was supported by only 30% of respondents, and opposed by nearly all representative organisations.
22. In the areas where there was strong support for proposals to revise or consolidate ACoPs, preparatory work is now underway pending a formal Board decision at its December meeting, given the tight timetable for the review and subsequent actions. HSE is committed to delivering this work by the end of 2013.

Further work

23. A further update will be provided at the March 2013 meeting of CONIAC.

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