



Self-employed Consultation

**Analysis and summary of responses to CD273:
Proposals to exempt self-employed persons
from section 3(2) of the Health and Safety at
Work etc Act 1974, except those undertaking
activities on a prescribed list**

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1.0 Executive Summary

1.1 As currently drafted Clause 1 of the Deregulation Bill, proposes to change section 3(2) of Health and Safety at Work etc Act 1974 (HSWA) to read:

“It shall be the duty of every self-employed person who conducts an undertaking of a prescribed description to conduct the undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health and safety.”

1.2 As a result of the proposed change only those self-employed persons conducting work activities prescribed by the Secretary of State in Regulations will continue to have duties under section 3(2) of HSWA, all others being exempt.

1.3 Between the 7 July and the 31 August 2014, HSE undertook a public consultation exercise on the clarity of definitions where the self-employed will continue to have duties under section 3(2) HSWA.

1.4 The public consultation sought views on four main issues:

- the clarity of the definition of the activities where the self-employed will continue to have duties;
- whether or not a self-employed person would understand if the exemption applied to them;
- the assumptions made in the Impact Assessment;
- the best method of communicating the change in law to the self-employed.

1.5 In total, 246 responses were received, 50 of which were in a narrative format. The remaining respondents completed the online questionnaire. The consultative document was downloaded 10002 times.

1.6 Views were received primarily from health and safety consultants (50% of respondents), businesses, trade associations, trade unions and local authorities. The consultation exercise did not elicit many responses from the self-employed cohort, who will be affected by this change.

1.7 Responses were analysed to determine if there were any common themes. Although not specifically requested to do so, many respondents took the opportunity to comment on the principle of the exemption. These views have also been captured.

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1.8 Analysis of the consultation responses, in relation to the four main questions, identified the following:

- The first question asked if the respondent either agreed or disagreed with the clarity of each definition used within the draft Regulations for the 32 work activities listed. Of the 246 responses received, on average, over 80% agreed that each of the definitions of the activities was clear.
- The second question asked, given the definitions for work activities being relied upon in the Regulations, would a self-employed person know if the law applied to them or not. Overall, there was disagreement that a self-employed person would understand. A total of 237 responses were received to this question and 61% (145) of respondents disagreed.
- The third question asked if the respondents had any comments to make on the assumptions contained in the Impact Assessment. 97 responses were received, almost half being from health and safety consultants. Respondents concerns focussed on the potential for confusion for a self-employed person to assess whether or not they were exempt; doubts over cost savings for the self-employed due to the time required to determine whether or not they were exempt and the potential for increased incidents to the self-employed. Many respondents disagreed with the assumption that the self-employed would not change their behaviour with regards to health and safety.
- The fourth question asked respondents how HSE should communicate the change in law to the self-employed. Web-based guidance was favoured by the majority of respondents. Comments were also received in favour of more traditional 'campaign' type activities. This included printed media, trade and press articles and TV /radio coverage. A number of respondents suggested that linking up with the HMRC website for 'Self-Assessment' would be a way of raising awareness of HSE guidance when the self-employed were completing their tax form.

1.9 The main comments received with respect to the general principle of the exemption were as follows:

- The proposals are based on a misconception that health and safety regulation is unnecessary and burdensome
- The proposed change goes way beyond Professor Löfstedt's recommendation

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- The self-employed are unlikely to research the cross-referenced regulations
- The definitions are open to interpretation and misunderstanding- they are complex and will not achieve the simplification required
- The self-employed might have duties for some activities but not for others, creating confusion
- The self-employed would need assistance to understand the regulations, for example, they would need to pay for advice
- The self-employed will assume they are exempt
- There will be additional burdens on business to communicate the changes
- The list of prescribed activities will never be fully inclusive, with activities causing risk to others missing from the list, for example, transport and fishing.

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2.0 Introduction

2.1 This report presents a summary of the outcome of HSE's public consultation on the clarity of the definitions where self-employed persons will continue to have duties under section 3(2) of the Health and Safety at Work etc. Act 1974 (HSWA).

2.2 In consulting, HSE sought views on:

- (i) the clarity of the definitions of the activities where self-employed persons will continue to have duties under HSWA. These activities were included in the draft regulations which formed part of the consultative document;
- (ii) whether or not, from the definitions used, a self-employed person would know if the law applied to them;
- (iii) the assumptions made in the Impact Assessment;
- (iv) how best to communicate the change in the law to the self-employed.

2.3 Although not specifically requested, many respondents took the opportunity to provide feedback on the general principles of exempting certain self-employed people from section 3(2) HSWA. These responses have been included in this report for completeness.

2.4 The consultation ran from the 7 July until the 31 August 2014. Respondents were asked to complete an online questionnaire or download a 'word' version and return this to HSE either electronically or by post. General narrative responses were also received from respondents. These narrative responses were entered into the online questionnaire, and the analysis therefore includes quantitative data derived from these narrative views where the respondent made it clear whether they agreed or disagreed.

2.5 This annex is designed to be read in conjunction with the consultative document (CD273) at <http://www.hse.gov.uk/consult/condocs/cd273.htm>

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3.0 Response demographics

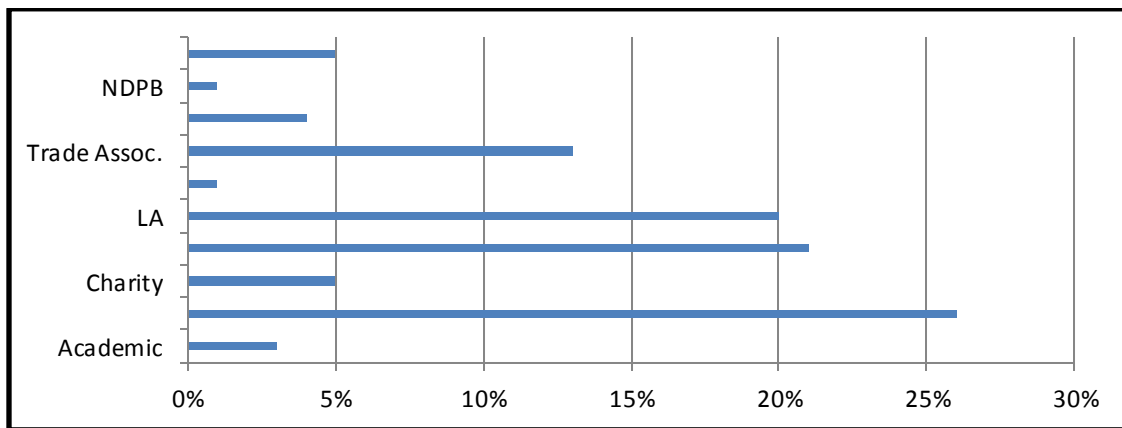
3.1 General Information

Following the conclusion of the consultation the following response rates were noted:

- The consultation document was downloaded a total of 10,002 times.
- A total of 246 responses were received.
- Of those 246 responses, 50 were in a narrative format.

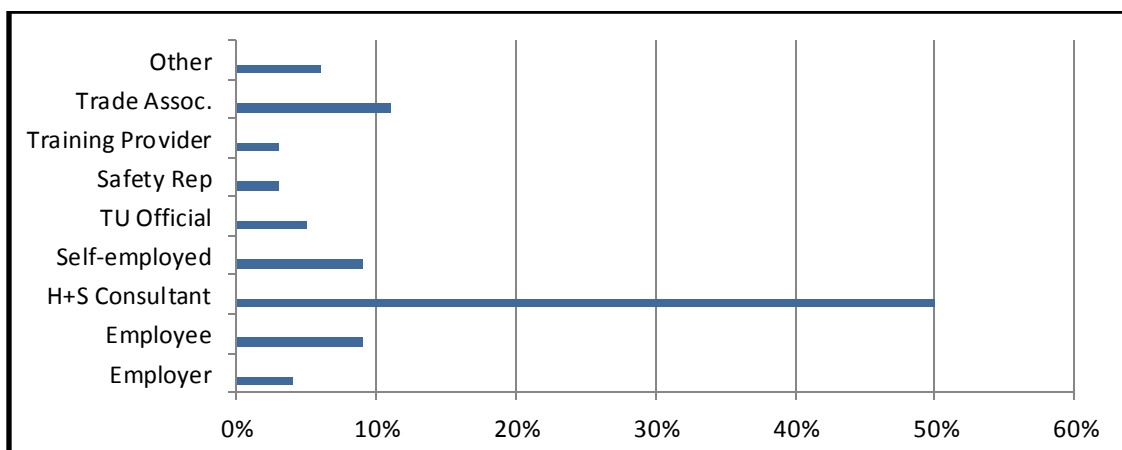
All responses were analysed to establish if there were any common themes. Not all respondents answered all the questions.

3.2 Responses by sector



Key: NDPB – Non Departmental Public Body / NGO – Non Government Organisation / LA – Local Authority

3.3 Response by role



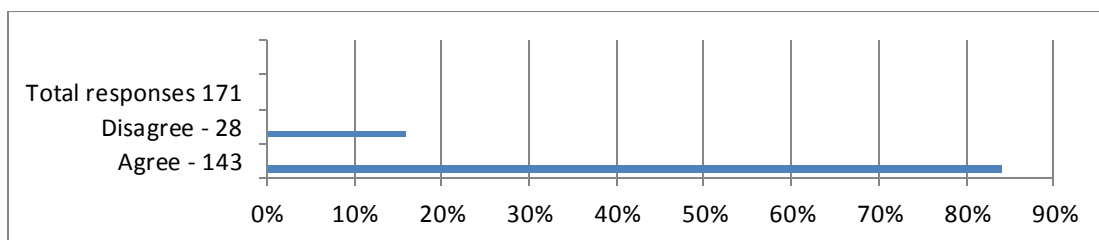
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4.0 Summary of the responses to question 1

The consultation asked if the respondent either **agreed** or **disagreed** with the clarity of the definitions of the activities listed within the draft regulations. If the respondent disagreed, they were given the opportunity to provide additional comments. Respondents could answer this question in relation to any or all of the activities.

4.1 Agriculture

Definition: Any agricultural activity (within the meaning given in regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998).



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 6 (3.5%) | 1 (0.6%) | 7 (4.1%) |
| An employee | 12 (7.0%) | 0 (0.0%) | 12 (7.0%) |
| Health and safety professional / consultant | 83 (48.5%) | 12 (7.0%) | 95 (55.6%) |
| Self-employed person | 16 (9.4%) | 0 (0.0%) | 16 (9.4%) |
| Trades union official | 3 (1.8%) | 5 (2.9%) | 8 (4.7%) |
| Safety representative | 4 (2.3%) | 1 (0.6%) | 5 (2.9%) |
| Training provider | 5 (2.9%) | 0 (0.0%) | 5 (2.9%) |
| Employer body / Trade Association | 4 (2.3%) | 4 (2.3%) | 8 (4.7%) |
| Other | 7 (4.1%) | 4 (2.3%) | 11 (6.4%) |
| No answer | 3 (1.8%) | 1 (0.6%) | 4 (2.3%) |
| Total | 143 (83.6%) | 28 (16.4%) | 171 (100.0%) |

The main themes regarding the clarity of the definition were:

- The inclusion of forestry in the agricultural activity definition is not clear. Forestry should be specifically mentioned.
- The need to have access to the Health and Safety (Enforcing Authority) Regulations 1998.

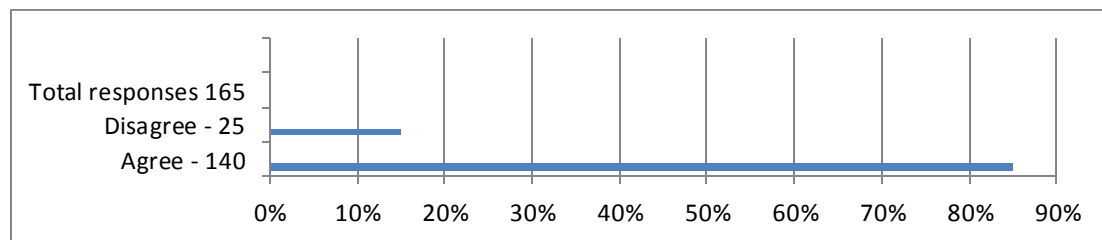
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Queries were raised about whether the following activities are included in the definition – harvesting of vegetables, bee-keeping, haulage of timber, management of animals in slaughter houses, fish and maggot breeding and fish farming.

4.2 Game keeping

Definition: Game keeping, which means the management of game and the environment to provide a habitat conducive for the production of game through activities including:

- (a) vermin control;
- (b) land, plant and water management; or
- (c) the prevention of poaching.



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 6 (3.6%) | 1 (0.6%) | 7 (4.2%) |
| An employee | 10 (6.1%) | 0 (0.0%) | 10 (6.1%) |
| Health and safety professional / consultant | 82 (49.7%) | 12 (7.3%) | 94 (57.0%) |
| Self-employed person | 17 (10.3%) | 0 (0.0%) | 17 (10.3%) |
| Trades union official | 3 (1.8%) | 4 (2.4%) | 7 (4.2%) |
| Safety representative | 5 (3.0%) | 0 (0.0%) | 5 (3.0%) |
| Training provider | 4 (2.4%) | 0 (0.0%) | 4 (2.4%) |
| Employer body / Trade Association | 5 (3.0%) | 3 (1.8%) | 8 (4.8%) |
| Other | 6 (3.6%) | 4 (2.4%) | 10 (6.1%) |
| No answer | 2 (1.2%) | 1 (0.6%) | 3 (1.8%) |
| Total | 140 (84.8%) | 25 (15.2%) | 165 (100.0%) |

The main themes regarding the clarity of this definition were:

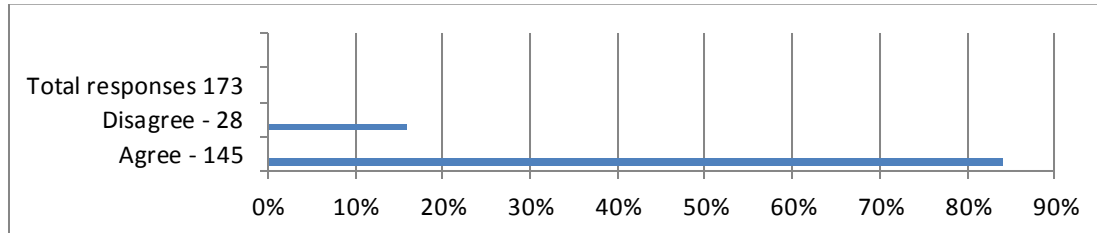
- Lack of clarity around the definition of vermin and vermin control e.g. does it cover red kites and badger culling.
- Lack of clarity around the definition of plant management.

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Queries were raised about whether the following activities are included in the definition - animal husbandry, firearms, traps, electric fencing, hunting, shooting parties, breeding of game birds.

4.3 Landscaping

Definition: Landscaping and other amenity activities, including the creation, maintenance and management of hard and soft landscapes in parks, gardens and similar environments for aesthetic and leisure purposes.



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 5 (2.9%) | 2 (1.2%) | 7 (4.0%) |
| An employee | 12 (6.9%) | 0 (0.0%) | 12 (6.9%) |
| Health and safety professional / consultant | 85 (49.1%) | 13 (7.5%) | 98 (56.6%) |
| Self-employed person | 16 (9.2%) | 1 (0.6%) | 17 (9.8%) |
| Trades union official | 3 (1.7%) | 5 (2.9%) | 8 (4.6%) |
| Safety representative | 5 (2.9%) | 0 (0.0%) | 5 (2.9%) |
| Training provider | 5 (2.9%) | 0 (0.0%) | 5 (2.9%) |
| Employer body / Trade Association | 5 (2.9%) | 2 (1.2%) | 7 (4.0%) |
| Other | 6 (3.5%) | 3 (1.7%) | 9 (5.2%) |
| No answer | 3 (1.7%) | 2 (1.2%) | 5 (2.9%) |
| Total | 145 (83.8%) | 28 (16.2%) | 173 (100.0%) |

The main themes regarding the clarity of this definition were:

- The definition of other “amenity activities” and “garden” is too vague.
- It is one of several exemptions that would potentially bring self-employed holiday home owners back into the legislation, creating absurd anomalies as compared to those owners who become exempt.

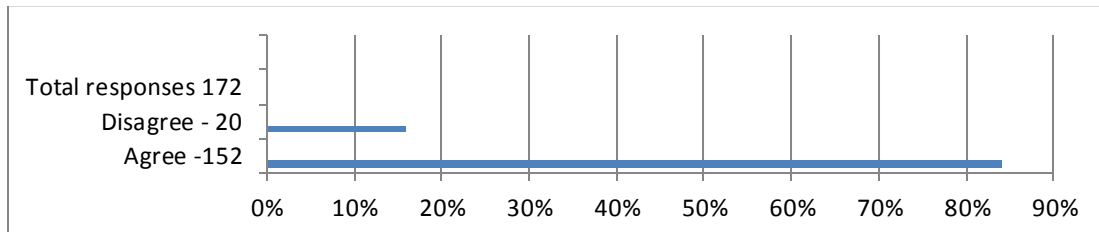
Queries were raised about whether the following activities are included in the definition - temporary art installations in parks and public spaces, temporary

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structures, private clubs e.g. golf clubs, landscaping of domestic gardens, maintenance of sports facilities

4.4 Arboriculture

Definition: Any arboricultural activity, including the cultivation and maintenance of trees, shrubs and other woody plants.



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 5 (2.9%) | 2 (1.2%) | 7 (4.1%) |
| An employee | 12 (7.0%) | 0 (0.0%) | 12 (7.0%) |
| Health and safety professional / consultant | 91 (52.9%) | 7 (4.1%) | 98 (57.0%) |
| Self-employed person | 17 (9.9%) | 0 (0.0%) | 17 (9.9%) |
| Trades union official | 3 (1.7%) | 5 (2.9%) | 8 (4.7%) |
| Safety representative | 5 (2.9%) | 0 (0.0%) | 5 (2.9%) |
| Training provider | 5 (2.9%) | 0 (0.0%) | 5 (2.9%) |
| Employer body / Trade Association | 5 (2.9%) | 2 (1.2%) | 7 (4.1%) |
| Other | 6 (3.5%) | 2 (1.2%) | 8 (4.7%) |
| No answer | 3 (1.7%) | 2 (1.2%) | 5 (2.9%) |
| Total | 152 (88.4%) | 20 (11.6%) | 172 (100.0%) |

The main themes regarding the clarity of this definition were:

- Clarity of the definition of arboriculture and what it includes e.g. does it extend to pruning small shrubs, working in or on trees, should the definition be wider to include all plants?
- In relation to self-catering accommodation provision the pruning of a shrub would bring self-employed holiday owners back into the legislation creating absurd anomalies.

Queries were raised about whether the following activities are included in the definition – use of chainsaws and study of trees.

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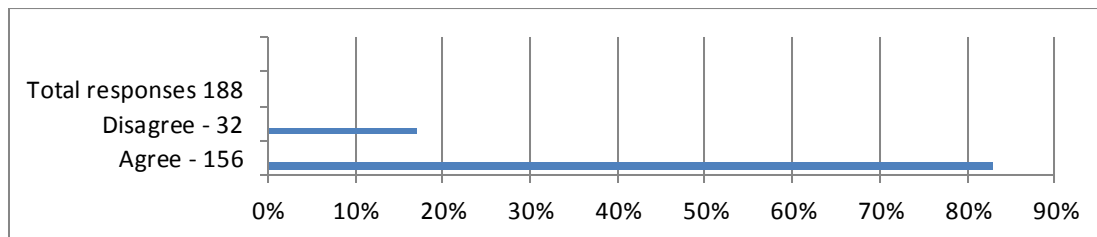
4.5 - 4.6 Construction and design

Definition: Construction work (within the meaning given in regulation 2(1) of the Construction (Design and Management) Regulations 2007 (“the 2007 Regulations”).

Any other activity conducted by any of the following persons, and which gives rise to a duty under the 2007 Regulations—

- (a) a designer;
- (b) a client;
- (c) a contractor;
- (d) a principal contractor; or
- (e) a CDM co-ordinator.

In this paragraph, “designer”, “client”, “contractor”, “principal contractor” and “CDM co-ordinator” have the meanings given in regulation 2(1) of the 2007 Regulations.



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 6 (3.2%) | 2 (1.1%) | 8 (4.3%) |
| An employee | 12 (6.4%) | 2 (1.1%) | 14 (7.4%) |
| Health and safety professional / consultant | 88 (46.8%) | 14 (7.4%) | 102 (54.3%) |
| Self-employed person | 16 (8.5%) | 1 (0.5%) | 17 (9.0%) |
| Trades union official | 4 (2.1%) | 5 (2.7%) | 9 (4.8%) |
| Safety representative | 5 (2.7%) | 0 (0.0%) | 5 (2.7%) |
| Training provider | 5 (2.7%) | 0 (0.0%) | 5 (2.7%) |
| Employer body / Trade Association | 9 (4.8%) | 5 (2.7%) | 14 (7.4%) |
| Other | 8 (4.3%) | 3 (1.6%) | 11 (5.9%) |
| No answer | 3 (1.6%) | 0 (0.0%) | 3 (1.6%) |
| Total | 156 (83.0%) | 32 (17.0%) | 188 (100.0%) |

The main themes regarding the clarity of this definition were:

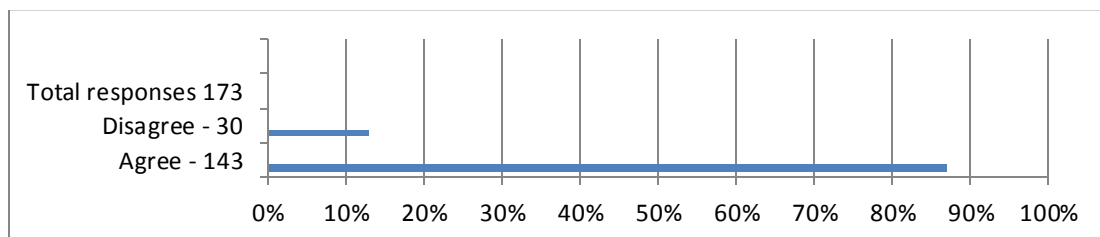
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- A misunderstanding that non-CDM construction work e.g. domestic sites would be exempt.
- A misunderstanding that design in this context covers areas other than construction design.
- As CDM is currently under review respondents suggested using the revised definitions.
- Concerns were raised that those working in a support capacity to the construction industry e.g. cleaning and maintaining buildings and fitting audio/visual equipment are currently unaware of their duties under the CDM regulations.
- Clarity of definition of designer.
- The increased application of CDM to scenery and other temporary structures in the entertainment sector and how this proposed change could lead to confusion.

Queries were raised about whether the following activities are included in the definition – plumbers, electricians, demolition workers, maintenance workers, general craftsmen, handymen, caretakers, bricklayers and plasterers

4.7 Compressed air

Definition: Work in compressed air - Any activity conducted in accordance with the Work in Compressed Air Regulations 1996 (“the 1996 Regulations”) by a compressed air contractor. In this paragraph, “work in compressed air” and “compressed air contractor” have the meanings given in regulation 2(1) of the 1996 Regulations.



| | Agree | Disagree | Total |
|--|------------|-----------|------------|
| An employer | 5 (2.9%) | 1 (0.6%) | 6 (3.5%) |
| An employee | 12 (6.9%) | 0 (0.0%) | 12 (6.9%) |
| Health and safety professional / consultant | 85 (49.1%) | 14 (8.1%) | 99 (57.2%) |
| Self-employed person | 16 (9.2%) | 1 (0.6%) | 17 (9.8%) |
| Trades union official | 4 (2.3%) | 5 (2.9%) | 9 (5.2%) |

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| | | | |
|--|--------------------|-------------------|---------------------|
| Safety representative | 4 (2.3%) | 1 (0.6%) | 5 (2.9%) |
| Training provider | 5 (2.9%) | 0 (0.0%) | 5 (2.9%) |
| Employer body / Trade Association | 4 (2.3%) | 2 (1.2%) | 6 (3.5%) |
| Other | 5 (2.9%) | 6 (3.5%) | 11 (6.4%) |
| No answer | 3 (1.7%) | 0 (0.0%) | 3 (1.7%) |
| Total | 143 (82.7%) | 30 (17.3%) | 173 (100.0%) |

The main themes regarding the clarity of this definition were:

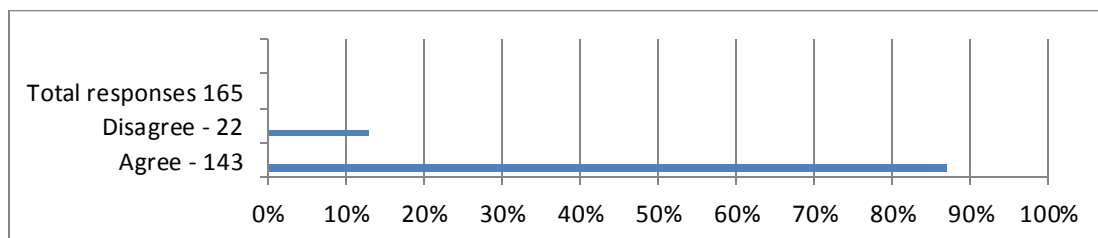
- Misunderstanding between the requirements of these regulations and the Pressure Systems Safety Regulations 2000 and clarification required.

4.8 Diving

Definition: Any activity conducted by any of the following persons, and which gives rise to a duty under the Diving at Work Regulations 1997 (“the 1997 Regulations”)—

- (a) a diving contractor;
- (b) a supervisor;
- (c) a diver;
- (d) a person who, to any extent, is responsible for, has control over or is engaged in a diving project; or
- (e) a person whose acts or omissions could adversely affect the health and safety of persons engaged in a diving project.

In this paragraph, “diver”, “diving contractor”, “supervisor” and “diving project” have the meanings given in regulation 2(1) of the 1997 Regulations



| | Agree | Disagree | Total |
|--|-------------------|-----------------|-------------------|
| An employer | 6 (3.6%) | 0 (0.0%) | 6 (3.6%) |
| An employee | 10 (6.1%) | 0 (0.0%) | 10 (6.1%) |
| Health and safety professional / consultant | 86 (52.1%) | 9 (5.5%) | 95 (57.6%) |
| Self-employed person | 16 (9.7%) | 1 (0.6%) | 17 (10.3%) |

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| | | | |
|-----------------------------------|--------------------|-------------------|---------------------|
| Trades union official | 4 (2.4%) | 5 (3.0%) | 9 (5.5%) |
| Safety representative | 5 (3.0%) | 0 (0.0%) | 5 (3.0%) |
| Training provider | 5 (3.0%) | 0 (0.0%) | 5 (3.0%) |
| Employer body / Trade Association | 3 (1.8%) | 3 (1.8%) | 6 (3.6%) |
| Other | 5 (3.0%) | 4 (2.4%) | 9 (5.5%) |
| No answer | 3 (1.8%) | 0 (0.0%) | 3 (1.8%) |
| Total | 143 (86.7%) | 22 (13.3%) | 165 (100.0%) |

The main themes regarding the clarity of this definition were:

- Concern about the clarity of the diving definition.

Queries were raised about whether the following activities are included in the definition – underwater photography.

4.9 Chemicals (paragraphs 9(a) – 9(f))

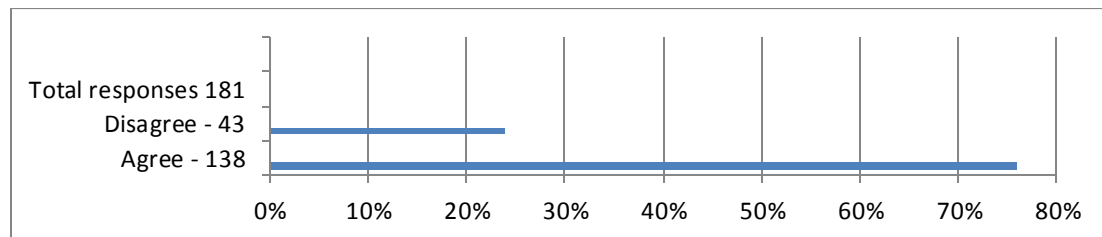
Definitions: Any work activity involving any—

- (a) carcinogen (within the meaning of regulation 2(1) of the Control of Substances Hazardous to Health Regulations 2002 (“the 2002 Regulations”).
- (b) mutagen (within the meaning of regulation 2(1) of the 2002 Regulations).
- (c) biological agent (within the meaning of regulation 2(1) of the 2002 Regulations).
- (d) substance hazardous to health (including a mixture or solution of two or more substances) for which the Health and Safety Executive has approved a workplace exposure limit (within the meaning of regulation 2(1) of the 2002 Regulations).
- (e) substance hazardous to health (including a mixture or solution of two or more substances)—
 - (i) which is listed in Table 3.2 of part 3 of Annex VI of Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures; and
 - (ii) for which an indication of danger specified for the substance is—
 - (aa) very toxic;
 - (bb) toxic;
 - (cc) corrosive;
 - (dd) harmful, with the exception of substances carrying only a risk phrase of R20, R21 or R22.
- (f) substance (not being a substance falling within sub-paragraphs (a) to (e)) for which a risk assessment conducted in accordance with regulation 6 of the 2002 Regulations has shown to be a potential cause of occupational asthma.

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In this paragraph “work activity” includes manufacturing, importing, exporting, supplying, managing, handling, storing, transporting, examining, testing and use.

“Risk phrase” has the meaning given in Annex III of Commission Directive 2001/59/EC of 6 August 2001 adapting to technical progress for the 28th time Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances.



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 4 (2.2%) | 2 (1.1%) | 6 (3.3%) |
| An employee | 10 (5.5%) | 1 (0.6%) | 11 (6.1%) |
| Health and safety professional / consultant | 83 (45.9%) | 20 (11.0%) | 103 (56.9%) |
| Self-employed person | 16 (8.8%) | 2 (1.1%) | 18 (9.9%) |
| Trades union official | 3 (1.7%) | 7 (3.9%) | 10 (5.5%) |
| Safety representative | 4 (2.2%) | 1 (0.6%) | 5 (2.8%) |
| Training provider | 5 (2.8%) | 0 (0.0%) | 5 (2.8%) |
| Employer body / Trade Association | 6 (3.3%) | 3 (1.7%) | 9 (5.0%) |
| Other | 4 (2.2%) | 7 (3.9%) | 11 (6.1%) |
| No answer | 3 (1.7%) | 0 (0.0%) | 3 (1.7%) |
| Total | 138 (76.2%) | 43 (23.8%) | 181 (100.0%) |

The main themes regarding the clarity of this definition were:

- Substances which have a WEL and substances which are defined in Table 3.2 need to be clearly listed so that the self-employed will understand what is required of them. Changes to WELs will need to be published more successfully.
- The inclusion of any work with a substance which has control limit will capture a huge raft of work. The definitions refer to COSHH Regulations and other Regulations to define coverage. There is nowhere that these substances are listed and a self-employed person

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would not reasonably be able to determine whether or not they would be exempt.

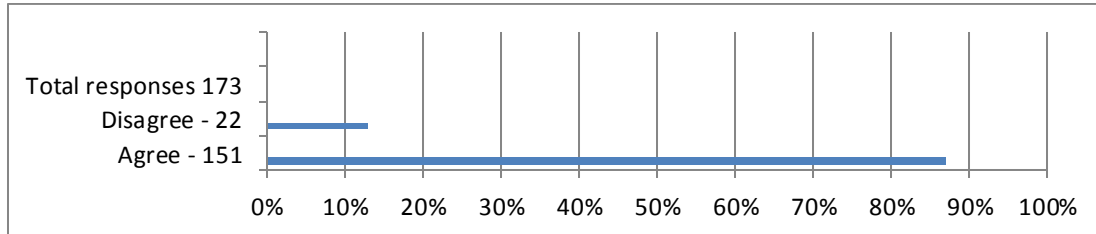
- Para 9(f) requires the self-employed person to conduct a risk assessment to determine if the substance used has a potential to cause occupational asthma how can they do this if they are exempt?
- Table 3.2 is 1355 pages, are we suggesting that self-employed persons would have a copy of this to identify whether or not the products they use are exempt. How would this reduce the burden of their compliance?
- The definitions of hazardous substances should be based on the new CLP Regulations.
- Apply no exemptions where a substance is hazardous para 9(ii) (substances which are indications of danger).
- Only the most dangerous chemicals, not those that are purchased by consumers, e.g. bleach should be included.
- In relation to COSHH it was felt that no-one should be exempt.
- Confusion has arisen from occupations identified as being exempt in the IA but who are known to use hazardous chemicals e.g. hairdresser, beauticians, motor engineers and cleaners.
- As most self-employed workers will use chemicals that are covered by COSHH in some context there is great potential for unnecessary confusion.
- The chemical definition highlights the issue that a self-employed person would have to devote significant time and effort to first review and then assess whether they fall within the prescribed list.
- Confusion about the extent to which the law will apply when using a chemical which is not exempt.

Queries were raised about whether the following activities are included in the definition – chemicals, legionella, transmission of HIV and Hep B and other blood-borne diseases, tattooing, skin piercing and skin treatments, hairdressing, work activities involving WELs, substances listed in Table 3.2 and occupational asthmagens need to be included.

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4.9 Dangerous Substances (para 9(g))

Definition: Dangerous Substance (within the meaning of regulation 2 of the Dangerous Substances and Explosive Atmospheres Regulations 2002).



| | Agree | Disagree | Total |
|---|--------------------|-------------------|---------------------|
| An employer | 5 (2.9%) | 1 (0.6%) | 6 (3.5%) |
| An employee | 11 (6.4%) | 0 (0.0%) | 11 (6.4%) |
| Health and safety professional / consultant | 90 (52.0%) | 9 (5.2%) | 99 (57.2%) |
| Self-employed person | 17 (9.8%) | 1 (0.6%) | 18 (10.4%) |
| Trades union official | 3 (1.7%) | 4 (2.3%) | 7 (4.0%) |
| Safety representative | 4 (2.3%) | 1 (0.6%) | 5 (2.9%) |
| Training provider | 5 (2.9%) | 0 (0.0%) | 5 (2.9%) |
| Employer body / Trade Association | 7 (4.0%) | 2 (1.2%) | 9 (5.2%) |
| Other | 6 (3.5%) | 4 (2.3%) | 10 (5.8%) |
| No answer | 3 (1.7%) | 0 (0.0%) | 3 (1.7%) |
| Total | 151 (87.3%) | 22 (12.7%) | 173 (100.0%) |

The main themes regarding the clarity of this definition were:

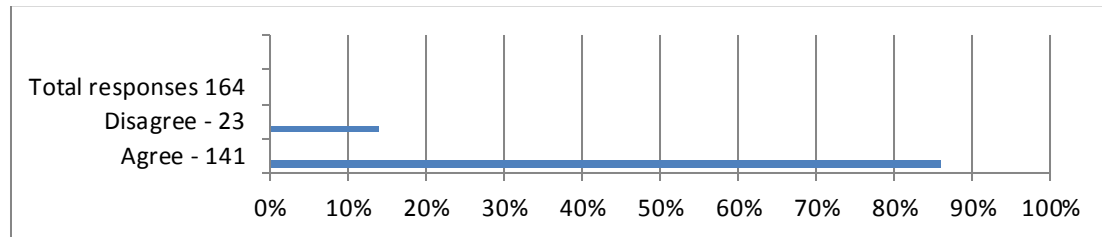
- Persons would need access to a facility to check if substances that they used fell into these criteria.
- These regulations should be rigorously applied. They should not be exempted for anyone.
- The small number of self-employed workers working in activities covered by DSEAR 2002, will not have any familiarity or understanding of these regulations, which will only prompt confusion whether they are exempt or not.

4.9 Biocidal Product or treated article (para 9 (h))

Definition: Biocidal product or treated article within the meaning of Article 3(1)(a) or Article 3(1)(l) of Regulation (EU) No 528/2012 of the European

Self-employed Consultation

Parliament and of the Council concerning the making available on the market and use of biocidal products.



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 6 (3.7%) | 0 (0.0%) | 6 (3.7%) |
| An employee | 11 (6.7%) | 0 (0.0%) | 11 (6.7%) |
| Health and safety professional / consultant | 87 (53.0%) | 8 (4.9%) | 95 (57.9%) |
| Self-employed person | 15 (9.1%) | 2 (1.2%) | 17 (10.4%) |
| Trades union official | 3 (1.8%) | 4 (2.4%) | 7 (4.3%) |
| Safety representative | 3 (1.8%) | 2 (1.2%) | 5 (3.0%) |
| Training provider | 4 (2.4%) | 0 (0.0%) | 4 (2.4%) |
| Employer body / Trade Association | 5 (3.0%) | 3 (1.8%) | 8 (4.9%) |
| Other | 5 (3.0%) | 4 (2.4%) | 9 (5.5%) |
| No answer | 2 (1.2%) | 0 (0.0%) | 2 (1.2%) |
| Total | 141 (86.0%) | 23 (14.0%) | 164 (100.0%) |

The main themes regarding the clarity of this definition were:

- Self-employed persons would need access to a facility to check if substances that they used fell into these criteria.
- Many self-employed people will not know if they are dealing with a “biocidal” product. If they assume they are exempt under the new Regs this will reduce health and safety precautions for themselves and others.
- The small number of self-employed persons using biocidal products will not have any knowledge of the existence of the Articles of EU regulation 528/2012, which will only prompt confusion as to whether they are exempted or not.
- “Treated article” – many people will not have a clue what this means.

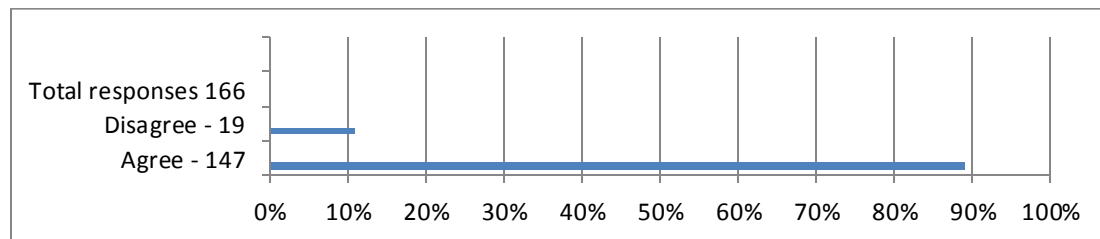
Self-employed Consultation

- Self-employed work activities should remain under severe control of HSE for the protection and the security of the public and the country to avoid any abuse for profits and illegal research.

Queries were raised as to whether legionella and its management and weed killers were included in the definition.

4.9 Acetylene (para (i))

Definition: Acetylene (within the meaning of regulation 2(1) of the Acetylene Safety Regulations 2014).



| | Agree | Disagree | Total |
|---|--------------------|-------------------|---------------------|
| An employer | 6 (3.6%) | 0 (0.0%) | 6 (3.6%) |
| An employee | 10 (6.0%) | 0 (0.0%) | 10 (6.0%) |
| Health and safety professional / consultant | 86 (51.8%) | 9 (5.4%) | 95 (57.2%) |
| Self-employed person | 17 (10.2%) | 0 (0.0%) | 17 (10.2%) |
| Trades union official | 4 (2.4%) | 4 (2.4%) | 8 (4.8%) |
| Safety representative | 5 (3.0%) | 0 (0.0%) | 5 (3.0%) |
| Training provider | 5 (3.0%) | 0 (0.0%) | 5 (3.0%) |
| Employer body / Trade Association | 7 (4.2%) | 2 (1.2%) | 9 (5.4%) |
| Other | 5 (3.0%) | 4 (2.4%) | 9 (5.4%) |
| No answer | 2 (1.2%) | 0 (0.0%) | 2 (1.2%) |
| Total | 147 (88.6%) | 19 (11.4%) | 166 (100.0%) |

The main themes regarding the clarity of this definition were:

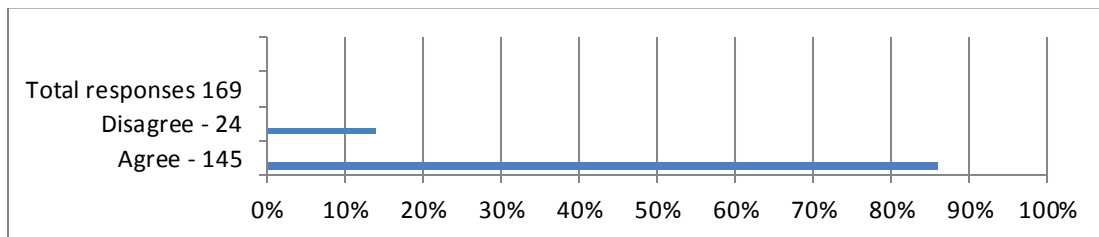
- Is acetylene covered by any other regulations i.e. DSEAR?
- Many self-employed workers might not know whether or not they are dealing with acetylene. If they assume they are exempt under the new Regs this will reduce health and safety precautions for themselves and others.

Self-employed Consultation

- Self-employed persons using acetylene will not have any familiarity with or understanding of the Acetylene Safety Regulations 2014, which will only prompt confusion as to whether they are exempted or not.
- In order for a self-employed person to determine exemption status they would need advice or understanding of the relevant regulations in order to make this determination.

4.10 Dangerous Substances in Harbour Areas

Definition: Any activity giving rise to a duty under the Dangerous Substances in Harbour Areas Regulations 1987.



| | Agree | Disagree | Total |
|---|--------------------|-------------------|---------------------|
| An employer | 6 (3.6%) | 0 (0.0%) | 6 (3.6%) |
| An employee | 10 (5.9%) | 0 (0.0%) | 10 (5.9%) |
| Health and safety professional / consultant | 88 (52.1%) | 8 (4.7%) | 96 (56.8%) |
| Self-employed person | 16 (9.5%) | 2 (1.2%) | 18 (10.7%) |
| Trades union official | 4 (2.4%) | 5 (3.0%) | 9 (5.3%) |
| Safety representative | 3 (1.8%) | 2 (1.2%) | 5 (3.0%) |
| Training provider | 5 (3.0%) | 0 (0.0%) | 5 (3.0%) |
| Employer body / Trade Association | 6 (3.6%) | 2 (1.2%) | 8 (4.7%) |
| Other | 5 (3.0%) | 5 (3.0%) | 10 (5.9%) |
| No answer | 2 (1.2%) | 0 (0.0%) | 2 (1.2%) |
| Total | 145 (85.8%) | 24 (14.2%) | 169 (100.0%) |

The main themes regarding the clarity of this definition were:

- Isn't this already covered by DSEAR?
- The linkage to specific regulations will be of little help to self-employed people who are unlikely to have access to the regulations.

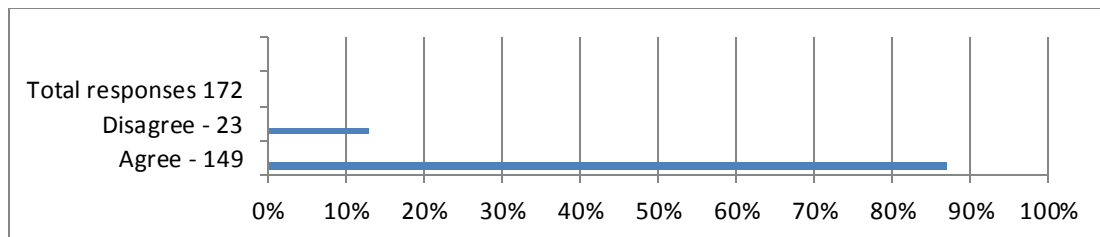
Self-employed Consultation

- Dangerous substances are dangerous wherever they are – not just in harbours. If there is a requirement to distinguish between land (shore) and at sea (on board) this should be properly explained. Regardless of this activities on board could affect persons on shore and vice versa so it really makes little difference. Leave the law as it is.
- Self-employed workers in harbours will not have any familiarity or understanding of the Dangerous Substances in Harbour Areas Regulations 1987.
- In order for a self-employed person to determine exemption status they would need advice or understanding of the relevant regulations in order to make this determination.

Queries were raised about the clarity of the definition of harbour areas.

4.11 Explosives

Definition: Any activity giving rise to a duty under the Explosives Regulations 2014.



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 6 (3.5%) | 1 (0.6%) | 7 (4.1%) |
| An employee | 12 (7.0%) | 0 (0.0%) | 12 (7.0%) |
| Health and safety professional / consultant | 88 (51.2%) | 7 (4.1%) | 95 (55.2%) |
| Self-employed person | 17 (9.9%) | 1 (0.6%) | 18 (10.5%) |
| Trades union official | 4 (2.3%) | 6 (3.5%) | 10 (5.8%) |
| Safety representative | 4 (2.3%) | 1 (0.6%) | 5 (2.9%) |
| Training provider | 5 (2.9%) | 0 (0.0%) | 5 (2.9%) |
| Employer body / Trade Association | 5 (2.9%) | 3 (1.7%) | 8 (4.7%) |
| Other | 6 (3.5%) | 4 (2.3%) | 10 (5.8%) |
| No answer | 2 (1.2%) | 0 (0.0%) | 2 (1.2%) |
| Total | 149 (86.6%) | 23 (13.4%) | 172 (100.0%) |

The main themes regarding the clarity of this definition were:

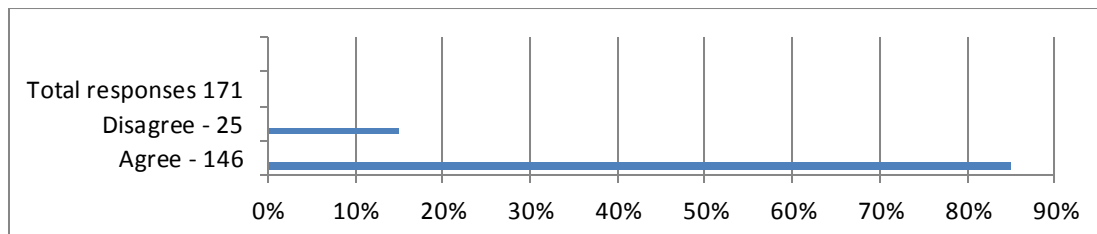
Self-employed Consultation

- The linkage to specific regulations will be of little help to self-employed people who are unlikely to have access to the regulations.
- Of course explosives can be dangerous but the current law provides for this. Leave the law as it is.
- Self-employed workers using explosives will not have any familiarity or understanding of the Explosives Regulations 2014 which will only prompt confusion as to whether they are exempted or not.
- In order for a self-employed person to determine exemption status they would need advice or understanding of the relevant regulations in order to make this determination.
- There will be a serious risk of hazards associated with non-qualified self-employed workers obtaining explosive materials and assuming they are exempt from health and safety laws.

Queries were raised as to whether the definition included vehicle airbags, explosive bolts etc.

4.12 Lead

Definition: Any activity which could result in exposure to lead, (within the meaning given in regulation 2(1) of the Control of Lead at Work Regulations 2002).



| | Agree | Disagree | Total |
|--|------------|----------|------------|
| An employer | 5 (2.9%) | 1 (0.6%) | 6 (3.5%) |
| An employee | 12 (7.0%) | 0 (0.0%) | 12 (7.0%) |
| Health and safety professional / consultant | 88 (51.5%) | 8 (4.7%) | 96 (56.1%) |
| Self-employed person | 15 (8.8%) | 2 (1.2%) | 17 (9.9%) |
| Trades union official | 3 (1.8%) | 5 (2.9%) | 8 (4.7%) |
| Safety representative | 4 (2.3%) | 1 (0.6%) | 5 (2.9%) |
| Training provider | 5 (2.9%) | 0 (0.0%) | 5 (2.9%) |

Self-employed Consultation

| | | | |
|--|--------------------|-------------------|---------------------|
| Employer body / Trade Association | 7 (4.1%) | 2 (1.2%) | 9 (5.3%) |
| Other | 4 (2.3%) | 6 (3.5%) | 10 (5.8%) |
| No answer | 3 (1.8%) | 0 (0.0%) | 3 (1.8%) |
| Total | 146 (85.4%) | 25 (14.6%) | 171 (100.0%) |

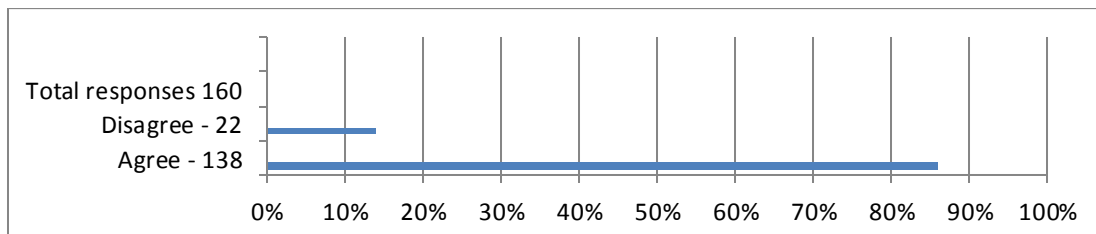
The main themes regarding the clarity of this definition were:

- Of course the danger is lead and it is irrelevant whether someone is employed or self-employed. Leave the law as it is.
- Self-employed workers working with lead will not have any familiarity or understanding of the Control of Lead at Work Regulations 2002, which will only prompt confusion as to whether they are exempted or not.
- Given the widespread distribution of lead in the environment and a range of products, most activities "could" result in exposure to lead, but are unlikely to do so. This wording is no substitute for a risk assessment as currently required.
- In order for a self-employed person to determine exemption status they would need advice or understanding of the relevant regulations in order to make this determination.
- This is far too general. Lead is can be found everywhere in the environment, in buildings and in many products, therefore many activities could result in exposure to lead.

Queries were raised about whether alloys are included in the definition

4.13 Manufacture or refining of chemicals and petrochemicals

Definition: Manufacture or refining of chemicals and petrochemicals. In this paragraph, "petrochemical" means a chemical or preparation obtained either directly or indirectly from the chemical processing of petroleum oil or natural gas.



Self-employed Consultation

| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 6 (3.8%) | 0 (0.0%) | 6 (3.8%) |
| An employee | 9 (5.6%) | 0 (0.0%) | 9 (5.6%) |
| Health and safety professional / consultant | 84 (52.5%) | 7 (4.4%) | 91 (56.9%) |
| Self-employed person | 15 (9.4%) | 2 (1.3%) | 17 (10.6%) |
| Trades union official | 3 (1.9%) | 5 (3.1%) | 8 (5.0%) |
| Safety representative | 4 (2.5%) | 1 (0.6%) | 5 (3.1%) |
| Training provider | 5 (3.1%) | 0 (0.0%) | 5 (3.1%) |
| Employer body / Trade Association | 5 (3.1%) | 1 (0.6%) | 6 (3.8%) |
| Other | 4 (2.5%) | 6 (3.8%) | 10 (6.3%) |
| No answer | 3 (1.9%) | 0 (0.0%) | 3 (1.9%) |
| Total | 138 (86.3%) | 22 (13.8%) | 160 (100.0%) |

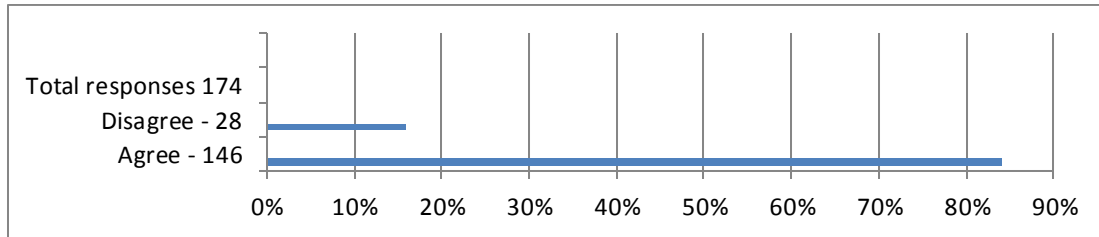
The main themes regarding the clarity of this definition were:

- This dangerous activity is best dealt with through the current regulatory regime which covers both employers and the self-employed.
- Apart from anything else it would be highly unlikely that individuals, self-employed or otherwise would be engaged in the manufacture of refining of chemicals and petrochemicals. Leave the law as it is.
- The extremely small number of self-employed workers working with petrochemicals will not have any familiarity with or understanding of the regulations which govern these activities, which will only prompt confusion as to whether they are exempted or not. This will create greater, not lesser bureaucratic burdens; cause potentially dangerous confusion as to whether the worker is required to comply with health and safety law; and may lead to bogus self-employment in the sector. This high-hazard sector is best regulated through the existing regime which covers both employers and the self-employed.

4.14 Carriage of Dangerous Goods and Use of Transportable Pressure Equipment

Definition: Any activity giving rise to a duty under the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009.

Self-employed Consultation



| | Agree | Disagree | Total |
|--|-------------|------------|--------------|
| An employer | 6 (3.4%) | 0 (0.0%) | 6 (3.4%) |
| An employee | 11 (6.3%) | 1 (0.6%) | 12 (6.9%) |
| Health and safety professional / consultant | 85 (48.9%) | 12 (6.9%) | 97 (55.7%) |
| Self-employed person | 16 (9.2%) | 1 (0.6%) | 17 (9.8%) |
| Trades union official | 4 (2.3%) | 6 (3.4%) | 10 (5.7%) |
| Safety representative | 4 (2.3%) | 1 (0.6%) | 5 (2.9%) |
| Training provider | 5 (2.9%) | 0 (0.0%) | 5 (2.9%) |
| Employer body / Trade Association | 7 (4.0%) | 2 (1.1%) | 9 (5.2%) |
| Other | 5 (2.9%) | 5 (2.9%) | 10 (5.7%) |
| No answer | 3 (1.7%) | 0 (0.0%) | 3 (1.7%) |
| Total | 146 (83.9%) | 28 (16.1%) | 174 (100.0%) |

The main themes regarding the clarity of this definition were:

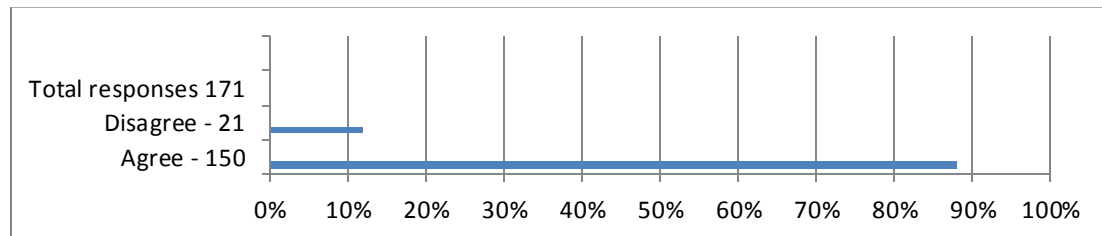
- Self-employed are unlikely to understand these Regulations or have informed access to them – they are in any event complex and constantly changing.
- It may be worth clarifying that either CDG in this case applies regardless of the quantity carried or that it only refers to self-employed persons whose work involves carriage of quantities greater than the “small load” amounts.
- Dangerous goods were not defined.
- Too complicated for a layman to understand.
- Self-employed workers performing these activities will not have any familiarity or understanding of the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations, which will only prompt confusion as to whether they are exempted or not.

Self-employed Consultation

Queries were raised about whether the following activities are included in the definition – those of a courier (would they have to comply with the CDG Regs only or all health and safety legislation and will it only be for the duration of the journey).

4.15 Control of Major Accident Hazards Regulations

Definition: Any activity conducted on an establishment where that activity may cause, or have a detrimental impact on the severity of the consequences of, a major accident. In this paragraph, “establishment” and “major accident” have the meanings given in regulation 2(1) of the Control of Major Accident Hazards Regulations 1999.



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 6 (3.5%) | 0 (0.0%) | 6 (3.5%) |
| An employee | 12 (7.0%) | 0 (0.0%) | 12 (7.0%) |
| Health and safety professional / consultant | 88 (51.5%) | 7 (4.1%) | 95 (55.6%) |
| Self-employed person | 18 (10.5%) | 0 (0.0%) | 18 (10.5%) |
| Trades union official | 4 (2.3%) | 6 (3.5%) | 10 (5.8%) |
| Safety representative | 4 (2.3%) | 1 (0.6%) | 5 (2.9%) |
| Training provider | 4 (2.3%) | 0 (0.0%) | 4 (2.3%) |
| Employer body / Trade Association | 6 (3.5%) | 2 (1.2%) | 8 (4.7%) |
| Other | 5 (2.9%) | 5 (2.9%) | 10 (5.8%) |
| No answer | 3 (1.8%) | 0 (0.0%) | 3 (1.8%) |
| Total | 150 (87.7%) | 21 (12.3%) | 171 (100.0%) |

The main themes regarding the clarity of this definition were:

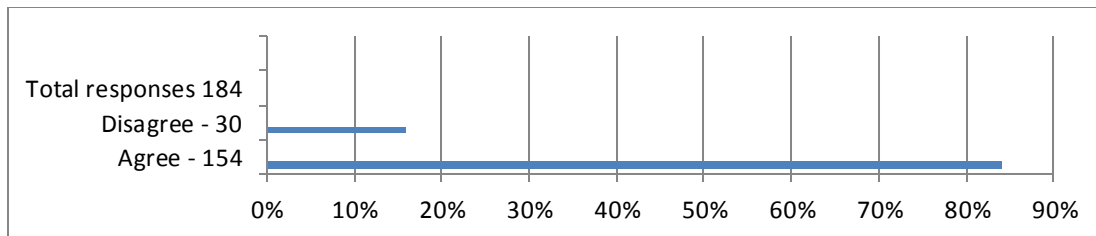
- This high hazard sector is best regulated through the existing regulatory regime which covers both employers and the self-employed.

Self-employed Consultation

- Self-employed workers covered by these provisions will not have any familiarity or understanding of the COMAH Regulations 1999 which will only prompt confusion whether they are exempted.
- In order for a self-employed person to determine exemption status they would need advice or understanding of the relevant regulations.

4.16 Asbestos

Definition: Any work with asbestos within the meaning given in regulation 2(2) of the Control of Asbestos Regulations 2012 (“the 2012 Regulations”). Any activity giving rise to a duty under regulation 4 of the 2012 Regulations (duty to manage asbestos in non-domestic premises).



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 6 (3.3%) | 0 (0.0%) | 6 (3.3%) |
| An employee | 12 (6.5%) | 1 (0.5%) | 13 (7.1%) |
| Health and safety professional / consultant | 92 (50.0%) | 12 (6.5%) | 104 (56.5%) |
| Self-employed person | 16 (8.7%) | 1 (0.5%) | 17 (9.2%) |
| Trades union official | 3 (1.6%) | 7 (3.8%) | 10 (5.4%) |
| Safety representative | 4 (2.2%) | 1 (0.5%) | 5 (2.7%) |
| Training provider | 4 (2.2%) | 0 (0.0%) | 4 (2.2%) |
| Employer body / Trade Association | 7 (3.8%) | 3 (1.6%) | 10 (5.4%) |
| Other | 6 (3.3%) | 5 (2.7%) | 11 (6.0%) |
| No answer | 4 (2.2%) | 0 (0.0%) | 4 (2.2%) |
| Total | 154 (83.7%) | 30 (16.3%) | 184 (100.0%) |

The main themes regarding the clarity of this definition were:

- No exemption should apply.

Self-employed Consultation

- Unclear whether those who are conducting surveys are carrying out work as asbestos. Would this be classed as ancillary or would it come into the category of advice.
- With cases of mesothelioma and asbestosis rising among our retired members, we believe that any activity involving asbestos should be covered by health & safety regulations, with no exceptions.
- This is particularly dangerous with considerable potential for harm. Most of the large number of self-employed people who come into contact with asbestos do not know it is there (and there is also a widely held view that because it has been banned it is no longer a problem). The current regulatory framework requires duty-holders, including those who own or manage property and the self-employed, to manage, including surveying, premises. The effect of this proposal will be that self-employed people will only have a duty once they are actually working with asbestos. So people who are not aware that asbestos is present will believe (assuming they think about it all) that they have no duty to find out whether asbestos is present before working as they will not be covered by the HSW Act, until they discover asbestos is there (and it is too late to prevent harm).
- The regulation refers to non-domestic premises. There is a need for clarity as to whether, in this context, holiday accommodation consisting of a normal domestic property that is used commercially as a holiday home, not as a permanent residence, is non-domestic or not.
- This will place a duty on every self-employed whether they carry out activities on the prescribed list or not - if they own business premises they will have a duty to manage asbestos and the law will apply to them.
- Whilst a landlord may have a majority of duties the occupier may have entered into a contract with a full repairing lease transferring the duty to manage to him.
- In order to establish whether a self-employed worker is now exempt from health and safety regulations, he would have to check whether he is covered by definition 16.1 (Reg 2.2 in Control of Asbestos Regs) or definition 16.2 (Reg 4 of Asbestos Regs). Are workers now expected to look these up? Are they likely to do this?
- While opposing all kind of exemptions, a clearer definition would be "Any work with asbestos."
- The current precautionary regulatory framework is a more effective solution to this issue. This involves duty-holders, including those who own or manage property and the self-employed, all having a duty to manage, including to survey for potential asbestos.

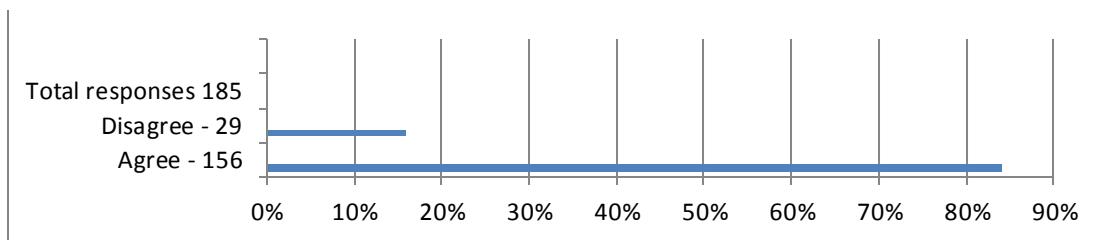
Self-employed Consultation

- A self-employed person would need advice or understanding of the relevant regulations in order to make a decision regarding exemption.

Queries were raised if the definition included any material containing asbestos and non-licensed, asbestos surveyors and others who might disturb asbestos e.g. fire consultants, health and safety advisors, plumbers and electricians, domestic decorators.

4.17 Electricity

Definition: Construction, operation or maintenance of a system, which gives rise to a duty under the Electricity at Work Regulations 1989 (“the 1989 Regulations”). Any activity giving rise to a duty under regulation 14 of the 1989 Regulations (work on or near live conductors). In this paragraph, “system” has the meaning given in regulation 2(1) of the 1989 Regulations.



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 7 (3.8%) | 0 (0.0%) | 7 (3.8%) |
| An employee | 12 (6.5%) | 1 (0.5%) | 13 (7.0%) |
| Health and safety professional / consultant | 90 (48.6%) | 11 (5.9%) | 101 (54.6%) |
| Self-employed person | 17 (9.2%) | 0 (0.0%) | 17 (9.2%) |
| Trades union official | 5 (2.7%) | 6 (3.2%) | 11 (5.9%) |
| Safety representative | 4 (2.2%) | 2 (1.1%) | 6 (3.2%) |
| Training provider | 4 (2.2%) | 0 (0.0%) | 4 (2.2%) |
| Employer body / Trade Association | 6 (3.2%) | 3 (1.6%) | 9 (4.9%) |
| Other | 7 (3.8%) | 6 (3.2%) | 13 (7.0%) |
| No answer | 4 (2.2%) | 0 (0.0%) | 4 (2.2%) |
| Total | 156 (84.3%) | 29 (15.7%) | 185 (100.0%) |

The main themes regarding the clarity of this definition were:

Self-employed Consultation

- Too all embracing. A self-employed person working alone with electricity, and not having any impact on others should be exempt.
- The linkage to specific regulations will be of little help to self-employed people who are unlikely to have access to the regulations. This dangerous activity is best dealt with through the current regulatory regime which covers both employers and the self-employed.
- Nobody who works with electrical systems that are or could be energised should be exempted from the duty.
- The issue is not the definition but potential for confusion in interpretation. According to the wording in combination with all associated regulations a person using a generator would have duties. If they use the generator for one day of the year do their duties last for one day and are they exempt for 364 days. It would also appear that a web designer working at home using a UPS (back up supply) would not be exempt under current proposals.
- Self-employed workers working with electrics will not have any familiarity or understanding of the Electricity at Work Regulations 1989, which will only prompt confusion as to whether they are exempted or not.
- In order for a self-employed person to determine exemption status they would need advice or understanding of the relevant regulations in order to make this determination.
- Would a self-employed person who owns electrical equipment that currently needs regular portable appliance testing still be required to do it? Unsafe electrical equipment could risk a fire or others could be at risk if they bring it onto work premises. (e.g. musicians). If using portable electrical equipment is excluded there would be a significant uncontrolled risk.
- The owners of a holiday home are responsible for the maintenance of the electrical installation for lighting, heating, appliances etc. They must employ competent contractors to carry out maintenance or installation work. Operation would seem to encompass the role of the owner of the property. This potentially removes the exemption from anyone who owns a property with an electrical system - this creates a grey area. . Currently there is no doubt - the owner of a holiday home is responsible for the safety of non-employees and undoubtedly this includes responsibility for ensuring that the electrical installation in a holiday home is properly maintained in a safe condition. As proposed, it is far from clear whether the courts would or would not consider the owner responsible for the operation of a system that gives rise to a responsibility under the EAW Regs. The definition needs to be re-written from scratch.

Self-employed Consultation

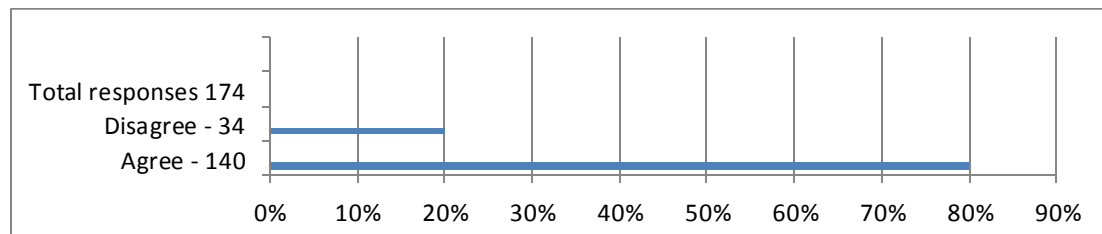
- The intended scope of this definition is not clear.
- It is widely understood by those carrying out electrical installation work professionally, even where this is not their main work activity, that such work falls within the scope of the Electricity at Work Regulations 1989. It seems unnecessary and confusing to refer to only specific parts of these regulations.
- Work on electrical systems (as defined) can, if carried out incorrectly or incompetently, pose a potential risk of harm to others.
- We propose that this definition is reworded, in the same fashion as a number of other definitions in Annex 1, to read: "Any activity giving rise to a duty under the Electricity at Work Regulations 1989"
- "How is the law going to be interpreted when a self-employed person carries out activities that he considers are outside health and safety legislation (because they are not on the list) but has faulty electrical equipment in his workplace that presents danger to anyone who may come into contact with it? Are his activities now included within the law or not?"

Queries were raised about whether the following activities are included in the definition – design and decommissioning functions.

4.18 Equipment and plant

Definition: Examination, maintenance or testing—

- (a) of fairground equipment; or
- (b) conducted for the purposes of the following Regulations—
 - (i) the Provision and Use of Work Equipment Regulations 1998.
 - (ii) the Lifting Operations and Lifting Equipment Regulations 1998.
 - (iii) the Control of Substances Hazardous to Health Regulations 2002.



Self-employed Consultation

| | Agree | Disagree | Total |
|---|--------------------|-------------------|---------------------|
| An employer | 6 (3.4%) | 0 (0.0%) | 6 (3.4%) |
| An employee | 9 (5.2%) | 1 (0.6%) | 10 (5.7%) |
| Health and safety professional / consultant | 83 (47.7%) | 17 (9.8%) | 100 (57.5%) |
| Self-employed person | 17 (9.8%) | 0 (0.0%) | 17 (9.8%) |
| Trades union official | 4 (2.3%) | 5 (2.9%) | 9 (5.2%) |
| Safety representative | 5 (2.9%) | 0 (0.0%) | 5 (2.9%) |
| Training provider | 4 (2.3%) | 0 (0.0%) | 4 (2.3%) |
| Employer body / Trade Association | 5 (2.9%) | 4 (2.3%) | 9 (5.2%) |
| Other | 5 (2.9%) | 6 (3.4%) | 11 (6.3%) |
| No answer | 2 (1.1%) | 1 (0.6%) | 3 (1.7%) |
| Total | 140 (80.5%) | 34 (19.5%) | 174 (100.0%) |

The main themes regarding the clarity of this definition were:

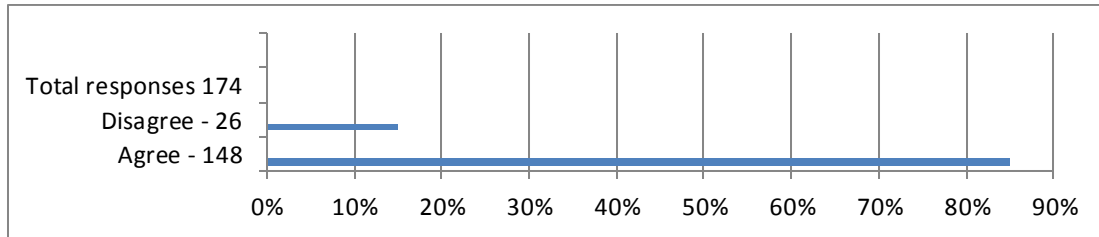
- The wide definition of work equipment in the regulations could give rise to confusion to self-employed persons, especially if they are operating such equipment in their own homes where they may not be aware that the regulations apply to them or where the likelihood of adversely affecting third parties is remote.
- The definition should be extended to cover examination testing and maintenance of any work equipment which may be used by others, for example the definition does not cover maintenance and testing of equipment required for controlling asbestos, radiation, lead as these do not fall within the definition of COSHH
- I'm surprised that (in the next paragraph) anyone in control of a pressure vessel requiring inspection is exempt, yet in this one only those carrying out the actual LOLER / COSHH examinations are exempt rather than those self-employed people who may own a forklift or make use of LEV.

Queries were raised about whether the inspection of a vacuum cleaner is a prescribed activity.

4.19 Pressure Systems

Definition: Any activity giving rise to a duty under the Pressure Systems Safety Regulations 2000.

Self-employed Consultation



| | Agree | Disagree | Total |
|--|-------------|------------|--------------|
| An employer | 6 (3.4%) | 0 (0.0%) | 6 (3.4%) |
| An employee | 12 (6.9%) | 0 (0.0%) | 12 (6.9%) |
| Health and safety professional / consultant | 87 (50.0%) | 12 (6.9%) | 99 (56.9%) |
| Self-employed person | 16 (9.2%) | 1 (0.6%) | 17 (9.8%) |
| Trades union official | 4 (2.3%) | 5 (2.9%) | 9 (5.2%) |
| Safety representative | 4 (2.3%) | 1 (0.6%) | 5 (2.9%) |
| Training provider | 4 (2.3%) | 0 (0.0%) | 4 (2.3%) |
| Employer body / Trade Association | 6 (3.4%) | 2 (1.1%) | 8 (4.6%) |
| Other | 6 (3.4%) | 5 (2.9%) | 11 (6.3%) |
| No answer | 3 (1.7%) | 0 (0.0%) | 3 (1.7%) |
| Total | 148 (85.1%) | 26 (14.9%) | 174 (100.0%) |

The main themes regarding the clarity of this definition were:

- Too all embracing. A self- employed person working alone on a pressure system, and not having any impact on others should be exempt.
- Operators of commercial coffee makers with steam boilers that they have duties to ensure that equipment is inspected and maintained.
- The linkage to specific regulations will be of little help to self-employed people who are unlikely to have access to the regulations. This dangerous activity is best dealt with through the current regulatory regime which covers both employers and the self-employed.
- Self-employed workers working with pressure systems will not have any familiarity or understanding of the Pressure Systems Safety Regulations 2000, which will only prompt confusion as to whether they are exempted or not.
- In order for a self-employed person to determine exemption status they would need advice or understanding of the relevant regulations in order to make this determination.

Self-employed Consultation

- The definition is circuitous. A duty under the Pressure Systems Safety Regulations will not arise if the activity does not fall within the Schedule to the Regulations. The definition should be extended to include any work activity including maintenance and inspection involving equipment defined as a pressure system within the meaning of the Regulations

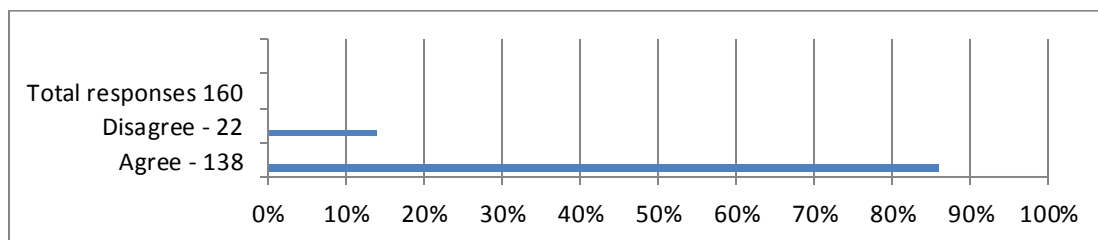
Queries were raised about whether the following activities are included in the definition – a caterer who uses a pressure cooker

4.20 – 4.21 Mining and quarrying

Definition: Any work conducted on, in or in relation to—

- a mine (within the meaning given in section 180(1) of the Mines and Quarries Act 1954); or
- a quarry (within the meaning given in regulation 3(1) of the Quarries Regulations 1999).

Any activity giving rise to a duty under the Borehole Sites and Operations Regulations 1995.



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 6 (3.8%) | 0 (0.0%) | 6 (3.8%) |
| An employee | 12 (7.5%) | 0 (0.0%) | 12 (7.5%) |
| Health and safety professional / consultant | 82 (51.3%) | 9 (5.6%) | 91 (56.9%) |
| Self-employed person | 16 (10.0%) | 1 (0.6%) | 17 (10.6%) |
| Trades union official | 3 (1.9%) | 4 (2.5%) | 7 (4.4%) |
| Safety representative | 4 (2.5%) | 1 (0.6%) | 5 (3.1%) |
| Training provider | 4 (2.5%) | 0 (0.0%) | 4 (2.5%) |
| Employer body / Trade Association | 4 (2.5%) | 2 (1.3%) | 6 (3.8%) |
| Other | 5 (3.1%) | 5 (3.1%) | 10 (6.3%) |
| No answer | 2 (1.3%) | 0 (0.0%) | 2 (1.3%) |
| Total | 138 (86.3%) | 22 (13.8%) | 160 (100.0%) |

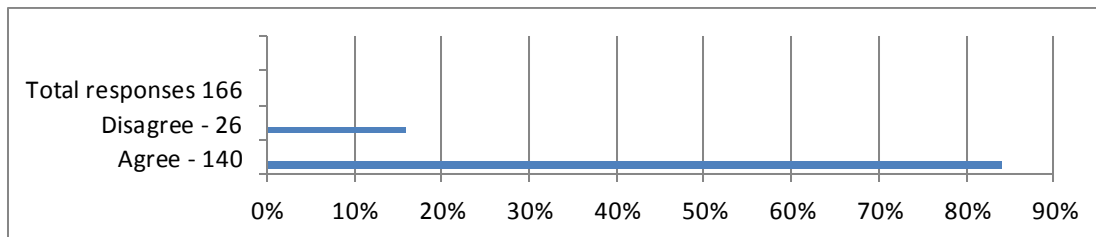
Self-employed Consultation

The main themes regarding the clarity of this definition were:

- Self-employed workers in the mining sector will not have any familiarity or understanding of the Mines and Quarries Act; Quarries Regulations; or the Boreholes Sites and Operations Regulations, which will only prompt confusion as to whether they are exempted or not.
- This dangerous activity is best dealt with through the current regulatory regime which covers both employers and the self-employed.
- In order for a self-employed person to determine exemption status they would need advice or understanding of the relevant regulations in order to make this determination.

4.22 Pipelines

Definition: Operation of a pipeline. Any modification, maintenance or other work conducted on or in relation to a pipeline. Any activity giving rise to a duty under regulation 15 of the Pipelines Safety Regulations 1996 (“the 1996 Regulations”). In this paragraph, “pipeline” has the meaning given in regulation 3 of the 1996 Regulations.



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 6 (3.6%) | 1 (0.6%) | 7 (4.2%) |
| An employee | 12 (7.2%) | 0 (0.0%) | 12 (7.2%) |
| Health and safety professional / consultant | 82 (49.4%) | 10 (6.0%) | 92 (55.4%) |
| Self-employed person | 15 (9.0%) | 2 (1.2%) | 17 (10.2%) |
| Trades union official | 4 (2.4%) | 4 (2.4%) | 8 (4.8%) |
| Safety representative | 4 (2.4%) | 1 (0.6%) | 5 (3.0%) |
| Training provider | 4 (2.4%) | 0 (0.0%) | 4 (2.4%) |
| Employer body / Trade Association | 4 (2.4%) | 3 (1.8%) | 7 (4.2%) |
| Other | 5 (3.0%) | 5 (3.0%) | 10 (6.0%) |
| No answer | 4 (2.4%) | 0 (0.0%) | 4 (2.4%) |
| Total | 140 (84.3%) | 26 (15.7%) | 166 (100.0%) |

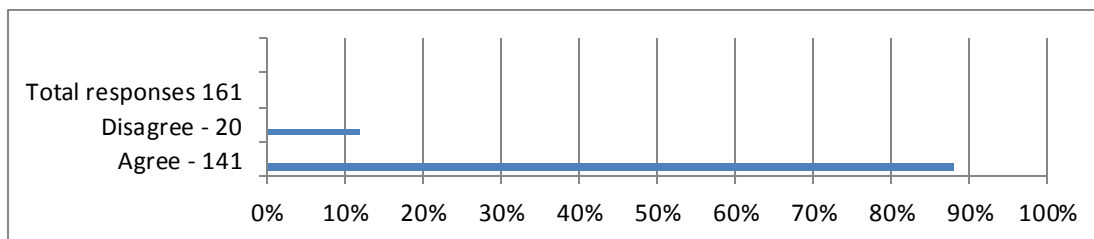
Self-employed Consultation

The main themes regarding the clarity of this definition were:

- This dangerous activity is best dealt with through the current regulatory regime which covers both employers and the self-employed.
- Self-employed workers in the pipelines sector will not have any familiarity or understanding of the Pipelines Regulations 1996, which will only prompt confusion as to whether they are exempted or not.
- In order for a self-employed person to determine exemption status they would need advice or understanding of the relevant regulations in order to make this determination.

4.23 Railways and other guided transport

Definition: The operation of a railway (within the meaning of regulation 2 of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 (“the 2006 Regulations”). The operation of a tramway (within the meaning of regulation 2 of the 2006 Regulations); or the operation of any other system of guided transport (within the meaning of regulation 2 of the 2006 Regulations).



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 6 (3.7%) | 0 (0.0%) | 6 (3.7%) |
| An employee | 13 (8.1%) | 0 (0.0%) | 13 (8.1%) |
| Health and safety professional / consultant | 83 (51.6%) | 7 (4.3%) | 90 (55.9%) |
| Self-employed person | 16 (9.9%) | 1 (0.6%) | 17 (10.6%) |
| Trades union official | 3 (1.9%) | 4 (2.5%) | 7 (4.3%) |
| Safety representative | 5 (3.1%) | 0 (0.0%) | 5 (3.1%) |
| Training provider | 4 (2.5%) | 0 (0.0%) | 4 (2.5%) |
| Employer body / Trade Association | 4 (2.5%) | 3 (1.9%) | 7 (4.3%) |
| Other | 5 (3.1%) | 5 (3.1%) | 10 (6.2%) |
| No answer | 2 (1.2%) | 0 (0.0%) | 2 (1.2%) |
| Total | 141 (87.6%) | 20 (12.4%) | 161 (100.0%) |

Self-employed Consultation

The main themes regarding the clarity of this definition were:

- We fully support railways being a prescribed activity.
- This dangerous activity is best dealt with through the current regulatory regime which covers both employers and the self-employed.
- Self-employed workers in the rail sector will not have any familiarity or understanding of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, which will only prompt confusion as to whether they are exempted or not.
- In order for a self-employed person to determine exemption status they would need advice or understanding of the relevant regulations in order to make this determination.

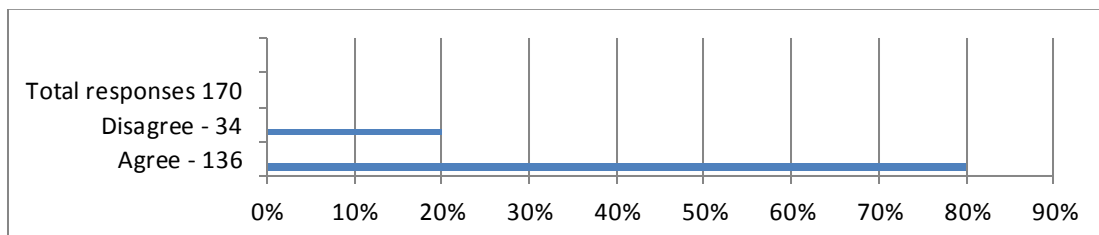
4.24 Health and social care

Definition: Provision of health or social care.

Provision of any premises where the main use of those premises is for the purpose of providing health or social care.

In this paragraph, healthcare includes any services provided to any person in hospitals or clinics, or by the ambulance services, community services, mental health services and other similar institutions (including by registered healthcare professionals).

Social care includes any services provided to any person in care homes or in premises where assessment, treatment or care is provided in the community (including in domestic premises).



| | Agree | Disagree | Total |
|--|------------|-----------|------------|
| An employer | 5 (2.9%) | 1 (0.6%) | 6 (3.5%) |
| An employee | 10 (5.9%) | 1 (0.6%) | 11 (6.5%) |
| Health and safety professional / consultant | 85 (50.0%) | 14 (8.2%) | 99 (58.2%) |
| Self-employed person | 16 (9.4%) | 1 (0.6%) | 17 (10.0%) |

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| | | | |
|--|--------------------|-------------------|---------------------|
| Trades union official | 3 (1.8%) | 5 (2.9%) | 8 (4.7%) |
| Safety representative | 4 (2.4%) | 1 (0.6%) | 5 (2.9%) |
| Training provider | 4 (2.4%) | 0 (0.0%) | 4 (2.4%) |
| Employer body / Trade Association | 4 (2.4%) | 3 (1.8%) | 7 (4.1%) |
| Other | 3 (1.8%) | 8 (4.7%) | 11 (6.5%) |
| No answer | 2 (1.2%) | 0 (0.0%) | 2 (1.2%) |
| Total | 136 (80.0%) | 34 (20.0%) | 170 (100.0%) |

The main themes regarding the clarity of this definition were:

- Although infection control risks can be covered under more relevant legislation the enforcement action doesn't prohibit the activity and therefore "other persons" remain unprotected while prosecutions are being taken. Seizing equipment doesn't stop the activity.
- Disagree about the concept of main use. What is meant by "main use" in "the premises where the main use is for the purpose of providing health and social care.
- The drafting of this regulation is dangerously vague.
- The definition is centred around premises rather than provision of services such that a self-employed surgeon or nurse would be exempt if they were not providing services in the homes of patients. The definition should be changed to cover any of the activities in 24(3) as well as providing any premises for such activities
- Misunderstanding and lack of clarity that the definition of provision of premises rather than the provision of health and social care.

Queries were raised about whether the following activities are included in the definition – nursing home, child care, self-employed managers, locum staff, management consultants and interim managers, practitioners and therapists, dieticians, massage therapists, tattooists and skin piercers, chiropodists, first aid, provision of first aid, social care in schools and taxi drivers transporting vulnerable service users, healthcare providers who visit people in their own homes.

4.25 Waste Management

Definition: The management of waste, which means the

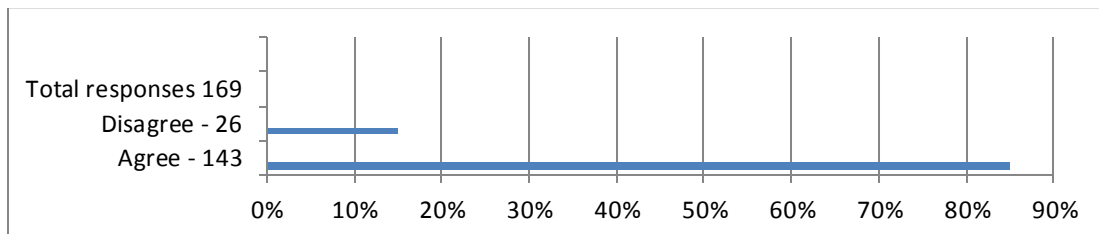
- (a) the collection, transport, recovery or disposal of waste (including hazardous, chemical or solvent waste);

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- (b) the supervision of such operations; or
- (c) the after-care of disposal sites.

In this paragraph:

- (a) “waste” means any substance or object which the holder discards or intends or is required to discard;
- (b) “collection” includes the gathering of waste, the preliminary sorting of waste and the preliminary storage of waste for the purposes of transport to a waste treatment facility;
- (c) “recovery” means any operation, the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function;
- (d) "disposal" means any operation other than recovery even where the operation has as a secondary consequence the reclamation of substances or energy.



| | Agree | Disagree | Total |
|--|-------------|------------|--------------|
| An employer | 6 (3.6%) | 0 (0.0%) | 6 (3.6%) |
| An employee | 12 (7.1%) | 0 (0.0%) | 12 (7.1%) |
| Health and safety professional / consultant | 84 (49.7%) | 9 (5.3%) | 93 (55.0%) |
| Self-employed person | 16 (9.5%) | 1 (0.6%) | 17 (10.1%) |
| Trades union official | 3 (1.8%) | 6 (3.6%) | 9 (5.3%) |
| Safety representative | 4 (2.4%) | 1 (0.6%) | 5 (3.0%) |
| Training provider | 4 (2.4%) | 0 (0.0%) | 4 (2.4%) |
| Employer body / Trade Association | 6 (3.6%) | 4 (2.4%) | 10 (5.9%) |
| Other | 5 (3.0%) | 5 (3.0%) | 10 (5.9%) |
| No answer | 3 (1.8%) | 0 (0.0%) | 3 (1.8%) |
| Total | 143 (84.6%) | 26 (15.4%) | 169 (100.0%) |

The main themes regarding the clarity of this definition were:

- Many self-employed are likely to have to manage waste, some of which is clearly hazardous and therefore surely should include them in the list - for example motor mechanics.

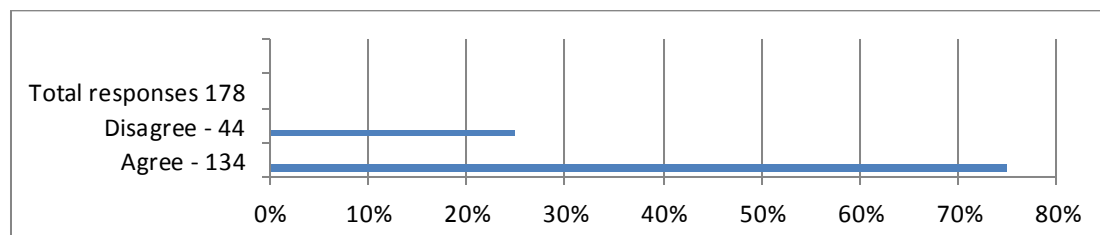
Self-employed Consultation

- This definition is so broad that it is difficult to think of any self-employed person who is not covered by it as they will have to dispose of their own waste.
- The waste industry understanding of "Recovery" is energy from waste recovery and not the separation from landfill this is more thought of as recycling.
- What is the meaning of "preliminary" storage of waste?
- As drafted this definition is extremely wide and includes anyone who separates a few bottles from food waste ready for recycling, or who carries a bag of rubbish to a pick-up point. Even picking up a single small piece of litter is encompassed. This definition needs to be changed to cover only those whose primary or significant business is waste disposal and not those for whom disposal of waste is ancillary to the main business, particularly in a quasi-domestic situation.
- If a holiday home owner has to transport waste to a tip and dispose of rubbish would this be included?

4.26 Amusement

Definition: Organisation, operation or conduct of any—

- (a) adventure activity within the meaning given by regulation 2(1) of the Adventure Activities Licensing Regulations 2004.
- (b) hazardous thrill-seeking activity.
- (c) hazardous production activity.
- (d) event, exhibition or venue attended by members of the public for entertainment purposes.
- (e) fairground, amusement park, theme park or other premises where any part of the premises is for the time being used wholly or mainly for the operation of any fairground equipment.
- (f) fairground equipment.
- (g) public firework display in any place to which at the material time the public have or are permitted access, whether on payment or otherwise.
- (h) zoo (within the meaning given by section 1(2) of the Zoo Licensing Act 1981).



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| | Agree | Disagree | Total |
|---|--------------------|-------------------|---------------------|
| An employer | 6 (3.4%) | 0 (0.0%) | 6 (3.4%) |
| An employee | 10 (5.6%) | 0 (0.0%) | 10 (5.6%) |
| Health and safety professional / consultant | 82 (46.1%) | 23 (12.9%) | 105 (59.0%) |
| Self-employed person | 16 (9.0%) | 1 (0.6%) | 17 (9.6%) |
| Trades union official | 2 (1.1%) | 6 (3.4%) | 8 (4.5%) |
| Safety representative | 5 (2.8%) | 0 (0.0%) | 5 (2.8%) |
| Training provider | 5 (2.8%) | 1 (0.6%) | 6 (3.4%) |
| Employer body / Trade Association | 3 (1.7%) | 5 (2.8%) | 8 (4.5%) |
| Other | 4 (2.2%) | 6 (3.4%) | 10 (5.6%) |
| No answer | 1 (0.6%) | 2 (1.1%) | 3 (1.7%) |
| Total | 134 (75.3%) | 44 (24.7%) | 178 (100.0%) |

The main themes regarding the clarity of this definition were:

Adventure activity

- What is the cross-over with the Activity Centres (Young Persons Safety) Act 1995?
- Self-employed workers will not have any familiarity or understanding of the Adventure Activities Licensing Regulations 2004.
- The proposed revocation of the Adventure Activities Licensing Regs 2004, will leave vast areas excluded.

Hazardous thrill-seeking activity

- Although reference is made to bungee jumping it does not refer to other bungee operations.
- Self-employed people may not consider their equipment to be thrill seeking so a further definition should be considered.
- Too broad and subjective what is thrill seeking for one person will not be thrill seeking for another.
- Does this apply to a horse-riding instructor?

Hazardous Production Activity

Self-employed Consultation

- It would be helpful if it was made clear that "'hazardous production activity'" includes activities undertaken in the film and television industry whether they occur in a live setting or for the purpose of recording/ broadcasting or other transmission to a live or remote audience. A suggested definition would be as follows: 'Hazardous production activity' includes circus acts and stunts and activities undertaken for the purpose of recording/ broadcasting or other transmission to a live or remote audience. 'Event, exhibition or venue' includes concerts fairs, film and television locations and sets. We are concerned that self-employed persons are required to undertake an assessment as to what is "'hazardous'". It is also unclear what factors are relevant in making this assessment and how this is judged. We would suggest including clarification as follows: In assessing whether an activity is "'hazardous'" regard should be had to the likelihood of harm/injury occurring:
 - (i) to any person involved in that activity in any capacity;
 - (ii) to other workers at the site or place where the activity occurs or
 - (iii) to any member of the public at the site or place where the activity takes place

as a result of the material(s) being used and/or in relation to the desired outcome of the activity.

- Hazardous production activity needs a fuller definition. Within the TV and Film industry this could be interpreted in a wide number of ways. The wide and vague definition is useful to us because it means that we can choose to define virtually anything we do as a "hazardous production activity" but equally it's going to be a difficult definition for you to defend in court.
- Does this apply to TV production?
- The definition is ambiguous and its application to the entertainment sector is not clear.

Event, exhibition or venue.

- Can this definition be refined or narrowed?
- Does this include equestrian events, street entertainers, carnivals, children's shows, laser displays, operation of inflatables, venue decorators, interior designers and self-employed artists who create unsafe installations, does this include private events?
- What if it is not for entertainment purposes?
- Not clear what events would be included as using the Oxford Dictionary definition of entertainment a restaurant could be described as a venue for entertainment.

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- Does this include holiday accommodation? What about a swimming pool at a holiday cottage?
- The definition is ambiguous and its application to the entertainment sector is not clear.

Fairground, amusement park, theme park etc

- Does this include a kiddie's ride or play area in a retail garden centre?

Fairground equipment.

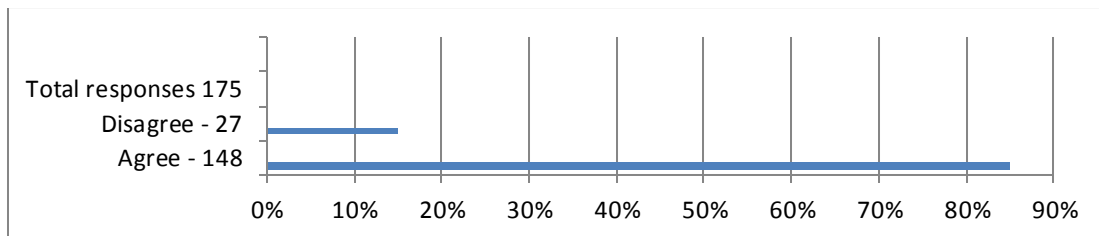
- The definition of fairground equipment should be expanded to include other equipment used / hired for example inflatables, bucking broncos, bungee jumping/run, zorbing and climbing equipment

Zoo

- Self-employed workers will not have any familiarity or understanding of the Zoo Licensing Act .

4.27 Gas

Definition: Any activity giving rise to a duty under the Gas Safety (Installation and Use) Regulations 1998.



| | Agree | Disagree | Total |
|--|------------|-----------|------------|
| An employer | 6 (3.4%) | 1 (0.6%) | 7 (4.0%) |
| An employee | 13 (7.4%) | 0 (0.0%) | 13 (7.4%) |
| Health and safety professional / consultant | 88 (50.3%) | 10 (5.7%) | 98 (56.0%) |
| Self-employed person | 16 (9.1%) | 1 (0.6%) | 17 (9.7%) |
| Trades union official | 3 (1.7%) | 5 (2.9%) | 8 (4.6%) |
| Safety representative | 5 (2.9%) | 1 (0.6%) | 6 (3.4%) |
| Training provider | 4 (2.3%) | 0 (0.0%) | 4 (2.3%) |
| Employer body / Trade Association | 3 (1.7%) | 3 (1.7%) | 6 (3.4%) |

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| | | | |
|------------------|--------------------|-------------------|---------------------|
| Other | 6 (3.4%) | 6 (3.4%) | 12 (6.9%) |
| No answer | 4 (2.3%) | 0 (0.0%) | 4 (2.3%) |
| Total | 148 (84.6%) | 27 (15.4%) | 175 (100.0%) |

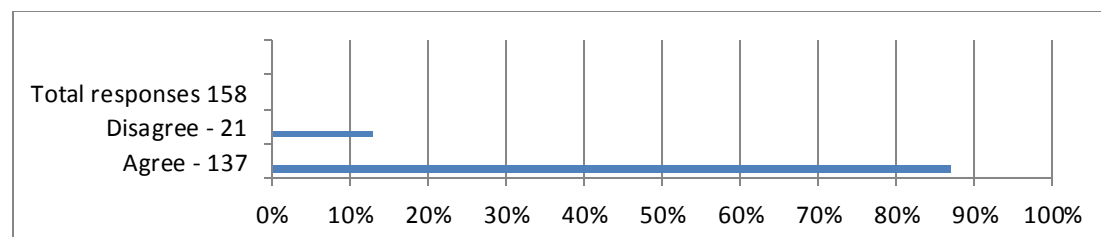
The main themes regarding the clarity of this definition were:

- This dangerous activity is best dealt with through the current regulatory regime which covers both employers and the self-employed.
- Self-employed gas installers will not have any familiarity or understanding of the Gas Safety (Installation and Use) Regulations 1998, which will only prompt confusion as to whether they are exempted or not.
- In order for a self-employed person to determine exemption status they would need advice or understanding of the relevant regulations in order to make this determination.
- There is a risk that non-qualified self-employed workers will assume an exemption where none exists.
- There should also be a reference to gas standards in schools -- i.e. Gas installations for educational establishments, IGEM/UP/11 Edition 2

Queries were raised about whether the following activities are included in the definition – would it relate to a food business operator ensuring gas appliances are maintained, are holiday homes a non-domestic premise?

4.28 Genetically modified organisms

Definition: Contained use within the meaning given in regulation 2(1) of the Genetically Modified Organisms (Contained Use) Regulations 2014.



| | Agree | Disagree | Total |
|--|-------------------|-----------------|-------------------|
| An employer | 6 (3.8%) | 1 (0.6%) | 7 (4.4%) |
| An employee | 10 (6.3%) | 0 (0.0%) | 10 (6.3%) |
| Health and safety professional / consultant | 82 (51.9%) | 8 (5.1%) | 90 (57.0%) |
| Self-employed person | 16 (10.1%) | 1 (0.6%) | 17 (10.8%) |

Self-employed Consultation

| | | | |
|--|--------------------|-------------------|---------------------|
| Trades union official | 3 (1.9%) | 5 (3.2%) | 8 (5.1%) |
| Safety representative | 5 (3.2%) | 0 (0.0%) | 5 (3.2%) |
| Training provider | 4 (2.5%) | 0 (0.0%) | 4 (2.5%) |
| Employer body / Trade Association | 4 (2.5%) | 2 (1.3%) | 6 (3.8%) |
| Other | 5 (3.2%) | 4 (2.5%) | 9 (5.7%) |
| No answer | 2 (1.3%) | 0 (0.0%) | 2 (1.3%) |
| Total | 137 (86.7%) | 21 (13.3%) | 158 (100.0%) |

The main themes regarding the clarity of this definition were:

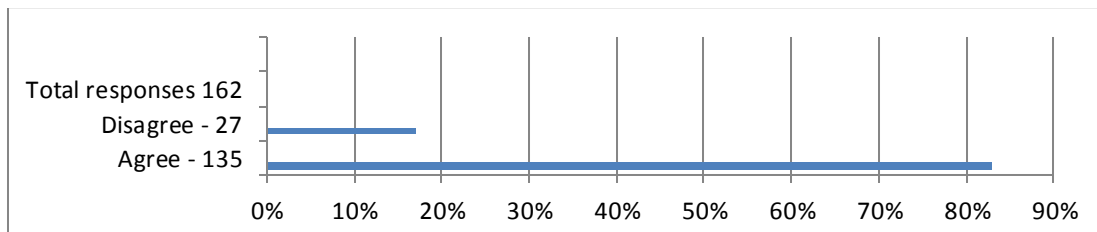
- GMO needs its own specific legislation, and I doubt many of its operations could be classed as 'self-employed'
- Self-employed workers working with GMOs will not have any familiarity or understanding of the Genetically Modified Organisms (Contained Use) Regulations 2014, which will only prompt confusion.
- The definition appears to exempt all other uses of GMOs outside of those specified in Regulation 2(1) of the 2014 regulations.
- In order for a self-employed person to determine exemption status they would need advice or understanding of the relevant regulations in order to make this determination.

4.29 – 4.30 Nuclear and ionising radiation

Definition: Any activity carried out on premises which are, or are on

- (a) a GB nuclear site (within the meaning of section 68 of the Energy Act 2013); or
- (b) an authorised defence site (within the meaning of regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998).

Work with ionising radiation (within the meaning given in regulation 2(1) of the Ionising Radiation Regulations 1999).



Self-employed Consultation

| | Agree | Disagree | Total |
|---|--------------------|-------------------|---------------------|
| An employer | 6 (3.7%) | 1 (0.6%) | 7 (4.3%) |
| An employee | 10 (6.2%) | 0 (0.0%) | 10 (6.2%) |
| Health and safety professional / consultant | 81 (50.0%) | 10 (6.2%) | 91 (56.2%) |
| Self-employed person | 15 (9.3%) | 1 (0.6%) | 16 (9.9%) |
| Trades union official | 4 (2.5%) | 6 (3.7%) | 10 (6.2%) |
| Safety representative | 4 (2.5%) | 1 (0.6%) | 5 (3.1%) |
| Training provider | 4 (2.5%) | 0 (0.0%) | 4 (2.5%) |
| Employer body / Trade Association | 4 (2.5%) | 2 (1.2%) | 6 (3.7%) |
| Other | 5 (3.1%) | 6 (3.7%) | 11 (6.8%) |
| No answer | 2 (1.2%) | 0 (0.0%) | 2 (1.2%) |
| Total | 135 (83.3%) | 27 (16.7%) | 162 (100.0%) |

The main themes regarding the clarity of this definition were:

- Beauty therapists carry out a number of procedures that involve risk to the health of their clients (e.g. electrolysis and micro-needling) and increasingly use lasers and IPL and other novel procedures as part of their cosmetic treatments. The use of lasers and other high intensity light sources in the beauty industry is only regulated by Section 3 of the Health and Safety at Work etc Act 1974.
- The self-employed may not realise that they have no exemption from Section 3(2) solely because the concentration of naturally occurring radon gas in their workplace exceeds 400 Bq m⁻³ in a 24 hour period (i.e. the definition of "work with ionising radiation" under paragraph 30).
- Self-employed workers working in radiation-heavy environments will not have any familiarity or understanding of the Energy Act 2013; the Ionising Radiation Regulations 1999; or the Health and Safety (Enforcing Authority) Regulations 1998, which will only prompt confusion as to whether they are exempted or not.
- In order for a self-employed person to determine exemption status they would need advice or understanding of the relevant regulations in order to make this determination.
- Could this be expanded to include non-ionising radiation (e.g. lasers and other dangerous light sources)?

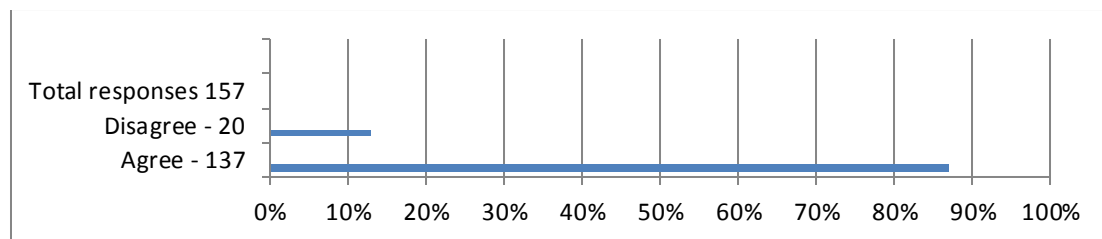
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- Queries were raised about whether the following activities are included in the definition – use of ionising radiation in schools, the use of high powered lasers.

4.31 Offshore

Definition: Any activity, to the extent not already prescribed in this Schedule, conducted from premises outside Great Britain to which the prescribed provisions of the 1974 Act apply outside Great Britain pursuant to article 3 of the Health and Safety at Work etc. Act 1974 (Application outside of Great Britain) Order 2013 (“the 2013 Order”).

In this paragraph, “prescribed provisions” has the meaning given in article 2 of the 2013 Order.



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 6 (3.8%) | 1 (0.6%) | 7 (4.5%) |
| An employee | 10 (6.4%) | 0 (0.0%) | 10 (6.4%) |
| Health and safety professional / consultant | 80 (51.0%) | 7 (4.5%) | 87 (55.4%) |
| Self-employed person | 16 (10.2%) | 1 (0.6%) | 17 (10.8%) |
| Trades union official | 4 (2.5%) | 4 (2.5%) | 8 (5.1%) |
| Safety representative | 4 (2.5%) | 1 (0.6%) | 5 (3.2%) |
| Training provider | 5 (3.2%) | 0 (0.0%) | 5 (3.2%) |
| Employer body / Trade Association | 4 (2.5%) | 2 (1.3%) | 6 (3.8%) |
| Other | 5 (3.2%) | 4 (2.5%) | 9 (5.7%) |
| No answer | 3 (1.9%) | 0 (0.0%) | 3 (1.9%) |
| Total | 137 (87.3%) | 20 (12.7%) | 157 (100.0%) |

The main themes regarding the clarity of this definition were:

- This dangerous activity is best dealt with through the current regulatory regime which covers both employers and the self-employed.
- The same confusion that this proposal will create onshore will also apply offshore.

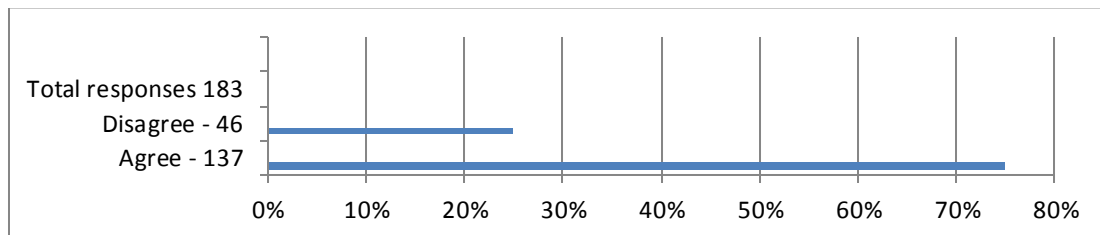
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- In order for a self-employed person to determine exemption status they would need advice or understanding of the relevant regulations in order to make this determination.

4.32 Advice

Definition:

- (1) Provision of advice by a competent person in relation to the carrying out of any of the activities set out in this Schedule.
- (2) A person is a competent person for the purposes of this paragraph if that person has sufficient training and experience or specialist knowledge in the area(s) on which they advise.



| | Agree | Disagree | Total |
|--|--------------------|-------------------|---------------------|
| An employer | 4 (2.2%) | 2 (1.1%) | 6 (3.3%) |
| An employee | 10 (5.5%) | 2 (1.1%) | 12 (6.6%) |
| Health and safety professional / consultant | 83 (45.4%) | 19 (10.4%) | 102 (55.7%) |
| Self-employed person | 15 (8.2%) | 3 (1.6%) | 18 (9.8%) |
| Trades union official | 3 (1.6%) | 5 (2.7%) | 8 (4.4%) |
| Safety representative | 5 (2.7%) | 0 (0.0%) | 5 (2.7%) |
| Training provider | 5 (2.7%) | 1 (0.5%) | 6 (3.3%) |
| Employer body / Trade Association | 6 (3.3%) | 4 (2.2%) | 10 (5.5%) |
| Other | 5 (2.7%) | 8 (4.4%) | 13 (7.1%) |
| No answer | 1 (0.5%) | 2 (1.1%) | 3 (1.6%) |
| Total | 137 (74.9%) | 46 (25.1%) | 183 (100.0%) |

The main themes regarding the clarity of this definition were:

- This definition seems to be defective and in need of redrafting. A person may be acting as required under 32(1) BUT not be 'competent' under the definition under 32(2): in which case they would not be within scope. You could consider dropping the word 'competent' from 32(1). Then all persons providing advice, competent or not, would be within scope: and the incompetent will not be able to slip through this apparent drafting error/glitch.

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- What is the objective of this clause? Is it to include all consultancy work relating to any one working in any of the fields listed above?
- The definition of advice requires clarification. Does it include conducting asbestos surveys, auditing, production of technical documents. Is the advice written or verbal, is it advice under a formal contract?
- Sufficient training and experience should be further refined.
- What about advising on non-prescribed undertakings?
- The provision of advice itself cannot be considered a risk activity. This will further encourage overzealous interpretation of 'Health and Safety' by consultants for fear of both litigation and now this law specifically referring to 'advice'. It is only when bad advice is followed and results in an incident that it could conceivably be a concern, but even then it detracts from the primary responsibility of the person in control of the activity. Advice also covers a wide range of applications from contracted consultancy, writing statutory reports and casual conversation. Presumably the HSE is also included in this in their commercial activities. Recommend leave the law as it is.
- What about the consultants register?
- This section is badly drafted and unhelpful. It is unclear whether this refers to any worker acting in a competent person capacity as required by regulation, or specifically to self-employer Health and Safety Advisers. In either case, by not claiming to be competent, it would be permissible to claim exemption from health and safety law as not undertaking a prescribed activity.
- To anyone other than a health and safety professional, this definition has alarmingly little meaning and any non-qualified person could be tempted to self-define as "competent".
- Provision of advice in relation to activities not included in the prescribed list will be exempt leading to risks to the self-employed and the public e.g. manual handling, falls from height and management of contractors.
- As drafted this clause means that the owner of a self-catering holiday home who answers a question from a guest about where to dispose of refuse, is giving advice and this clause applies. This needs to be reconsidered from scratch.
- Queries were raised whether in the definition a health and safety trainer is included.

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5.0 Summary of responses regarding the general principle of the exemption

5.1 Although not specifically requested to do so, respondents took the opportunity to comment about the general principle of the exemption when answering question 1.

5.2 Some common themes which emerged were:

- This is just an unnecessary change that will add to the burden e.g. self-employed people will spend time and have difficulty clarifying whether they fall within the prescribed activities rather than reducing bureaucracy.
- A self-employed person working alone and not having any impact on others should be exempt.
- The current legislation is perfectly adequate. The Regulation is no clearer or more accurate but merely provides an exhaustive list of activities, machinery and substances which could pose a risk to others.... To have an exhaustive list of activities, machinery or substances, which could be dangerous or a risk to other persons is a totally nugatory exercise in common sense and will cause more effort, provide less protection and will not reduce bureaucracy.
- This will create, not lesser bureaucratic burdens; cause potentially dangerous confusion as to whether the worker is required to comply with health and safety law and may lead to bogus self-employment.
- Definitions are generally open to interpretation and misunderstanding and will potentially increase legal costs for the self-employed.
- If this kind of activity is only part of several activities the worker does, he might hold health and safety duties for some activities but not for others which creates completely confusing situation for himself, fellow workers and the public / clients.
- Current universality of HSWA provides the simplest way for the self-employed to understand their duties and the approach that applies to them.
- In order for a self-employed person to determine exemption status they would need advice or understanding of the relevant regulations in order to make this determination.
- We are concerned that this is so complex as to be unworkable.
- As a Health and Safety consultant I will be spending time clarifying with my clients whether this applies to them or not. Government's and

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Parliament's time spent on making law and amending the existing laws, I can see this appearing on "myth of the month" and the myth panel having to clarify this.

- As shown by the Gangmaster legislation there is lots of scope for disagreement about what is out and what is in.
- The cross reference to other regulations within the draft regulations is not clear and not likely to happen. Many self-employed workers will assume that they are not included, reducing their standards of protecting themselves and others.
- Small businesses might reclassify themselves as self-employed co-operatives to avoid compliance with the new S. 3(2).
- It is totally unacceptable to propose such exemptions on moral and ethical grounds.
- How will a self-employed person know on a day to day basis if they are in or out?
- No amount of advice can make up for the fact that this is a very poorly thought- out piece of legislation. The current situation is that if a person performs a risk assessment and finds there are no significant risks they do not need to do anything. The idea that H&S is a burden is a myth.
 - (i) By messing with the definitions, legislators are doing the following:
Creating a legal minefield subject to the vagaries of developing case law
 - (ii) Removing the legal responsibilities from the business sector most likely to cause an accident
 - (iii) Striking at the very threefold route of the moral, legal and financial obligations of health and safety law by removing the concept of "duty of care" from the self-employed
 - (iv) Risking the slow death of businesses as risk averse customers refuse to employ them.

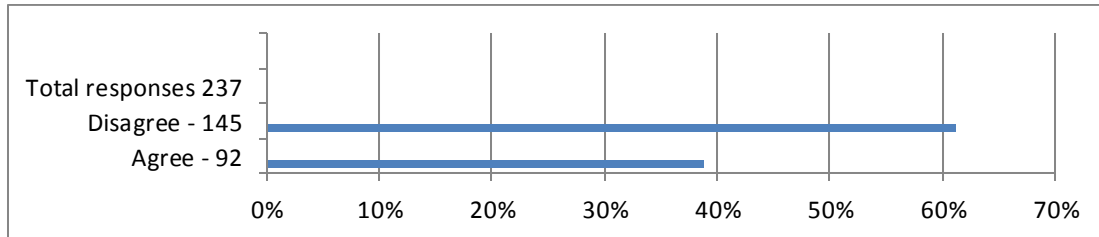
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6.0 Summary of Responses to Question 2

6.1 Question 2 of the consultation asked respondents:

‘From the definitions for work activities in the Regulations, do you think someone who is self-employed would know if the law applied to them or not?’

The results are detailed below:



| | Yes | No | Total |
|--|-------------------|--------------------|---------------------|
| An employer | 5 (2.1%) | 4 (1.7%) | 9 (3.8%) |
| An employee | 9 (3.8%) | 11 (4.6%) | 20 (8.4%) |
| Health and safety professional / consultant | 47 (19.8%) | 68 (28.7%) | 115 (48.5%) |
| Self-employed person | 13 (5.5%) | 7 (3.0%) | 20 (8.4%) |
| Trades union official | 2 (0.8%) | 8 (3.4%) | 10 (4.2%) |
| Safety representative | 3 (1.3%) | 3 (1.3%) | 6 (2.5%) |
| Training provider | 4 (1.7%) | 3 (1.3%) | 7 (3.0%) |
| Employer body / Trade Association | 7 (3.0%) | 17 (7.2%) | 24 (10.1%) |
| Other | 1 (0.4%) | 14 (5.9%) | 15 (6.3%) |
| No answer | 1 (0.4%) | 10 (4.2%) | 11 (4.6%) |
| Total | 92 (38.8%) | 145 (61.2%) | 237 (100.0%) |

If the respondent disagreed they were given the opportunity to provide additional comments. This section also includes comments from respondents who returned a narrative response.

A summary of the key themes emerging from these are below, grouped by sectors along with some quotes from key stakeholders.

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6.2 Trade unions

It was clear that the Unions strongly oppose the proposal to exempt any self-employed worker from the universal coverage of HSWA. Key themes emerging from the Union comments were:

- The definitions are too general, too complex or do not reflect the nature of the work that they do.
- It will create confusion for self-employed.
- Increase in bogus self-employment.
- The regulation is so confusing that it will be rendered unenforceable.
- This goes beyond Professor Löfstedt's recommendation.
- Confusion between what is an undertaking and what is prescribed activity.
- Misinterpretation.
- Increased probability that self-employed workers will injure or kill themselves or others.
- Proposal will lead to increased levels of bureaucracy and regulation
- The extent of the application of the law if carrying out a prescribed activity.
- Leave the law as it is.
- The creation of business burdens for the self-employed that currently do not exist.
- Reduced protection for workers.
- Health and safety standards likely to be imposed by contract compliance rather than relying on statute.
- Work at height and workplace transport are missing from the list.

Key quotes included:

Unite the Union - "As we strongly disagree with the proposal and have made it clear that we believe that this proposal is a recipe for dangerous confusion, it follows that we do not believe that a self-employed person would know if the law applies to them or not especially as the effect of regulations is in many cases to make the definition more complicated.

GMB - "GMB strongly opposes the proposals to exempt any self-employed workers from the universal coverage of the Health and Safety at Work Act 1974. We firmly believe that the proposals will increase the probability that self-employed workers will injure or kill themselves or others and cause huge confusion amongst the self-employed and those who work with them. This supposedly "deregulatory" measure will create huge and unnecessary levels of bureaucracy and increased regulation in trying to make an unworkable set of proposals fit the wider risk-based statutory framework."

TUC - "The definitions provided are either too general, too complex or simply do not reflect the nature of the work that self-employed people do. The concept of breaking down an undertaking to activities and then relating those

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activities to specific regulations is an extremely complex exercise which is going to produce nothing but confusion. I suspect that the HSE would find it extremely difficult to find a self-employed person who could accurately say which of these activities apply to the work that they do.”

Prospect - “It is unrealistic to expect someone who is self-employed even to be aware of the Regulations, not least given the impression the self-employed will have that they are exempt. As for wading through definitions that health and safety experts and lawyers are saying are unworkable - plainly this is absurd.”

UCATT - “They will NOT know whether or not the law applies to them, because in most cases the person would have to look up another set of legislation to find out the actual definition. We are confident to assume that in our sector - construction - the smallest minority of workers would actually go on to look up the definition in question.”

USDAW - “Far from clarifying the law the changes make it much more complex and difficult for a self-employed person to know where they stand.”

6.3 Member of the Public / Self-employed

Key themes which emerged from self-employed / members of the public were:

- The self-employed will assume that the exemption will apply to all of them
- The difficulty for the self-employed in obtaining access to up-to-date regulations which are cross referenced.

6.4 Trade Associations

Key themes which emerged from Trade Associations were:

- Self-employed would need assistance to understand the Regulations or pay for advice
- Proposals are based on a misconception that health and safety regulation is unnecessary and burdensome.
- Many will simply assume they are exempt
- Self-employed workers deserve the same protection as all other workers.
- This goes beyond Professor Löfstedt’s recommendation
- Proposals will cause misunderstanding and misinterpretation
- There will be additional burdens on business to communicate these requirements and educate their contractors
- Definitions are complex and will fail to achieve the simplification required.
- Those working in low risk environments already have minimal burdens on them.

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- Those seeking to contract SEP will have an additional burden of guiding, assisting, monitoring and assessing the SEP in making assessments.
- List of prescribed activities to be exempt will never be fully inclusive.
- Definitions are unclear and the list contains references to other complex legislation. Unlikely that a SEP will check list/ regulation alongside each of their work activities.
- Water plumbing systems and work on heating oil and solid fuel systems should be prescribed activities.
- The list does not include vehicle and other drivers
- The list needs to be a comprehensive code of prescribed industries with sufficient detail and not cross refer to other legislation / regulation
- Who would bear legal liability for anything which went wrong as a result of such exempted workers actions?
- The whole legislative proposal is too bureaucratic
- No one occupation should be exempt from HSWA.

Key quotes included:

CBI - The CBI provided a narrative response. “We are extremely concerned that the self-employed exemption in its current form is not fit for purpose and will not lead to substantial improvements....we have become concerned by the change in the scope of the legislation. This has shifted from an exemption for those whose work poses no risk of harm to others, as originally suggested by the Lofstedt review as an “easy-to-grasp” concept, to an exemption for all self-employed persons except those undertaking activities on a prescribed list. The new scope as it currently stands is not fit for purpose. Above all, a list of prescribed activities to be exempt from the legal change will never be fully inclusive. In short, the new exemption will be costly to implement, without bringing the intended benefits. The potential business burden associated with introducing this new exemption – originally intended to reduce burden – is substantial.

With this in mind we call for the government to reassess its current approach. As it stands, we therefore cannot be fully supportive of the new exemption. We feel that the current form and wording of the legal change has reached such a place that the best way forward would be to return to square one and do a thorough review into what the legislation should look like in order to achieve the aims as set in the Loftstedt review ”

English Association of Self Catering Operators - “We fear that the reputation of the industry may suffer if there is a public perception that holiday accommodation owners are outside the law. Guests may worry that holiday homes in England are unregulated and may not be in a safe condition for themselves and their children. The proposal offers little or no benefit to the responsible holiday home owner, who will continue to maintain his/her property to a high standard and take care to ensure the safety of guests. The only benefit will be to those owners who offer poor standards and who seek to avoid their responsibilities. For these reasons we do not support the

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proposal.”

Anonymous - “members believe that there is little need for the proposed change and suspect it will only serve to confuse matters further. Such additional confusion can only lead to increased risk in other sectors”.

Residential Landlords Association - Provided a narrative response. “We welcome very much the proposed relaxation and believe that it is a step in the right direction in reducing unnecessary burdens on the self-employed.”

Federation of Small Businesses – Provided a narrative response. “FSB supports the intention behind the principle of exempting some self-employed from health and safety legislation but has identified in their narrative response that “striking the right balance between removing unnecessary compliance burdens, avoiding too much uncertainty for the self-employed and creating unintended loopholes will be a difficult task.”

APIL – Provided a narrative response. “Many of the definitions in the prescribed list are unclear. The list leads readers on a wild goose-chase through numerous sets of regulations to find a definition.”

British Compressed Gases Association - “Industrial society has spent many decades trying to enhance Health and Safety awareness, attitudes and performance and we see no logic for one sub-set of workers to have their responsibilities to keep themselves and others around them safe diminished”.

Safety Assessment Federation - “This consultation does not appear to address the real questions, such as, what problem are we trying to solve, what evidence do we have that the problem exists, is the current law being properly interpreted and applied and are better solutions available without having to change the law.”

EEF - “That the current proposals being put forward on exempting the self-employed are not fit for purpose in their current form.

We think that prescribing work activities is likely to have unintended consequences. Lists of prescribed activities can never be fully inclusive or the definitions sufficiently precise. It will inevitably mean that some self-employed whose work activities pose a risk to others become exempt. This is not a desirable outcome.”

Anonymous - “Removing this level playing field means that even the clearest of legislation, which the draft regulations are not, will introduce an element of doubt where previously clarity was ensured.”

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6.5 Non-Government Organisations

Key themes which emerged from Non-Government Organisations were:

- The change will cause confusion
- Self-employed persons are being referred to one place to another.
- Any time saved will be overtaken by the time spent interpreting the regulations

6.6 Local Authorities

Key themes which emerged from Local Authorities were:

- No reflection of the National LA Code. Self-employed persons in low risk industries are already not inspected because of the LA National Code.
- Perception of burden is a contrived concept
- The change is not evidence based.
- Increase in compensation culture as only means of recourse will be via civil cases. Benefit to lawyers.
- This brings in new legislation that increases the red tape for self-employed persons.
- If a list is used it should be only those who are exempt.
- Create anomalies between employers and self-employed and therefore create a competitive advantage.
- Businesses will not contract to the self-employed as they will pick up the liability.
- The change will lead to confusion for the self-employed and for enforcing officers and will cause an immediate burden due to familiarisation and assessment.
- Workplace transport and work at height should be included. Skin piercers, beauticians, tattooists and window cleaners are not included.
- It will require a SEP to analyse every definition to understand if they are exempt or not
- Far removed from the Lofstedt recommendation.
- Create an anomaly in that all employees (s 7) will still have a legal duty to others whereas SEP who would have greater control over how work activities are carried out would not have a duty.
- What happens if a risk is realised from an exempted person?
- Self-employed persons are unlikely to appreciate that they will have separate duties under specific regulations e.g. COSHH, falls from height.

Key quotes included:

Birmingham City Council -“On the overall premise of exempting low risk SEP from the duty under HSWA to themselves, we think this is a positive move...however, I cannot agree that any business (small or large) should be exempt from HSWA with regard to section 3, a duty not to (sic) protect others

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not in their employ.”

Edinburgh County Council -“Create confusion. The proposed regulations list 32 work activities and note 35 other pieces of legislation in footnotes to be considered in determining whether or not a SEP is exempt or not. Proposal is unsatisfactory, bureaucratic and potentially dangerous proposals are based on Lofstedt's perception - with the perception that the law is inappropriately applied - it isn't.”

Rushmoor County Council - “No need to change the current legislation. It is not wanted by businesses or regulators. The existing legislation already provides an exemption for self-employed persons who do not expose others to risks to their health and safety.”

Preston City Council - “It is difficult to understand why the HSE are making recommendations in supporting this change I find it unimaginable that the body responsible for the HSWA wants to make such a significant change after 40 years of implementation....

This is a situation that Robens never wanted to see - HSWA has to be all embracing and based upon the premise that if you create a risk to other persons you should be regulated. If you don't create risks you won't be regulated against - what could be more simpler than that?”. It really is badly thought out and because the proposed law is trying to be all things to all people, it is very poorly drafted, creating a two tier H&S system.”

Leeds City Council – “Self- employed persons who pose no risk to others are already exempt under S3 (2), that is the whole point of it.”

6.7 Academic

Key themes which emerged from Academia were:

- Self-employed persons will not read / ignore regulations and assume that they are exempt.
- The reference to other legislation is confusing.
- It is not clear whether the exemption only applies to the listed work activity or all their work activities

Key quotes included:

Bristol University - “It is a high risk approach to tell a group of individuals that the law does not apply to them but then list all the areas in which it does apply.”

University of Essex - “We sometimes place students with self- employed people (e.g. professional artists). If they take on a work experience placement, will they then have to comply with H&S legislation. If so, this will be a disincentive for them to accept placements.”

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6.8 Consultancies

Key themes which emerged from Consultancies were:

- The proposal will create confusion.
- Reference to other legislation makes the proposal complex.
- Most self-employed would be completely unable to interpret the Regulations without assistance and would be unlikely to read them anyway.
- Leave the law as it is.
- The list does not cover every industry and self-employed persons will create risks to themselves and others. The law should not be changed.
- Self-employed persons will assume exemption from the law.
- The basic principle of this legislation is fundamentally flawed.
- Intentional misinterpretation to avoid duties.
- Is fishing included?
- Self-employed persons would require legal and professional assistance.

6.9 Charity/ Professional Bodies

Key themes which emerged from Charities/ Professional bodies were:

- Open to misinterpretation
- Self-employed persons believing that they are exempt from the law.
- Potential for an increase in accidents and injuries
- Concerns about the complexity and scale of h&s law impacting small businesses.
- Present consultation goes far beyond rationale underlying the change proposed in the Lofstedt review.
- There will now be instances where SEP could undertake activities that have the potential to harm others but be outside scope of the law as not on the prescribed list.
- Change that erodes the framework of our legal system.
- The concept of reliably identifying those who pose no potential risk to others is flawed and unworkable.
- The current requirements are unworkable.
- Will lead to lower health and safety standards.
- Relying on the prescribed activities approach was originally rejected by HSE following advice from its sector experts.
- The list fails to adequately capture all those who pose a risk of harm to others.
- Unlikely that SEP will check references to regulations.

Key quotes included:

RoSPA - "Providing a list of prescribed activities has the potential to act as a ready reckoner for the target audience, and from a practitioner standpoint the

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definitions appear clear, however the lack of underpinning knowledge within the target audience may place them at a disadvantage.”

“There is the potential that a self-employed person could be engaged in several tasks while doing one overall job, only some of which tasks are prescribed and as a consequence may move in and out of legal duties under S3(2)”.

“If anything this approach is more burdensome in terms of what will now be expected of the self-employed person which was not the intention of Lofstedt, whose motivation was to help improve the perception that health and safety law is appropriately applied. A radical move if the desired outcome is not met and the numbers of accidents and injuries increase due to a lack of awareness within the target audience.”

Institution of Occupational Safety and Health (IOSH) - “We believe it is unnecessary, unhelpful and unwise to exempt certain self-employed people from health and safety law at all. However, in response to this question about whether someone would know if they are exempt or not from the definitions provided, we believe that in many cases, no they would not, depending on the individual concerned and their activities. Worryingly, some self-employed who are not exempted under these proposals may wrongly think that they are.”

6.10 Business

Key themes which emerged from business were:

- Open to misinterpretation and confusion.
- Self-employed will rely on client organisations for advice.
- The self-employed will assume exemption
- Self-employed do not understand their current legal obligations.
- The self-employed will end up paying consultants to inform and advise them.
- Leave the law as it is.
- Most self-employed persons will not seek out the regulations.
- Current proposals go beyond and are significantly different to the Lofstedt recommendation
- This would add unnecessary costs and uncertainty with no clear safety benefits being realised.
- The proposed definitions are not sufficiently clear enough to give confidence to determine if an exemption applies or not.
- The proposals rest on a poor evidence base.
- Instead of reducing the perceived burden on small businesses actually create more problems for larger companies and individuals.

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Key quotes included:

Anonymous – “A so-called 'simple idea' has become weighed down with legislative impracticabilities.”

Anonymous - “This is an ill-thought proposal that makes legislation far more complex (rather than "it applies to everyone") and the people least likely to understand the changes risk being the least resourced in terms of H&S knowledge / support. Lawyers are going to earn fees arguing if a person fits into one of these categories rather than the law preventing an incident in the first place.”

Renewable UK – “The proposal could lead to a perceived "2 tier" H&S landscape with the resulting safety culture problems that could arise.

It is highly likely that legal and related contractual matters will need to be reviewed by employers resulting in unnecessary costs and potentially project delays while such checks are carried out.”

Anonymous - “We believe that, because it is prescriptive it will be clear, however it will be so complex that problems will arise for coverage under health and safety law will now turn on very fine points and required detailed examination of the law.”

Thompsons Solicitors (narrative response) - “A new set of regulations that refer to existing regulations is not a simplification of the law. This is a backward step to an outdated era of regulation. Not what Lofstedt intended.”

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7.0 Summary of responses to question 3

7.1 Respondents were asked if they had comments about any of the assumptions that had been made in the Impact Assessment (IA) that accompanied the consultation.

7.2 Responses to Question 3

| Response | Number | Percentage (%) |
|----------------|------------|----------------|
| Yes | 86 | 35 |
| No | 110 | 45 |
| Not say | 50 | 20 |
| ALL | 246 | 100 |

7.3 Thirty-five percent of respondents stated that they would like to comment on the assumptions made in the Impact Assessment (IA) presented to them. A small number of those who stated they did not want to, or didn't know, still entered comments. Those were generally expressing disagreement with the policy proposal itself, or with IAs and use of cost estimates in general.

7.4 Of those who stated their intention to comment, almost half were health and safety professionals. There were also a number of respondents from trade unions and trade associations, and a small number stated they were self-employed.

7.5 The main themes were:

- The most common issue that emerged was the potential for confusion for the self-employed in assessing whether they are exempt according to the list of prescribed activities. A number of respondents either doubted that there would be cost savings to the self-employed because of time needed to determine whether they are exempt, and/or concerns that some assessments would not be accurate, leading to mistaken assumptions about legal duties.
- A number of respondents raised concerns about potential for increased health and safety incidents and disagreed with the assumption that the exempt self-employed would not change their behaviour with regards to health and safety.
- Many of the respondents did not answer the specific question asked, but chose instead to provide general comments of either support for or opposition to the proposal.

7.6 Key quotes included:

Stage Electrics

There is absolutely no evidence that I am aware of for the HSE to comment that cost savings of £220 K will be made by self-employed people who currently allegedly spend time familiarising themselves with current safety obligations. I do not agree that this proposal will in any way contribute to an improved perception that H&S is proportionate and sensible. It seems totally irresponsible to exempt self-employed persons from safety obligations.

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Anonymous- “The assumption that exempted self-employed would not reduce the precautions they are currently taking & as such there would be no adverse effects on health and safety, is at best naive and at worst dangerous. If there is the potential that a struggling self-employed person can save money by scrimping on safety it is extremely likely that they will.”

DTD Training Ltd – “I just don't see that the costs are accurate. As assumptions at best they cannot accurately determine the saving to business and don't take into account fully the potential for harm / failure for misrepresentation and misinterpretation of the requirements.”

Anonymous – “This proposal is insane, driven by political dogma. The only people NOT included are shopkeepers, estate agents, lawyers and accountants, if they employ just one person they are caught by the full panoply of H&S law. If the government is trying to encourage small businesses to grow this legislative change is diametrically opposed to that. It is a classic perverse incentive. Why would anyone in an excluded category take the first step to take on their first employee?”

USDAW – “Given the complexity and confusion introduced by the draft regulations assumptions that self-employed will make the correct decision about their position and on the numbers who will face uncertainty are unrealistic. Equally assumption that costs will be reduced for new self-employed are not justified as they will still struggle to know whether they are covered or not. The assumption that behaviour will not change as a result of the exemption is naïve.”

Institution of Occupational Safety and Health (IOSH) - “IOSH believes the impact assessment is significantly flawed and under-estimates the costs... The impact assessment (para 90, p.42)¹ acknowledges that some exempted categories have injury rates that are statistically significantly higher than the average for all occupations, citing the Labour Force Survey data 2001/2 - 2012/13, which is clearly a concern.

Clearly, if HSE proceed with these proposals, the added costs of communicating these changes and providing advice to address potential confusion should also be estimated and included (see answer to Q4 below).

Anonymous - The impact assessment claims a benefit in that 115,000 new self-employed people per year would not need to familiarise themselves with health and safety law. However, elsewhere in the assessment, it's suggested that self-employed persons are not familiar with all potentially relevant health and safety law that might apply to them anyway.

Taking account of all the available evidence" it is estimated that a self-employed person spends one hour familiarising themselves with health and safety law. It does not say if this is a one-off or per year. In any event, is one hour really that burdensome?

A saving of £20 per individual is estimated. Is that really worth removing a

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statutory duty to take reasonable care for the health and safety of customers and others who may be affected by the self-employed work activities and, in the guise of being deregulatory, create a far more complex regulatory framework of exemptions and partial exemptions.”

TUC – “There are a number of incorrect, vague or unsupported assumptions made in the impact assessment.

The HSE's own research (para 59) shows that of all the interviewees that were asked whether the removal of a legal obligation would change how they work, 100% said it would not. Clearly, by the HSE's research, there cannot be any cost-savings, yet they have still sought to claim that there will be a 10 year saving of £8.4 million to the existing self-employed.

The TUC does not accept that there will be no change in the way that self-employed people work. We believe that there will be increased risk taking and as such there will be a considerable cost to themselves, others and society.

In relation to the specific assumptions, the estimates of coverage are based on an incorrect assumption that 2 million people will be exempt. Given the wording of the current list of activities, that is clearly not going to be the case with the vast majority of self-employed undertaking at least one of these activities at some point.

The presumption that one-off familiarisation will cost £3.6 million is based on flawed assumptions.

The attempt to cost what existing businesses do is so general as to be useless. The IA itself accepts that there is no way it can be done. The one example that they give (a manual handling risk assessment) again only shows the potential theoretical gain by not having to conduct a risk assessment but not the much higher cost of not doing one and injuring their back.

Para 48 of the IA states that 'only 5 out of the 60 people interviewed thought they had any H&S obligations, the remainder said that they did not or they were not sure.' So where will the cost savings come from? Change will simply increase the workload of managers and safety practitioners as they will be burdened by having to explain the changes.

Changes to subsidiary H&S regulation and ACOP's will be a massive task creating yet more "burden" on everybody.”

UCATT – “We disagree with various assumptions made in the impact assessment: In our view the legislation will not qualify as "Out", as it is a new measure which does not scrap another piece of legislation. It is an additional piece of legislation with the unfortunate effect of confusing whole arrays of previous legislation.

We would be keen to see an example of what the "health and safety burdens on self-employed individuals" actually are, especially of those that will be

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exempt from the legislation.

The estimates in Point 79 are dubious. There will be millions of self-employed workers where it is not straightforward to determine whether they are undertaking a prescribed activity. Workers will be utterly confused in terms of their duties if some of their work activities fall into the prescribed list and others don't.

We are highly concerned to read that HSE is already aware that many of the activities that will be exempt "have the potential to pose a risk of harm to others" (Point 92, page 42). This includes motor mechanics and auto engineers, woodworkers, metal workers and maintenance fitters. It is beyond belief that HSE knowingly exempts workers from health and safety duties (and therefore protection) which pose a risk to themselves or others.

Prospect – “The impact assessment assumptions are flawed. They lack the required objectivity and are plainly inaccurate because as the IA states itself, there is a need to understand better the diversity and risk profiles of the self-employed. Making policy assumptions prematurely plainly isn't sensible and the corollary is they cannot be proportionate. HSE suggests the self-employed will be able to determine legal application/exemption within an hour. The justification is wanting.”

British Safety Council – “We believe that there is no clear evidence to support the assumption that the "self- employed would not reduce the precautions they are currently taking and that there would be no adverse effects on health and safety.”

Unite the Union – “The impact assessment actually confirms, through its vagueness and the many assumptions made without substantive evidence, that that there are no benefits, economic or otherwise, associated with this proposal.

Paragraph 90 and Tables 2 and 3 are particularly worrying. Dangerous presumptions are being made about groups that will be exempt under this proposal even though their activities are recognised as hazardous and are potentially harmful to others. For example a number of occupations who work with dangerous substances are listed including motor mechanics and auto engineers, (there are several COSHH sheets on aspects of this work - and a dedicated HSE supported motor vehicle repair forum), woodworkers, (wood is listed in Schedule 1 of COSHH as carcinogenic) and metal working (several more COSHH sheets are available on this issue). In addition, wood, animals and isocyanates are all listed by the HSE as causes of occupational asthma. How could these activities be exempt? This constitutes a major danger to society and considerable potential costs to society.

Where is the evidence to demonstrate the benefits to the self-employed (and others) of being compliant with the law by preventing injury and illness to themselves or others?”

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Wrexham C.B.C. – “The Impact assessment has no evidence base and does not cost the implication of failure to misinterpret or misunderstand the complex new legislation by the self-employed. The Impact assessment also fails to consider the cost to an injured person, civil claims, the National Health Service, social care and the social morality of UK plc.”

Anonymous – “The impact assessment is ridiculous. It is self-evident that if some self-employed think that they are exempt then the precautions they take will reduce. If this is not the case then there is no purpose in any health and safety regulations. The cost estimates of how long it would take to familiarise themselves is incredibly small. In addition the savings of business familiarising themselves with obligations would increase not decrease due to complexity and uncertainty”

Anonymous – “We do not believe sufficient account is taken of clients and industry bodies who are likely to be put to additional expense in clarifying that self-employed workers in prescribed industries are still subject to health and safety law to counter the general perception that is likely to form to the contrary.”

8.0 Summary of responses to Question 4

8.1 We asked how HSE should communicate the change in health and safety law with self-employed people so that they know if the law applies to them or not? 202 respondents answered this question, the key themes which emerged to communicate the change in the law were:

- web-based guidance including guidance specific to industries and worked example, FAQs.
- Awareness raising by trade associations, trade bodies representing self-employed people, Chambers of Commerce, Unions, HMRC, training bodies, Safety Groups and LAs.
- Social media sites e.g. facebook, twitter, apps, newsletters.
- Writing, e-mailing all existing HMRC registered self-employed persons.
- Providing leaflets to Business Gateways, SMEs, insurance companies, banks to include when business policies are taken out.
- Workplace posters.
- A publicity campaign via Radio, TV and trade press.
- Flow-charts or online questionnaire tool.
- Helpline.
- An Approved Code of Practice.

8.2 Key quotes included:

Anonymous – “I think a web based wizard type tool would work best. Asking the self-employed person questions and they choose multiple choice answers giving them an outcome of exempt or not exempt. The questions should be jargon free and use down to earth phrases and be totally unambiguous. It would be good if they could get a print out of this and it suggests that they

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review this annually or if they have changes to the work activities they are involved in.”

Anonymous – “The current signposting on the HSE homepage is likely to be the most straightforward. A series of questions in a decision tree may also assist sole traders.”

British Glass Manufacturers' Confederation – “This will require significant cost and effort and an extensive communication campaign. A mixture of simple guidance, web tools, basic leaflets, social media and radio advertising will be needed in addition to cooperation with representatives, regional safety associations, trade associations and businesses.”

British Safety Council – “A far reaching media campaign will be necessary given the significant number of self-employed people who will be affected by the changes. The self-employed need to be helped to answer the question, "Am I in or out?"

CITB (Construction Industry Training Board) – “For construction, we think that a joint awareness campaign that involved partner organisations, such as CITB, would ensure that there was a consistent message that was being communicated to self-employed construction workers on whether the law applies to them and what this means for them.”

Federation of Small Businesses – “A support system should be in place for self-employed people who might be unsure of their obligations, a helpline should be staffed by experts. Should be accompanied by an e-mail address that the self-employed can e-mail for advice.”

Institution of Occupational Safety and Health (IOSH) – “IOSH believes that the proposed web-based guidance will be insufficient, duty holders may not have ready access to the Internet or may have IT, literacy or language difficulties. Duty holders may need to discuss their individual circumstances in order to establish whether or not they are exempted. So, we suggest that a dedicated, multi-lingual HSE phone line would need to be provided for this purpose.”

RoSPA – “Communicating health and safety related information to this target audience has been a consistent problem, web-based guidance will only go part of the way, use of social media, develop a mobile phone app, but these rely on the target audience engaging with the process. In addition work with and through the UK's wider health and Safety network, e.g. RoSPA, similar bodies, Trade Associations, Chambers of Commerce, Federation of Small Businesses, Enterprise related organisations all of which could respond to well-constructed case studies.”

Anonymous – “Provided a link on the HMRC Tax Self-Assessment webpage, 'are you aware of your health and safety duties'.”