

Royal Society for the Prevention of Accidents

National Occupational Safety and Health Committee

**Proposed abolition of the Management of Health and Safety at Work
Regulations ACoP**

Views expressed to date

From Roger Bibbings to Judith Hackitt 02/01/13

Dear Judith

I was pleased to see that the HSE Board has agreed to put off a decision on whether to withdraw the Approved Code of Practice (ACoP) to the Management of Health and Safety at Work (MHSW) Regulations until the comprehensive suite of guidance that, under current proposals would take the ACoP's place, is complete. I wanted to take this opportunity to explain why we in RoSPA think this is a wise decision and why we think it is necessary to take sufficient time to get this important change right.

RoSPA's National Occupational Safety and Health Committee have accepted that, in its current form, the MHSW ACoP does not meet the needs of many stakeholders. However we are seriously concerned that its complete removal in place of a general and potentially loosely worded guidance text would seriously weaken the corpus of authoritative advice that needs to be in place to indicate how employers should organise themselves so that they have suitable operational capability to manage work related risks to health and safety.

We would like to see the ACoP revised so that in effect it would become 'the Highway Code' for managing safely, accepting that a key challenge would be to arrive at a set of principles which was easily scaleable to any organisation's circumstances (risk, size, complexity and so on). There are several key themes which have been highlighted in the HSE's strategy in recent years which are not covered very specifically in the MHSW regulations (leadership, workforce involvement, for example) and which need to be highlighted in a new and revitalised ACoP. Another very important theme (which is as important as risk assessment but which is largely missing from the MHSW Regulations) is accident and incident reporting and investigation. At present this is only covered in passing in the ACoP and could well disappear altogether if the general guidance option is followed.

What is required, in our view, is a set of broad but authoritative risk management principles which are easy to understand (particularly in the context of teaching managers and safety representatives about H&S) but which can be applied proportionately by duty holders. This project needs to be undertaken carefully, with sufficient time allocated, not just to reflect on the effectiveness of current doctrine (HSG65 etc) but to secure broad stakeholder consensus.

Ultimately what keeps people safe at work are not simply the particular measures which duty holders put in place following risk assessment to protect people from specific hazards but the policies, people and procedures which give assurance that significant risks can be tackled on an ongoing basis. This is why, in our view, a simplified and updated MHSW ACoP should actually be regarded as the key text in

the regulatory canon, and not an obscure document which can simply be dispensed with.

Best wishes for a (proportionately) safe and successful New Year.

Yours sincerely

Roger Bibbings
Occupational Safety Adviser

Question sent by Louise Collins 29/01/13

I attach a draft agenda for the next meeting of NOSHC on 8th February in London. As usual, there is pre-meeting question on which we would welcome views:

"Should the MHSW Regs ACoP be abolished - as recommended by Lofstedt - or should it be retained and improved?"

Answers

A: From Paul Reeve ECA 29/01/13

Headline response to the 'general question'. The 'management regs ACoP' should be retained, but as a document that *adds considerable value* to the regulations themselves (rather than recasting the regulations in much greater length). Much of this *added value* will come from delivering far more 'good practice' information about how to meet the 'key' (and fairly universal) legal requirements of the management regs - notably but not exclusively on competence, where the ACoP shies right away from being practically useful. Basically, it should be seeking out what is hard to comply with due to ambiguity, and filling in most of the blanks (notably to help SMEs). It should also say more clearly what is not required by law in the 'key areas', to help prevent HS 'mission creep'.

Just a view!

Paul Reeve
Head of Business Policy and Practice | Business Policy and Practice

B: From Bud Hudspith UNITE 29/01/13

Paul's view is helpful, but the fundamental problem here has been conducting the review of guidance in advance of the review of ACOPs.

My view is that ACOPs should describe what employers need to do to meet the law, and that guidance should set out good practice information that can go beyond the strict requirements of the law (which many organisations do).

I fully agree with the Paul that the ACOP should be retained.

It is simply inadequate to replace the ACOP with guidance (or a variety of sources of guidance - how does that help employers?), although, like most people. I can accept that much of the current ACOP needs rewriting.

Removing the ACOP is not the answer.

Bud

C: From Simon Lunken, BPIF 01/02/13

Hello Louise,

Regarding the pre meeting question, I thought it would be prudent to pass this onto my colleagues who sit on the BPIF National H&S Committee. This way it would be an Industry view and not just mine.

The feedback is attached to this email, but in a nutshell, the majority of the committee disagree with removing the ACoP and replacing it with 'general guidance' docs. The ACoP is a valuable tool, let's just improve it where required!

I will be attending next Friday.

Kind regards

Simon Lunken
 Head of Health and Safety
 BPIF National Health and Safety Committee Reply to MHASW Proposed
Amendments

- In conclusion, the ACOP, in my view, could be amended to stating overall how risks are controlled possibly in a more dynamic way with a altered audit trail ie proven risk control on site etc but to eliminate risk control entirely would be clearly wrong in this context and would not help reduce fatalities and casualties at work in many industries.
- This piece of legislation was produced to make the Health & Safety at Work Etc. Act 1974 workable. When teaching H&S Awareness training a major point is that the Health & Safety at Work Etc. Act 1974 tells us what needs to be done and the MHSW Regulations tell us how to do it. I personally feel that abolishing this piece of legislation would destroy the infrastructure & protocols of the Health & Safety at Work Etc. Act 1974 and as H&S professionals would make our job more difficult.
- How would it be possible to abolish the Management of Health and Safety at Work Regulations 1999/ACOP? It would destroy the infrastructure of the 1974 Act. It must be maintained and improved.
- As the regulations will still be applicable and it should in theory make more businesses compliant, as guidance should be specific to areas of the

regulations that are applicable to that particular business .I have more concern that the removal of the ACoP will lead to an assumption that the legislation has changed and this may well lead to confusion.

- This regulation/ACoP has surely significantly improved health and safety within the UK by formalising the essential steps to managing risk in the workplace. When acted upon sensibly, it brings about suitable and lasting control measures. As a key regulation/ACoP, how would it be replaced? Why would it be replaced?

When reading Lofstedt's report it talks about "overburdening", is this feeling not partly brought on by the fear of litigation, due partly to no-win-no-fee claims coupled with the ingenious use of hindsight by the legal profession? (This could become worse with the fee for intervention scenario). Is it not partly this concern that stops people being practical and leads to stifling controls or poor reasoning and blanket negativity to the overall H&S subject, not the process itself? I do however feel the paper chase sometimes distracts from the good work underpinning controls.

- If the Government has concerns over certain points of the ACoP, then the areas of concern should be rectified. I see no value in removing the ACoP and replacing it with 'basic guidance' documents. The ACoP has worked well and most safety practitioners I have spoken to, have found its ACoP/guidance extremely valuable for interpretation on what the regulation requires. Why remove it, let's improve it.
- I think the ACoP should be updated and held onto if possible. As others have stated this does not change the regulations but is a handy tool.
- Professor Lofstedt suggested that the most expensive administrative element of the Management Regs are the processes around risk assessment and risk management. I agree with the report that one of the fundamental problems affecting the approach to risk assessment is the interpretation of what needs to be record, and certainly not to cover every minutia hazard. This was not the intention of the regulations, originating from the umbrella '74 act. The situation over the crippling civil litigation with current society has resulted on businesses, pressurised by insurance firms, to go to the 'nth degree.

I would agree that new set of guidelines may be needed to make it easier for the SME sector, the regulations themselves should remain untouched.

D: From Declan Gibney, IOSH 04/02/13

Thanks Louise,

I wish to confirm my attendance at this weeks meeting. With regard to the pre meeting question, the IOSH position is that we are strongly against its withdrawal, believing it should be retained and improved. The IOSH response to the HSE consultation on proposals to review HSE's ACoPs (CD241) can be found at

http://www.iosh.co.uk/ConsultDoc/IOSH_response_to_the_proposal_to_review_HSE_s_ACoPs_Sept12.pdf (pages 4-7 cover this particular ACoP L21)

Regards,
Declan

E. From David Eves 5/02

Dear Louise

I'm not sure yet that I'll be able to come to Friday's meeting for reasons you'll understand but here are a few thoughts about your question: "*Should the MHSW Regs ACoP be abolished - as recommended by Lofstedt - or should it be retained and improved?*"

Discussion might now be academic, as the regulator having reviewed the ACoP seems to have decided to withdraw it in favour of guidance. The ACoP certainly needed revision and improvement, but there is already a welter of guidance and yet more won't fill the gap left in the regulatory framework by its withdrawal, for reasons that I set out below.

In his first report Lofstedt identified the MHSWR's most expensive administrative elements as to do with risk management and risk assessment. He also judged these to be vital issues. Lofstedt didn't actually recommend abolition of the ACoP. He said (at para 60, Chapter 5):

There were a range of comments on the 'Management of Health and Safety at Work' ACoP that is published alongside the Management of Health and Safety at Work Regulations (1999) and associated guidance. This key publication would particularly benefit from a comprehensive review with particular attention paid to what information is included and how it is presented (with an SME audience in mind). Some felt that more could be done to emphasise the fact that only the significant findings of a risk assessment have to be recorded to reinforce the statement (in paragraph 13) that "the level of detail in a risk assessment should be proportionate to the risks". This would help address the view expressed by many, that businesses feel they are expected to complete risk assessments for every hazard.

Lofstedt's constructive criticism is surely what a revised MHSWR ACoP would need to address, with SMEs particularly in mind. However, HSE having been recommended by Lofstedt to review all its 53 ACoPs seems now to have decided to withdraw this one, replacing it with a 'suite' of guidance.. The revised HSG 65 you have just circulated (thank you) is presumably part of that proposed package.

HSG 65 was first published in 1992 and originated in the best practice of the larger and more enlightened firms which had been studied by HSE's Accident Prevention Advisory Unit. Aimed principally at directors, managers and trained safety representatives, it was never intended to become a *vade mecum* for SMEs. '*Essentials of Health and Safety*' was pitched at those. Neither of these publications was intended to act as a substitute for an ACoP to support the MHSW Regulations (which also date originally from 1992). It seemed obvious, given the central position that those regulations were to occupy, that within the architecture set out in Section

One of the 1974 Act a dedicated ACoP would be needed to explain how to comply with them. I'm not clear what has changed, unless the Robens vision and the reforming mission set out in the Act are now in question.

Employers, particularly SMEs, need clarity and certainty that any advice they follow will help them comply fully with health and safety law. Until we see HSE's complete package of guidance it's hard to judge whether that package could become a satisfactory substitute for an ACoP and whether it would be sufficiently SME friendly.

There is already a bewildering amount of guidance available from different sources these days. HSE guidance is rightly regarded as more authoritative than some and usually proves helpful but doesn't have the same legal status as an ACoP and usually includes a careful legal disclaimer. The revised HSG 65 still seems likely to be read only by the more sophisticated employers.

My vote would therefore have been for development of a new, jargon-free ACoP which would remain at the centre of the regulatory structure, underpinning the MHSW Regulations and developed in consultation with those who have responsibilities for complying with health and safety law.

It would be good if SMEs simply needed to follow such an ACoP rather than having to find their way through a labyrinth of advice on web sites. But this does not seem to be the likely direction of travel...

Kind regards

David Eves

F. From Paul Reeve 5/02

Yes, the current HSE recommendation to the HSE board is, once again, to drop the management ACoP.

Paul Reeve

Head of Business Policy and Practice | Business Policy and Practice

G. From Bud Hudspith 5/02

My understanding is that the HSE Board has agreed to dump the ACOP even though the consultation revealed a majority in favour of an ACOP.

Bud

Appendix one

HSE board paper

<http://www.hse.gov.uk/aboutus/meetings/hseboard/2012/051212/pdecb1295.pdf>

Analysis of response to public consultation

<http://www.hse.gov.uk/consult/condocs/cd241-analysis.pdf>

Lofstedt progress review

<http://www.dwp.gov.uk/docs/progress-report-health-safety-reforms-feb-2013.pdf>

