



Chartered  
Institute of  
Environmental  
Health

# Proposals to remove fourteen legislative measures

Response to the Health and Safety Executive consultation

May 2012

# The Chartered Institute of Environmental Health

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As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines; run educational events and commission research.

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As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.

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## General

In its response to the Löffstedt report the Government made a commitment that by 2014 the total number of regulations businesses have to comply with will be reduced by 50 per cent (in the Budget 2012 the Government raised this proportion to 84 per cent). The CIEH views this consultation as a step towards the implementation of the Government's stated aim.

The Health and Safety Executive (HSE) has previously consulted on a proposal to revoke seven Statutory Instruments and the CIEH responded to that consultation. In that consultation, the HSE based its argument for revocation on the grounds that the six Regulations and one Order are redundant or have been overtaken by more up to date Regulations. In most respects, the CIEH accepted those arguments.

In this current consultation it is noticeable that an additional ground has been advanced in support of revoking some of these legislative measures, namely that they do not deliver the expected health and safety benefits. This additional criterion causes the CIEH some concern because there is a danger that an element of subjective judgement is introduced into the decision-making process. This is of concern to the CIEH both in relation to the measures to which this criterion is being applied in this consultation and the extent to which it may be relied upon in future consultations where the removal of further health and safety legislation is to be proposed.

In this response, the CIEH addresses the issues raised by this additional criterion – for example the evidence to support the claim that a measure does not deliver the expected benefits and how the HSE proposes to deliver those benefits - in those places where it arises.

Save as we comment specifically below, the CIEH accepts the arguments made and accepts that the fourteen legislative measures should be revoked.

## Answers to Consultation questions

### **Annex 1**

Celluloid and Cinematograph Film Act 1922  
Celluloid and Cinematograph Film Act 1922 (Repeals and  
Modifications) Regulations 1974 (S.I. 1974/1841)  
Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations  
1980 (S.I. 1980/1314)

*1.1 Do you agree with the proposal (as outlined in the Annex) to revoke the Celluloid and Cinematograph Film Act 1922, the Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974 and the Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations 1980?*

Answer:

Yes. The measures are almost redundant, the use of celluloid in the film industry having been discontinued in the 1950's. The storage of such old film materials in workplaces (if any remain) is covered by more recent legislation. Past application of the measures to non-workplaces (for example domestic premises and Clubs) and to self employed workers is

maintained by the superseding legislative measures referred to in the consultation document. The argument that if the Act is repealed the two sets of Regulations can also be revoked is uncontroversial.

1.2 *To the best of your knowledge, are there any groups or individuals who keep or store raw celluloid or cinematograph film in non-workplace premises, and therefore have duties under this legislation?*

Answer:

No.

1.3 Not applicable

## **Annex 2**

Construction (Head Protection) Regulations 1989 (S.I. 1989/2209)  
Notification of Conventional Tower Cranes Regulations 2010 (S.I. 2010/333)  
Notification of Conventional Tower Cranes (Amendment) Regulations (S.I. 2010/811)

2.1 *Do you agree with the proposal (as outlined in the Annex) to revoke the Construction (Head Protection) Regulations 1989?*

Answer:

Yes. These Regulations are identified in the Lófstedt report as being unnecessary because they have been superseded by the Personal Protective Equipment at Work Regulations 1992 (the PPE Regulations).

The consultation document points out that the revoking Instrument will revoke Regulation 3(3)(f) of the PPE Regulations (which disapplies certain requirements where the Construction (Head Protection) Regulations apply so that the requirement to wear head protection will be within the scope of the PPE Regulations and all of the requirements will be applicable to head protection.

As the consultation document points out, the revocation of these regulations may be misinterpreted as a relaxation of the strict application of the requirement for head protection. This would be a very serious matter given the significant numbers quoted in the consultation document for fatalities and injuries caused due to the absence of head protection. The HSE will have to handle any perception that head protection on construction sites is being relaxed and this should be a matter of effective communication in collaboration with the industry and trade unions.

2.2 *If the proposal is agreed, HSE plans to publicise the change to help ensure the construction industry understands that it will still require employers to provide, and workers to wear, head protection where there is a risk of head injury. Can you suggest ways in which you/industry could help achieve this?*

Answer:

The consultation document records that these Regulations have been cited 33 times in Notices issued in the previous 13 years and 3 times in approved prosecution activity in the same period. The CIEH would suggest that the HSE's own inspectors, and those of local authorities, need to be positioned at the heart of campaigns and provision of information to uphold the strict requirements relating to head protection and to preserve the downward trend in both fatalities and injuries that have been witnessed in recent years.

The CIEH is willing to be involved in campaigns and other communication activities designed to reinforce this messaging.

*2.3 Do you agree with the IA's assessment of the costs and benefits of the proposed revocation of the CHP Regulations?*

Answer:

The costs and benefits for businesses are inevitably imprecise. The projected difference between costs and benefits suggests that the cost to businesses of maintaining the status quo would not be significant.

The costs to the HSE (there is no mention of local authorities, professional bodies or the like) has not been quantified at this stage. The CIEH would comment that the range of anticipated activities described in paragraph 42 does not match the seriousness of the risk of a reduced level of compliance referred to above. The CIEH would expect there to be planned a greater intensity of activity and that therefore the costs to the HSE (and others) may be considerably higher than is hinted at.

*2.4 [Note that the CIEH does not reproduce this question as it is lengthy and refers to the HSE's estimates of time likely spent by businesses in carrying out acts relevant to compliance in respect of which the CIEH has no comments to make]*

Answer:

The CIEH has no comments to make in response to the HSE's various estimates.

*2.5 HSE believes that the proposed change will maintain the high level of provision and use of head protection that the construction industry has already achieved. Do you agree?*

Answer:

The best case scenario would be that there will be no reduction in compliance. However, the consultation document and this response to it both contain expressions of concern that compliance may slip. This is why the CIEH has made a point of referring to the work which will need to be done to emphasise that the revocation does not alter the strict requirement for head protection. Without a commitment to the carrying out of work of sufficient intensity and prominence to address this point, the CIEH would answer this question "No".

*2.6 Would this revocation have any implications (positive or negative) for businesses, workers or others that we have not considered in the impact assessment?*

Answer:

The CIEH does not foresee any.

*2.7 Do you agree with the proposal (as outlined in the Annex) to revoke the Notification of Conventional Tower Cranes Regulations 2010 and the Notification of Conventional Tower Cranes (Amendment) Regulations 2010?*

Answer:

Yes.

These two sets of Regulations were made recently. There is no argument for their revocation based on redundancy or superseding measures. Instead, reliance is placed on comments (not recommendations) made by Professor Lofstedt in his report. The consultation document therefore makes the case for their revocation on the basis that “there is no evidence that the intended effects are being realised in any significant way “. It states also that the costs to duty-holders have been higher than were estimated prior to implementation.

As the consultation document records, the introduction of the registration scheme for conventional towers followed a recommendation in a report of the House of Commons Work and Pensions Select Committee in 2008. This recommendation itself followed an alarming number of fatalities associated with the use of towers – 7 in the three years immediately preceding the Committee’s inquiry.

In the five years since those statistics were published there has apparently been no fatality associated with the use of towers. This includes the three years before the register was introduced and two years since. The proposition to abolish the register comes too soon, the CIEH would argue, to allow a definitive judgment to be made one way the other as to the contribution of the notification and registration regime to preventing fatalities and injuries.

However, the CIEH accepts that other approaches are capable of achieving the aim of consistent safe practice without the need for this notification and registration regime. The CIEH draws comfort from that fact that the original Government response to the Select Committee’s recommendation came to the same conclusion, as this extract shows:

**22. We are extremely concerned at the number of incidents and fatalities involving tower cranes and other plant on construction sites and call on the HSE to urgently bring forward proposals such as a national register of plant to include ownership, age, design type, date of last inspection and any other relevant factors. (Paragraph 137)**

34. The Government shares the Committee's concern about tower crane safety but does not consider that a national register is the best way forward. There is an enormous range and quantity of plant used in the construction industry and it moves between sites frequently. Establishment and maintenance of such a register, even if it were limited to tower cranes, would be burdensome and unlikely to have the desired effect on safety standards.

35. Owners and users are already legally obliged to ensure their plant is inspected, examined and maintained in a safe condition. HSE is working with the Strategic Forum for Construction to ensure that the industry understands and promulgates the practical measures it needs to take to comply with these legal requirements.

36. Although HSE cannot report on particular incidents until legal proceedings are concluded, it has taken into account findings emerging from investigations, including those at Battersea and Liverpool, in determining its strategy for tower cranes and its programme of field work.

*2.8 In addition to HSE's continued work with the industry to improve standards can you suggest cost-effective, non-regulatory ways in which the public could be reassured that tower cranes on construction sites are being used to high standards of safety?*

Answer:

Working with the providers of tower cranes and services to raise and maintain higher standards is obviously an important element. It is noted from the IA that some of these businesses are very small and this represents a challenge for the HSE of securing engagement.

The competence of managers, providers and users is also a key area for attention. In seeking to focus on these key issues, the actions referred to in paragraphs 2.20 and 2.21 of the consultation document will certainly be helpful. It would also be helpful to stress the importance of the involvement of trade unions, local authorities and professional bodies.

*2.9 Do you agree with the IA's assessment of the costs and benefits of the proposed revocation of the Notification of Conventional Tower Crane Regulations and their Amending Regulations?*

Answer:

The CIEH has no reason to question the changes in the costs calculated in this IA as compared with those in the IA prepared in connection with the proposal to introduce the Regulations in the first place. At a total cost per registration of £35, the CIEH would not regard the cost saving to businesses as a sufficient reason for revoking these regulations and abolishing the register.

*2.10 [Note that the CIEH does not reproduce this question as it is lengthy and refers to the HSE's estimates of time likely spent by businesses in carrying out acts relevant to compliance in respect of which the CIEH has no comments to make]*

Answer:

The CIEH has no comments to make in response to the HSE's various estimates.

*2.11 Would this revocation require you to make any changes to your computer systems?*

Answer:

No.

*2.12 Would this revocation have any implications (positive or negative) for businesses, workers or others that we have not considered in the impact assessment?*

Answer:

The CIEH does not foresee any.

## Annex 3

Notification of Installations Handling Hazardous Substances Regulations 1982  
(S.I. 1982/1357)

Notification of Installations Handling Hazardous Substances (Amendment) Regulations 2002  
(S.I. 2002/2979)

3.1 *Do you agree with the proposal (as outlined in the Annex) to revoke:*

a) *The Notification of Installations Handling Hazardous Substances Regulations 1982?*

b) *The Notification of Installations Handling Hazardous Substances (Amendment) Regulations 2002?*

Answer:

Yes, conditionally (see 3.2). The former were introduced in response to a specific national disaster, namely the Flixborough explosion. They were subsequently superseded by the COMAH (Control of Major Accident Hazards) Regulations in 1999 and the Planning (Hazardous Substances) Regulations (PHS Regulations) in 1992. The latter were superseded by further COMAH Regulations in 2005. In addition, as the consultation document points out, there are now additional regulations in relation to marking of and planning for hazardous substances.

3.2 *Do you agree that a consequential amendment should be made to the Dangerous Substances (Notification and Marking of Sites) Regulations 1990 to ensure there is a specific notification requirement for Ammonium Nitrate if both the 1982 and the 2002 NIHHS Regulations are revoked?*

Answer:

The CIEH agrees that consequential amendments are required as a result of removing these regulations. When discussing the subsequent COMAH and PHS Regulations, the consultation document states that these regulations "now largely subsume the NIHHS procedure". The fact that there is no exact match demonstrates that care must be taken not to reduce inadvertently the protection of workers, workplace visitors and the wider public as it exists currently.

Whilst the consultation document speaks of opportunities to "streamline and simplify" as well as reducing "potential duplication" and "grounds for confusion", there is a danger of confusion and gaps in protection because of the removal of the NIHHS procedure for notifying the "competent authority" (Environment Agency and HSE jointly). This is specifically pointed out in the consultation document in respect of ammonium nitrate. The remaining NAMOS procedure means that ammonium nitrate must be properly marked. The proposal is that a notification requirement be added in respect of notifying the Fire and Rescue Service. This clearly represents a reduction in the notification requirements overall and it is a matter of concern to the CIEH that well established systems of notification are being disturbed.

There is some relevance in this respect for local authorities since the consultation document identifies that some workplaces which have until now been the responsibility



of the HSE will become the responsibility of local authorities to ensure compliance with safety rules. The consultation document is silent on whether the Health and Safety (Enforcing Authority) Regulations 1998 will be changed or the HSE's table (on its website) of the respective responsibilities of the HSE and local authorities will be changed or any other activity is contemplated to highlight this transfer of responsibility.

*3.3 Do you agree that in the consequential amendment the threshold limit for Ammonium Nitrate should be 150 tonnes (i.e. the threshold limit in NIHHS)?*

Answer:

No. If businesses are complying with the NAMOS requirement to mark 25 tonnes or more of ammonium nitrate (in order to protect firefighters who may be called to deal with a blaze at the workplace), it does not seem to be much of a burden to notify the Fire and Rescue Service of the storage and/or use of the same quantity (as opposed to learning and implementing different requirements for marking and notifying).

*3.4 [Note that the CIEH does not reproduce this question as it is lengthy and refers to notifications by businesses in respect of which the CIEH has no comments to make]*

Answer:

The CIEH has no comments to make in response to this question.

## Annex 4

Gasholders (Record of Examinations) Order 1938 (S.I. 1938/598)  
Section 39 (2) of Factories Act 1961

*4.1 Do you agree with the proposal (as outlined in the Annex) to revoke the Gasholders (Record of Examinations) Order 1938 and section 39 (2) for the Factories Act 1961?*

Answer:

Yes. The use of gasholders has greatly declined, as the consultation document describes. As a result, these legislative provisions have reduced applicability and they are superseded by other legislation.

*4.2 [Note that the CIEH does not reproduce this question as it refers to effects on businesses in respect of which the CIEH has no comments to make]*

Answer:

The CIEH has no comments to make in response to this question.

## Annex 5

Docks Regulations 1988 (S.I. 1988/1655)  
Approved Code of Practice with Regulations and Guidance (COP25)  
Shipbuilding and Ship-Repairing Regulations 1960 (S.I. 1960/1932)

*5.1 Do you agree with the proposal (as outlined in the Annex) to revoke The Docks Regulations 1988 and for HSE to withdraw its approval of COP 25?*

Answer:

Yes, conditionally. The HSE "believes" that these Regulations have been superseded by more recent legislation. The CIEH would expect a more evidence-based justification than mere belief. COP25 was made under powers provided for the purpose in the Health and Safety at Work etc Act 1974. It is true that some provisions have been superseded such that there is a need to update the guidance contained in it. The consultation document suggests that a new industry code is needed to carry out this updating, rather than a new Approved Code of Practice. In the absence of evidence to support the effectiveness of this change, the CIEH would prefer the retention of an amended and updated Approved Code of Practice.

It is noted that the Regulations have been cited 56 times in Notices and 38 times in prosecutions in the previous 13 years. Clearly the standards set by these Regulations remain relevant today.

*5.2 [Note that the CIEH does not reproduce this question as it is lengthy and refers to the HSE's estimates of time likely spent by businesses in assessing the effects of revocation on their operations in respect of which the CIEH has no comments to make]*

Answer:

The CIEH has no comments to make in response to the HSE's various estimates.

*5.3 Would this revocation and the withdrawal of the ACoP have any implications (positive or negative) for businesses, workers or others that HSE has not identified?*

Answer:

The fact that there is a need to update safety protection referred to above, and that it is proposed to do this through an industry code instead of an ACoP, could have a direct implication for safety going forward depending both on the drafting of the code and the seriousness with which it is regarded by businesses and others concerned. It might also send out a signal that the wider safety culture promoted by the existence of the Regulations and ACoP is being relaxed.

*5.4 Do you agree with the proposal (as outlined in the Annex) to revoke the Shipbuilding and Ship-repairing Regulations 1960?*

Answer:

Yes, conditionally. It is noted that "HSE believes that these Regulations can be revoked without reducing health and safety protections". Revoking these regulations would create a gap in workplace protection in respect of workplaces in or on ships in respect of lighting requirements. A similar point is made in the consultation document specifically in relation to lighting requirements on ships (Regulation 69 refers). The HSE offers to explore closing any such gaps in the revoking SI. The CIEH argues that it is essential to ensure that there should be no gap in safety requirements for workers and workplace visitors arising out of the proposed revocation.

*5.5 [Note that the CIEH does not reproduce this question as it is lengthy and refers to the HSE's estimates of time likely spent by businesses in assessing the effects of revocation on their operations in respect of which the CIEH has no comments to make]*

Answer:

The CIEH has no comments to make in response to the HSE's various estimates.

*5.6 Would this revocation have any implications (positive or negative) for businesses, workers or others that HSE has not identified?*

Answer:

The fact that there is acknowledgement of possible gaps in statutory protection if this revocation goes ahead demonstrates the need for great care in reassuring all who work in and visit workplaces covered by these Regulations that standards are not being allowed to drop.

## Annex 6

Gasholders and Steam Boilers (Metrication) Regulations 1981 (S.I. 1981/687)  
Docks, Shipbuilding etc (Metrication) Regulations 1983 (S.I. 1983/644)  
The Locomotives etc. Regulations 1906 (Metrication) Regulations 1981 (S.I. 1981/1327)

*6.1 Do you agree with the proposal (as outlined in the Annex) to revoke the:*

- *Docks, Shipbuilding etc (Metrication) Regulations 1983; and*
- *Gasholders and Steamboilers (Metrication) Regulations 1981;*
- *Locomotives etc Regulations 1906 (Metrication) Regulations 1981*

Answer:

If the Shipbuilding and Ship-repairing Regulations 1960 are revoked (as proposed in Annex 5) then the Docks, Shipbuilding etc (Metrication) Regulations 1983 have no legislation on which to "bite" and can be revoked without effect.

If the Gasholders (Record of Examinations) Order 1938 is revoked (as proposed in Annex 4), then the Gasholders and Steam Boilers (Metrication) Regulations 1981 are redundant and can be revoked without effect.

If the Locomotives etc Regulations 1906 (Metrication) Regulations 1981 for use of locomotives and wagons on lines and sidings in or used in connection with premises under the Factory and Workshop Act 1901 (1906) (1906 No.679), included in HSE's consultation '**Proposals to revoke seven Statutory Instruments' (CD238)**, are revoked then these Regulations have no legislation on which to "bite" and can be revoked without effect.