



Chartered  
Institute of  
Environmental  
Health

## Proposals to review HSE's Approved Codes of Practice

CIEH's response to Health & Safety Executive's consultation

August 2012

# The Chartered Institute of Environmental Health

As a **professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

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.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

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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## Summary of the CIEH's response

In general the CIEH approves of the review of which this consultation is part. It meets a recommendation in the Löffstedt report which was accepted by the Government. As time moves on, it makes sense to revisit past publications in order to:

- Update content
- Address ambiguities which have been identified
- Remove duplication
- Improve drafting, format and presentation
- Use plain language

Provided that the aim is to ensure that Approved Codes of Practice (ACoPs) should form an "unambiguous guide to what the law requires" (Löffstedt report) who could possibly object to the principle?

The CIEH strongly endorses the usefulness of ACoPs for duty holders, of course, but also for regulators and for the public. In the case of regulators, ACoPs form an important element of the ongoing relationship between them and duty holders.

Some existing ACoPs are clear and they set out what is required of the duty holder in a concise and understandable way. Others are less clear or the information needed by the duty holder is spread about in more than one document. In these latter cases, a review of language and content is particularly welcome. Certainly bringing all relevant information into one ACoP, where this is practicable, is very helpful.

The CIEH warmly welcomes the stated intention that the HSE intends to use plain language in its redrafting of ACoPs, and strongly endorses this approach where possible. There is no escaping the need to discuss technical detail sometimes, and given the special status of ACoPs great care is needed in explaining what legislation requires. This does not always lend itself to short words and paraphrases. It is noted that in some instances it is intended to move technical guidance to separate publications, which may be a sensible approach if the intention is to achieve greater clarity (see our response to Section 3 for our response to the proposal for simply shorter publications).

However, we would again refer to the special status of ACoPs and the CIEH would be concerned if there were a general move away from ACoPs towards greater use of guidance in their place where this might actually complicate the relationship between regulators and employers and introduce greater uncertainty to enforcement processes.

The CIEH thanks the HSE for the opportunity to comment on drafting, format and presentation at this stage. The CIEH has few specific comments to make ahead of seeing the individually revised/amended ACoPs but is willing to be part of any subsequent "stakeholder consultation" in respect of them. The CIEH holds a possibly unique position in not only representing regulators but also health and safety advisors, consultants and trainers for duty holders. The CIEH is one of the main organisations that developed the Regulators' Developmental Needs Assessment (RDNA) tool and competence framework and the

Occupational Safety and Health Consultants Register (OSHCR) and is also a member of POOSH.

The CIEH is grateful for the confirmation that the HSE intends, as indeed the law requires, that each revised/amended ACoP will be the subject of individual consultation.

## Answers to consultation questions

### Section 1

#### **1.1 Dangerous substances and explosive atmospheres - L134 (24 pages); L135 (19); L136 (28); L137 (22) and L138 (92).**

- 1.1.1 Yes, these five ACoPs lend themselves to consolidation in a single L138 and the CIEH looks forward to seeing the draft that is proposed
- 1.1.2 Not applicable
- 1.1.3 No
- 1.1.4 No
- 1.1.5 No
- 1.1.6 The present format of regulation followed by ACoP followed by relevant guidance is good but even with the most effective editing will likely result in a format which offends the proposed 32-page rule (see Section 3). The CIEH's response is for the proposed rule to be rejected but if it should be implemented then clearly a different format will be required. The CIEH would wish to be involved in the consideration of any alternative formatting of the new ACoP should such consideration be required
- 1.1.7 No

#### **1.2 Legionella – L8 (68 pages).**

- 1.2.1 Yes but following the recent outbreaks in Edinburgh and Stoke on Trent, a review here is bound to attract more than the usual amount of scrutiny. It would be seriously worrying if the consultation document's proposal of removing Part 2 of this ACoP and turning this into technical guidance were to be regarded by people generally as some kind of downgrade. This is especially so when Part 2 relates to water systems. It is however, noteworthy that Part 2 is all expressed as guidance anyway. The change proposed need sensitive handling and the CIEH would welcome involvement in helping to progress this proposal safely
- 1.2.2 Not applicable
- 1.2.3 As above
- 1.2.4 No
- 1.2.5 Both
- 1.2.6 As at 1.1.6
- 1.2.7 No

#### **1.3 Asbestos – L127 (30 pages); L143 (98).**

- 1.3.1 Yes, these two ACoPs lend themselves to consolidation in a single L143 and the CIEH looks forward to seeing the draft that is proposed
- 1.3.2 Not applicable

- 1.3.3 No
- 1.3.4 No
- 1.3.5 As at 1.1.6
- 1.3.6 No

#### **1.4 Gas safety – L56 (100 pages); COP 20 (19).**

- 1.4.1 Yes, these two ACoPs lend themselves to consolidation in a single L56 and the CIEH looks forward to seeing the draft that is proposed
- 1.4.2 Not applicable
- 1.4.3 No
- 1.4.4 No
- 1.4.5 No
- 1.4.6 As at 1.1.6
- 1.4.7 Not applicable but we do refer landlords and tenants to those sources
- 1.4.8 No

#### **1.5 Hazardous substances (COSHH) – L5 (137 pages).**

- 1.5.1 Yes, this ACoP lends itself to revision and the CIEH looks forward to seeing the draft that is proposed
- 1.5.2 Not applicable
- 1.5.3 No
- 1.5.4 No
- 1.5.5 As at 1.1.6
- 1.5.6 No

#### **1.6 Workplaces – L24 (58 pages).**

- 1.6.1 Yes. It may be of interest to the HSE to know that this ACoP more than any other has been most used by the CIEH in responding to queries from members of the public on the subject of health and safety. Whilst the CIEH does not offer an official public helpline, we do from time to time receive calls from employees having problems on issues covered by the Workplace (Health, Safety and Welfare) Regulations. This ACoP nearly always has information in it which can help employees argue their case for better support. We agree that the ACoP lends itself to revision and the CIEH looks forward to seeing the draft that is proposed
- 1.6.2 Not applicable
- 1.6.3 No
- 1.6.4 No
- 1.6.5 As at 1.1.6
- 1.6.6 No

#### **1.7 Management of health and safety at work – L21 (54 pages).**

- 1.7.1 No, the CIEH disagrees with the proposal to withdraw this ACoP and replace it with guidance.
- 1.7.2 The CIEH believes that this is a very significant and valuable ACoP and should be the starting point for many managers undertaking an assessment of how they may best meet their legal obligations and manage the risks that their operations are responsible for. In the Löffstedt report it states that *"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).* "It appears that the author contemplates a revision, not a withdrawal of this "key publication". This makes sense given the author's strong focus on risk assessment and managing risk since it is in this ACoP that "how to" assess and manage risk is explained. The aim of this review ought to be how to put a revamped ACoP L21 centre-stage to ensure that all duty holders understand this approach and their responsibility in carrying it out

- 1.7.3 As above
- 1.7.4 As above
- 1.7.5 As above. The revised ACoP should be the starting point for all duty holders and links should be provided to more differentiated guidance for those who might seek further detail
- 1.7.6 Yes. The Five Steps to Risk Assessment would be a good follow-on to the kind of revised ACoP the CIEH favours
- 1.7.7 Not necessarily but that is hardly the point since what matters most is the special status of the ACoP
- 1.7.8 Yes, it might create the perception that the importance of risk assessment is being downgraded instead of upgraded and might reduce understanding at large of risk when the Löffstedt report calls for greater understanding at large of risk
- 1.7.9 No

## **1.8 Agriculture – L116 (20 pages).**

- 1.8.1 Yes. Subject to handling the possible perception that removing this ACoP and replacing it with guidance represents a downgrading of how important child safety is seen to be, the CIEH agrees the general approach being proposed. We would like to have an opportunity to view the replacement guidance in due course. We also point out that this ACoP also contains a section on risk assessment – we would hope that our suggestion in respect of L21 would mean that this valuable part of L116 would not in any way be lost or downgraded
- 1.8.2 See above
- 1.8.3 See above
- 1.8.4 No

## **1.9 Pipelines – L81 (24 pages).**

- 1.9.1 Yes. It does appear that the content of this ACoP is more suited to the guidance approach which is proposed
- 1.9.2 Not applicable
- 1.9.3 No
- 1.9.4 No

## **Section 2**

- 2.1 In the cases of L103 (53 pages); L104 (40); L105 (32); L106 (36); L107 (29); L22 (87); L112 (38); L114 (51); L113 (71); L101 (46); L122 (64); L60 (33); L132 (118); L118 (100) the proposal is to update and revise and the CIEH agrees that these ACoPs lend themselves to this approach. We look forward to seeing the new ACoPs.

- 2.2 In the case of L146 (77 pages) – consulting workers on health and safety – it is proposed that no changes are required at this time. However, it would clearly offend the proposed new rule proposed in Section 3!
- 2.3 See 2.2
- 2.4 No
- 2.5 No
- 2.6 No

## Section 3

3.1 The CIEH is fundamentally opposed to the application of a maximum length by reference to page numbers for all ACoPs.

The length must be dictated by the subject matter and the minimum content necessary to provide an unambiguous guide what the law requires – in the area of law under consideration.

Yes, repetition, duplication and waffle even must be removed, but what remains is what is required, in the professional judgement of the author. By all means give the author a remit which includes a guideline expected length, but do not impose an arbitrary, external limit.

The CIEH feels strongly on this matter and the proviso that the maximum length may not be exceeded “other than in exceptional circumstances” is not good enough. A matter of professional judgement is not an exceptional circumstance, it is a daily exercise of technical knowledge and expertise.

It may of course be that this proposal is merely about semantics. Typically, an ACoP presents the text of the relevant regulation, followed by the ACoP text followed by any relevant guidance. Take away the regulation and take away the guidance and what remains may very well be capable of expression within 32 pages.

Perhaps this provocative proposal is intended to stimulate debate about format and presentation. Is it most valuable for the reader for the regulation, ACoP text and guidance to be grouped together? But are we really asked to approve an approach whereby the reader (perhaps a duty holder in a small business) is given the ACoP separately and invited to consult the regulations themselves and any guidance in two other places? This makes a nonsense of why this whole review is taking place, namely to make it easier for duty holders to find the relevant information that enables them to comply with what the law requires of them.

Most businesses access most of the information they need online these days. A discussion in terms of page numbers is virtually meaningless in this context. The ACoP online will enable the reader to click on a link to the relevant part of a regulation, and click again on a link to the relevant guidance anyway. This proposal completely misses the point in our digital age.

Even in respect of hard copies of ACoPs, would it, then, be acceptable to print the ACoP text alone (in less than 32 pages) in a document which then continues into separate sections

containing the regulations and the relevant guidance? Or would this offend this rule and the reader should be expected to acquire three separate hard copy documents? Again, this is nonsense.

The CIEH proposes that we remain focused on what matters – unambiguous guidance, free from duplication and presented in plain language – and abandon this proposal completely.

3.2 None

3.3 It depends – these documents need to say what they need to say, neither more nor less.

3.4 None

3.5 As at 3.1

3.6 None