

OVERHAULING ACOPs:

The British Safety Council's response

EARLIER THIS SUMMER the British Safety Council surveyed its members on the proposed review and repeal of 30 of the Health and Safety Executive's (HSE's) Approved Codes of Practice (ACOPs). These views have helped to inform our submission to HSE concerning these reform proposals. Some of the key views and concerns raised by members in relation to these proposed changes are reviewed in this article.

NEAL STONE AND JOSCELYNE SHAW

The British Safety Council has over the course of the last two years undertaken extensive consultations with our members on Lord Young's reforms, the first round of changes to Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR), HSE's 'Fee for Intervention' cost recovery proposals and on the Löfstedt review of health and safety. What is clear is that our voice is listened to by government, politicians and the regulator because of our and our members' expertise and knowledge of health and safety management built up over the last 50 years.

The regulatory framework governing health and safety in Great Britain continues to undergo significant change. We have progressed only a little way into the work to implement reform in line with the recommendations set out in Professor Ragnar Löfstedt's review of health and safety law, *Reclaiming health and safety for all*, published in November 2011.

His report recommended: "HSE should review all of its Approved Codes of Practice. The initial phase of the review should be completed by June 2012 so businesses have certainty about what is planned and when changes can be anticipated."

Löfstedt in his report has called for a risk and evidence-based review of ACOPs, carried out with the relevant industry stakeholders, "to ensure that the material in each ACOP is:

- Still required (in this form)
- Gives an unambiguous guide to what the law requires for specific activities
- Up-to-date and properly reflects changes in technology
- Presented in the most appropriate way for the intended audience."

The Löfstedt reforms have some considerable way to go – the planned review and repeal of certain ACOPs is just one of 26 recommendations set out in Professor Löfstedt's review. The HSE consultation document (CD241) published in June 2012 proposes:



CONSOLIDATION: Two ACOPs on work with asbestos containing materials and managing asbestos in non-domestic premises will be merged, under HSE's plans.

BOX 1: 15 ACOPs FOR REVISION, CONSOLIDATION OR WITHDRAWAL

- Dangerous substances and explosive atmospheres
- Legionella
- Asbestos
- Gas safety
- Hazardous substances
- Workplaces
- Management of health and safety
- Agriculture
- Pipelines

BOX 2: 15 ACOPs FOR REVIEW WHICH MAY REQUIRE MINOR CHANGE

- Diving
- Work equipment
- Lifting equipment
- Confined spaces
- Pressure systems
- Hazardous substances
- Quarries
- Worker involvement

BOX 3: ACOPs TO BE REVISED OR WITHDRAWN (DECISION ALREADY MADE)

- Lift trucks
- Chemical manufacturing

- A review of 15 ACOPs with the goal of revision, consolidation or withdrawal – with work to be completed by end of 2013 (see box 1)
- A further 15 ACOPs to be reviewed which may require minor change, if at all, with work to be completed by the end of 2014 (see box 2)
- Two further ACOPs have been earmarked for revision or withdrawal (see box 3)
- To limit ACOPs to 32 pages other than in exceptional circumstances.

RESULTS FROM BRITISH SAFETY COUNCIL'S SURVEY OF MEMBERS

In all, 245 organisations completed our online survey concerning the proposed review of HSE's Codes of Practice. In broad terms this closely mirrors the number of organisations who responded to our earlier survey on the Löfstedt review.

SIZE OF RESPONDENT ORGANISATIONS

<1 employee	2%	50-249 employees	43%
1-9 employees	4%	250-999 employees	23%
10-49 employees	13%	>1,000 employees	15%

The majority of respondents came from medium sized organisations (43%); with a significant number also from large organisations (38%); while almost a fifth from smaller organisations (19%).

be the factor determining length rather than an artificial limit.

Concerns were expressed by a significant number of respondents over the proposed timescale for the work to revise, consolidate

Proposal	Agree	Disagree	Don't know
Minor revisions or no change to a further 15 ACOPs to be delivered by 2014	59%	4%	37%

KEY SECTORS OF RESPONDENT ORGANISATIONS			
Manufacturing	26%	Professional, scientific and technical	4%
Construction	18%	Government (central & local)	4%
Transport and distribution	6%	Other service activities	6%
Charity and non-governmental organisations	4%	Other sectors	16%

There was significant support for this proposal (above) although concerns were again raised about the capacity of HSE to undertake what was an indeterminate amount of work. Respondents again stressed the need for adequate lead-in time for industry to implement and adapt to any changes that result.

The sectors from which respondent organisations were predominantly drawn included manufacturing, construction and transport and distribution – they accounted for half of the responses we received. This is particularly important in helping to explain those ACOPs of particular interest to our members and prompting comment.

or withdraw fifteen ACOPs (see box 1). Twice as many manufacturing and construction respondents disagreed with the proposed timescales as those who agreed. Equally this view was held across different sizes of organisations. Concerns were expressed too about HSE’s capacity to carry out this extensive piece of regulatory reform within the proposed timetable. The work needed to carry out this process effectively was viewed by many as resource intensive with the need to avoid undue haste.

VIEWS ON PROPOSALS FOR THE MANAGEMENT OF HEALTH AND SAFETY AT WORK ACOP		
Proposal	Agree	Disagree
Withdrawal of Management of Health and Safety at Work ACOP (L21)	57%	43%
Replacement of Management of Health and Safety at Work ACOP (L21) with more specific guidance incorporating Five Steps to Risk Assessment and Managing for Health and Safety (HSG65)	82%	18%

SUMMARY OF RESPONSES TO PARTICULAR PROPOSALS

A clear majority of respondents supported the proposed new limitation on the length of ACOPs although there was a significant groundswell of opinion against. Supporters of the change argued that some ACOPs were unduly lengthy, lacked clarity and were consequently not used as intended as a source of vital information on how to comply. There was considerable support for the view that for most regulations the limitation of 32 pages would work and duty holders would not suffer in consequence. Simplification and clarity in the language used in ACOPs was called for and, it was argued, would aid compliance.

Respondents were worried about the consequences of rushed reform and the capacity of organisations to effectively manage the mass of change. Some respondents were concerned that the timescale was politically driven by an agenda where the cutting of regulation was seen as a top priority.

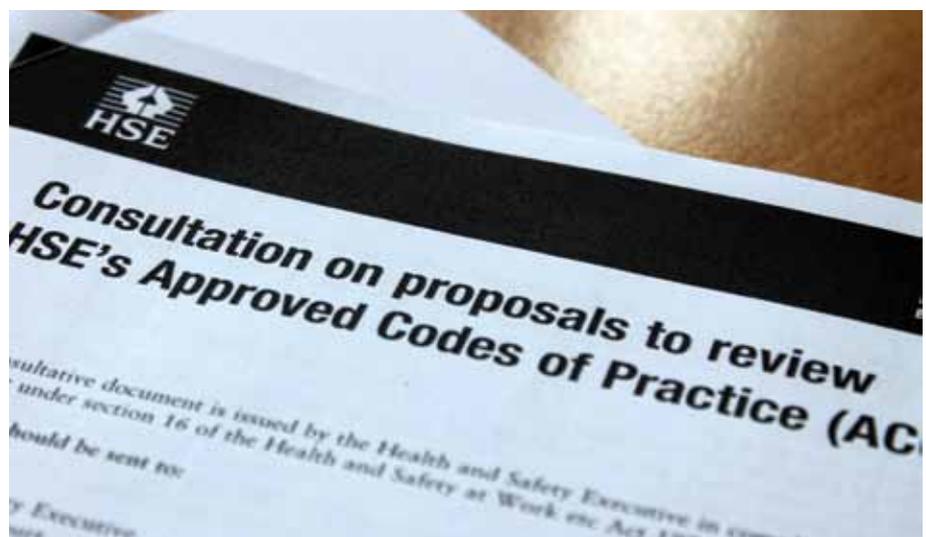
Though the majority of respondents appear to support the withdrawal of this ACOP, closer analysis revealed that respondents from the manufacturing sector were split in terms of providing support for the withdrawal of this ACOP while construction were clearly less in favour of the withdrawal. This particular ACOP was cited by many respondents as one of the most frequently consulted concerning the management of health and safety. Many of those respondents who indicated some support for the withdrawal of this ACOP did so with the proviso that the planned guidance was precise, concise and provided clarity.

More broadly a number of respondents were keen to stress the tangible gains that our system of health and safety regulation, including ACOPs, had brought over the last 38 years. While many support regulatory simplification, that goal should not be at the expense of a reduction in the effectiveness of our legal framework, many argued.

Proposal	Agree	Disagree
Limit ACOPs to maximum length of 32 pages	57%	43%

However many of those respondents who opposed the limitation argued that the proposed 32 page limit was arbitrary and that there could not and should not be a ‘one size for all’ approach. The length of the ACOP needed to reflect the complexity of the regulations – ACOPs needed to be as long as necessary to effectively address the regulatory requirements they are supporting. The hazards in question, and the regulations concerning those particular hazards, should

Proposal	Agree	Disagree
Proposed timeframe for the revision, consolidation or withdrawal of 15 ACOPs by end of 2013 and a further 15 ACOPs to undergo minor revision or no amendment by end of 2014	37%	63%



BREVITY: Although the majority of respondents supported the proposals to limit the length of all ACOPs to 32 pages, there was a significant groundswell of opinion against this idea.

Furthermore, many respondents reserved their position and called for the opportunity to see the detail of proposed replacement guidance before giving their support for this change.

Similarly those respondents who opposed the withdrawal of ACOP L21 recognised the need to update and improve much of the content – in fact 57% of those who did not express support for the withdrawal of ACOP L21 did in fact support the proposal for more specific, updated guidance that would be structured and well sign-posted to include: *Health and Safety Made Simple*; a revision to the guidance previously branded as *Essentials*; revised *Five Steps to Risk Assessment*; and *Managing for Health and Safety* (HSG65). In particular both those for and against the proposed change cited, for example, the importance of preserving the detail of the provisions concerning risk assessment currently contained in ACOP L21.

There were mixed views on the usefulness of *Managing for Health and Safety* (HSG65). Respondents recognised the ACOP and the various pieces of guidance did not meet the needs of many small and medium enterprises. For those respondents who lent heavily on HSG65, for example, in informing their reporting arrangements, others considered it far too detailed for their own organisation's particular needs.

Both in respect of ACOP L21 and HSG65, a significant number of respondents held the view that the language and construction of the content failed to meet the needs of the vast majority of organisations. Following the advice and guidance contained in HSG65 was considered by some as being prohibitively expensive. A number of respondents made the point that ACOPs and guidance are not solely the preserve of health and safety professionals and needed to be drafted in an easy to understand style.

IEWS HELD ON OTHER ACOPS

Proposal	Agree	Disagree
Retain and revise Workplace, Health, Safety and Welfare ACOP (L24) to aid compliance and better reflect regulatory change, e.g. on smoking and CDM	94%	6%

The vast majority of respondents acknowledged the need for revision to better reflect regulatory changes and work arrangements. Many considered elements of this ACOP (L24) considerably out of date and quite complex to follow, dealing as it does with a broad range of risks. Some saw an unnecessary overlap, for example, with sector specific regulation. Support for retaining the ACOP was overwhelming.

SIZE OF ORGANISATION (BY EMPLOYEES)

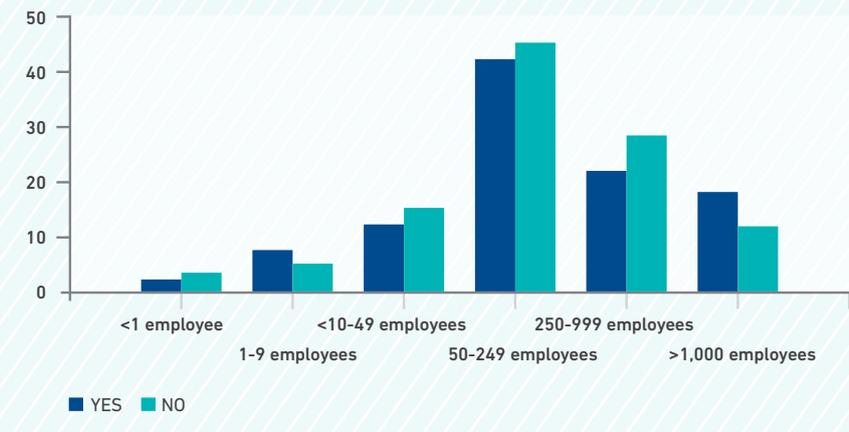


FIGURE ONE: Breakdown of organisations by number of employees.

Proposal	Agree	Disagree	Don't know
Consolidation of five ACOPs concerning dangerous substances and explosive atmospheres into single revised ACOP (L138) – L134, L135, L136, L137 and L138 for consolidation	55%	14%	31%

While there was significant support for consolidation, a number of respondents said that bringing together five ACOPs into one was a considerable challenge in terms of the proposed 32 page ACOP limit. The logic of combining the five ACOPs attracted significant support given the relationship of the hazards and the increased accessibility to the ACOP provisions in one place that will result.

Proposal	Agree	Disagree	Don't know
Revision and reduction in content of Legionnaires' disease ACOP (L8)	45%	18%	37%

Respondents cited legionella as one which required complex technical guidance on how to comply. Just over half of manufacturing respondents and almost half of construction respondents agreed with this proposal. Some respondents considered that the technical advice and guidance in the ACOP (L8) needed reviewing, including on the provisions concerning monitoring and the frequency of inspection activity. Owing to recent outbreaks of Legionella in Scotland and England, some argued this was ample proof of the need for effective regulation and clear, accessible guidance concerning compliance.

There was significant support for the consolidation of the two ACOPs concerning the management of asbestos in non-domestic premises (L127) and work with materials containing asbestos (L143). A significant number of respondents considered the combining the two ACOPs a sensible move bringing together provisions concerning associated hazards in a single source document.

However a small number of respondents considered that the current two ACOPs dealt with very different requirements which necessitated separate ACOPs.

While asbestos regulation had been radically overhauled in recent years some respondents cited non-compliance as a continuing problem and one that an improved ACOP could play an important part in addressing.



SUPPORT: Most respondents agreed the ACOP on the Workplace Regs should be retained.

Proposal	Agree	Disagree	Don't know
Consolidation of two Asbestos ACOPs (L127 and L134) to assist duty holders on compliance and to better reflect the Control of Asbestos Regulations 2012	83%	7%	10%

Proposal	Agree	Disagree	Don't know
Withdrawal of gas safety training standards ACOP (COP20) and its incorporation into gas safety installation ACOP (L56)	45%	3%	52%
Withdrawal of gas service pipes design, construction and installation ACOP (L81) and replacement with guidance	32%	4%	64%

There was limited, but clear support shown among those respondents who addressed these particular proposals. There was support for the withdrawal of COP20 and its incorporation into the ACOP concerning gas safety installation (L56) as well as the withdrawal of ACOP (L81) concerning gas service pipe design, construction and installation and its proposed replacement with guidance.

(L5) and associated guidance, in particular that for low risk sectors, would, in the view of a number of respondents, be of great assistance. Although the respondents who addressed this particular issue had no direct involvement in the management of children working in agriculture there was widespread recognition of the contribution a focused and targeted ACOP could make.

Proposal	Agree	Disagree	Don't know
Clarification and improvement of information currently in ACOP (L5) concerning control of substances hazardous to health in combination with improvements in COSHH guidance	86%	5%	7%

There was significant support among respondents for this proposed change a reflection in part of the problem identified by some respondents of the guidance on COSHH being spread across a number of sources. The problems encountered by SMEs in particular, including understanding the control systems in place, were cited by some respondents as in need of resolving. Streamlining of the ACOP

A number of respondents had reservations that the replacement of the ACOP (L116) with improved guidance would have any greater impact. Similarly a number of respondents were keen to understand whether this change was being made against a backdrop of a decrease in the number of children killed and seriously injured working in agriculture.

Proposal	Agree	Disagree	Don't know
Withdrawal of ACOP concerning safety of children in agriculture (L116) and improved guidance	30%	11%	49%

NEXT STEPS

The British Safety Council will in the next edition of *Safety Management* detail the progress and summarise all 26 recommendations contained in Professor Löfstedt's report.

KEY POINTS MADE BY BRITISH SAFETY COUNCIL IN ITS SUBMISSION TO HSE

- There was significant support among British Safety Council members who responded to the survey for the main changes proposed including the withdrawal of the Management of Health and Safety ACOP (L21) and its incorporation in revised guidance.
- Concerns were expressed by survey respondents about the capacity of HSE to undertake the considerable amount of work needed to review, revise and repeal some 32 ACOPs to the prescribed timetable.
- A significant number of respondents also made clear the need for industry to be given the time necessary to implement and adapt to any changes that result from the review.
- However there were a significant number of respondents who saw the repeal and consolidation of specific ACOPs and their replacement with enhanced guidance as a weakening of the legislative framework.
- The retention and revision of the Workplace Health, Safety and Welfare ACOP (L24) was supported.
- Although a clear majority of respondents supported the introduction of a 32 page limit for ACOPs, concerns were raised about the potential loss of vital guidance and advice on compliance a consequence of the limit. There was strong support for the length of ACOPs needing to adequately reflect the technical complexity of the linked regulations.
- Many respondents recognised the challenge faced by small and medium organisations in understanding complex and lengthy guidance. Respondents saw the need for clarity and conciseness when revising ACOPs to meet SME needs.
- Respondents are keen to see the proposed new guidance and consolidated ACOPs and have the opportunity to formally comment on their fitness and suitability.



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CONCERN: Many respondents expressed concern about the capacity of HSE to undertake the work required to review, revise and consolidate the 32 ACOPs by the proposed deadlines.