

Summary & Analysis of Consultation Responses for CD 260 – Consultation on proposals to remove twelve (12) legislative measures.

Table 1 – General information

a) Type of Organisation

Option	Total	% of total
Academic	5	7
Charity	2	3
Consultancy	12	18
Industry	21	31
Local Government	8	12
Member of the Public	2	3
National Government	3	4
Non-departmental public body	3	4
Non-governmental organisation	2	3
Pressure Group	-	0
Trade association	9	13
Trade union	1	2

b) Capacity of respondent

Option	Total	% of total
An employer	5	8
An employee	10	16
Health and safety professional	43	71
Trade union official	1	2
Training provider	2	3

Table 2 – Summary of responses to questions

Question 1.1 - Do you agree with the proposal, as outlined in Annex 1-1, to repeal the remaining Sections of the Factories Act 1961?

Option	Total	%
Yes	64	93
No	5	7

If no, what are your objections?

One respondent thought it disappointing not to be able to decisively tick the box that says, “Yes we agree with the proposal”. The basis of their concern was the phrasing of questions, which they felt, implied the regulator was doubtful whether “more modern legislation” covered what is left of FA61.

The same respondent felt that:

“PUWER regs 4 and 5 did not mirror Section 39(2) of FA61. FA61 S39(2) is in effect viewing the gas holder as a pressure vessel, whereas PUWER Regs 4 and 5 are dealing with ergonomics risks and whether a piece of work equipment is suitable for people to use.”

A second respondent stated “Gives too much room for the watering down of the regulations as seems to be the intention as mentioned to me by a local council employee who was not very pro health and safety”.

Question 1.2 - In particular, do you agree with the argument given in Annex 1-1, that the change in regulatory regime from Section 39 of the Factories Act 1961 to PUWER etc will not impose any additional burdens on businesses?

Option	Total	%
Yes	64	96
No	3	4

If no, can you quantify how great this burden would be, and over what timescale it would have an impact?

Comments included:

- i) the cost to businesses of unintended safety consequences if PUWER requirements do not mirror those in FA s39(2) (not quantified but potentially £Ms)
- ii) lack of clarity for businesses on what the regulator requires under PUWER which is law that applies less easily to the structure and operation of a gas-holder as it does to work equipment

Question 1.3 - Do you also agree that using PUWER etc instead of Section 39 of the Factories Act 1961 will offer the same level of protection as under the historical legislative regime?

Option	Total	%
Yes	63	93
No	5	7

If no, what are your objections?

Comments from the same respondent made the point that PUWER is not addressing the same functional requirements and features that FA61 is addressing. Therefore there is no guarantee that the same level of protection can be afforded.

Question 1.4 - Do you agree with the proposal, as outlined in Annex 1-2, to repeal the remaining Sections of the Offices, Shops & Railway Premises Act 1963?

Option	Total	%
Yes	65	97
No	2	3

If no, what are your objections?

N/A

Question 2.1 - Do you agree with the proposal, as outlined in Annex 2, to revoke the ten Statutory Instruments?

Option	Total	%
Yes	66	99
No	1	1

If no, what are your objections?

One respondent, previously a safety rep felt there was no need to change the law now as “they are understood and been known for many years”.

Supplementary Questions

Question 3 - Are there any further comments you would like to make on the issues raised in this Consultative Document?

Comments were broad, ranging from the general aims of the consultation to remove unnecessary legislation to what must be done to ensure continued regulatory standards. Actual comments made included:

- Keep doing this, it is worthwhile.
- Doesn't go far enough. The country is sinking under excessive health & safety legislation.
- Not at present, I feel there is a lot more work to do by removing out dated legislation.
- Makes sense to completely remove these Acts... I think people who had heard of these Acts probably assumed they were long dead anyway and most employees are not even aware of their existence.
- This is a sensible and long overdue tidying up of outdated legislation. We welcome it.
- I have long considered these acts redundant having been overtaken by HSW74 and six-pack 1992. Can't see anyone having a problem.
- The HSW Act 1974 adequately covers all of these matters.
- I am happy to see out-dated legislation be removed or revoked on the proviso that worker safety is not compromised as a result of those removals or revocations
- We believe that a number of the measures identified can be removed without a lowering of health and safety standards. The Factories Act 1961 is not widely used by practitioners with the Provision and Use of Work Equipment Regulations 1998 (PUWER) instead being utilised to bring claims. We do however, have concerns that the removal of certain remaining sections of the Factories Act 1961 will lead to employees being put at risk, as there is not a sufficient amount of detail in the corresponding regulations in PUWER. It is stated in the consultation document that gaps in the modern legislation can be filled by referring to IGEM technical

standards, guidance and approved codes of practice. These standards and codes of practice are not legally binding however, and so employers may only comply with the bare minimum requirements in the regulations, resulting in a drop in safety standards and potentially dangerous workplace practices...we are concerned that there are a number of subsections of section 39 of the Factories Act 1961 that, if repealed, will result in a drop in workplace health and safety standards, and as such will lead to employees and those at work being put at risk...(APIL)

- Over the years the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963 have largely become redundant. When the provisions of Section 39 of the Factories Act 1961 are incorporated into PUWER they must be worded to ensure the same level of protection as under the historical legislative regime as well as taking into consideration modern practices of working and technological advances.

Comments on the Impact Assessment included:

- The first page [of the unnumbered] IA, 'Initial assessment of business impact' second para: refers to '59 of these larger gas holders'. CD260 also only talks of these "larger gas holders". Presumably FA61 addressed issues with all gas holders. So how has the population of gas holders and the safety of workers and public being secured after revocation of FA61?
- The second page of IA, "One-in, One-out status", second sentence; ""... this proposal is a part of a much wider complex programme of work aimed at improving the perception of health and safety legislation ..." Perception often has nothing to do with the reality of something. Industry has to work with the reality of the legislation. Industry would not wish to suffer the unintended economic, risk and safety consequences of working with regulation that had been designed to change the perception of health and safety legislation, if the changes meant that it was detrimental to the regulatory reality applied to industry.
- The second page of IA, "One-in, One-out status", second sentence; says "It is not proportionate to monetise the benefit from this proposal ..." This seems to contradict CD260 which refers to "savings provisions" How else can savings provisions be assessed (whatever savings provisions are, and they are not defined) without monetising components of the proposal?
- The detail of section 39 of the Factories Act 1961 includes details and requirements which are related to a particular form of construction of Gas holders etc. PUWER picks this up through general requirements and thereby provides appropriate protection which is flexible enough to deal with technological changes. The principal concern is that there are no unintended consequences as a result of the revocation of these pieces of legislation, namely that the protections being relied on in other legislation are not themselves the subject of revocation or amendment.

Question - 4 Is there anything you particularly liked or disliked about this consultation?

Comments ranged from the consultation does not go far enough, to it was excellent and easy to complete. Other comments were -

- One LA commented, that although this particular consultation was relatively straight forward, we would like to comment on the number of consultations that are being brought to the fore generally and the strain this is placing on resources within the Council.
- All members saw no reason to object to the proposed changes. The majority of members also reported that they had no longer had any operational holders and most are waiting to be purged and fully decommissioned. (IGEM believes there are still a few holders in operation).
- It is disliked that when removing or replacing regulation, that the regulator doesn't provide a clause level justification for the claim of "equivalent levels of protection of those at work".