

The Educational Institute of Scotland

Health and Safety in the Workplace

1. Introduction

- 1.1 The following resolution was approved by the 2012 Annual General Meeting:

Health and Safety in the Workplace

"This AGM instructs Council to investigate the impact of the UK government's proposals to deregulate existing Health and Safety protections in the workplace and to organise a campaign to resist any deterioration in staff and pupil's health and safety at work."

- 1.2 The first part of this resolution has been passed by the Executive Committee to the Employment Relations Committee for action. The Executive Committee will process the second part of the resolution as part of its campaigning work.

2. Proposals to deregulate existing Health and Safety protections

- 2.1 The Health and Safety at Work etc. Act 1974, which came into force in 1975, was designed to overcome some of the weaknesses of earlier health and safety law. It created a new Health and Safety Commission (HSC); reorganised and unified the various Government inspectorates into a body called the Health and Safety Executive (HSE); and provided new powers and penalties for the enforcement of safety laws.
- 2.2 The HSC and the HSE were merged in 2008 to become The Health and Safety Executive. The HSE is Britain's national regulator for workplace health and safety. Its budget is being cut by more than a third over the next few years. It shed 200 staff last year.
- 2.3 During the last financial year, the HSE's field inspectors carried out 21,603 proactive visits. This was down a third from 33,000 in 2010-11 and was a result of the Government's *"Good health and safety, Good for everybody"* initiative. The Government says it is targeting high-risk areas such as construction. Local authorities are cutting their own inspections by around 65,000.
- 2.4 In April 2012, the HSE published a consultation document seeking views on its proposals to remove fourteen legislative measures (one Act, twelve Regulations and one Order and with a related provision in the Factories Act 1961) and to withdraw approval for an associated Approved Code of Practice. HSE stated these were either redundant, had been overtaken by more up to date Regulations or do not deliver their expected benefits. This consultation began on 3 April 2012 and ended on 4 July 2012.
- 2.5 The TUC made no comments on eleven of the proposals but objected to two and raised concerns over another. It objected to the proposal to

revoke the Notification of Conventional Tower Cranes Regulations 2010 and the proposal to revoke the Docks Regulations 1988. It raised concerns over the proposal to revoke the Construction (Head Protection) Regulations 1989. The TUC also commented on the Impact assessment process.

2.6 In June 2012, the HSE published proposals for the revision, consolidation or withdrawal of 15 ACOPs (Approved Codes of Practice) to be delivered by end-2013 and on proposals for minor revisions, or no changes, to a further 15 ACOPs for delivery by 2014. These include a proposal to withdraw the ACOP for the Management of Health and Safety at Work Regulations 1999 and replace it with a suite of more specific, updated guidance by 2013. It also sought views on a proposal to limit the length of all ACOP documents a maximum length of 32 pages, other than in exceptional circumstances. Consultation began on 25 June 2012 and ended on 14 September 2012.

2.7 The TUC response to the proposals is outlined below.

2.7.1 Dangerous substances and explosive atmospheres

The TUC broadly supported the consolidation of these ACOPs.

2.7.2 Legionella

This is an extremely important and well used document. The ACOP should retain the current requirements on duty-holders, with separate technical guidance which should also emphasise good practice.

2.7.3 Asbestos

The TUC supports the consolidation of these ACOPs.

2.7.4 Gas Safety

The TUC argues that there is a very strong case for updating the current ACOP L56 and the appendices. They are clearly out of date and do not reflect the requirements of the industry.

2.7.5 Hazardous Substances

The TUC supports changes to this ACOP as well as improvements to the guidance.

2.7.6 Agriculture

The TUC welcomed the proposal to revise and improve the guidance.

2.7.7 Pipelines

The TUC called for a consistency of approach across the pipeline sector and argued for the guidance material to be widely distributed in paper form so it can be accessed during site-work.

2.7.8 Management of Health and Safety at Work Regulations 1999

The proposal to withdraw this ACOP and replace it with more specific, updated guidance attracted criticism from the TUC and from the EIS.

It is acknowledged that much of the current ACOP is general guidance and therefore it is unclear what differentiates "a legal requirement" from "good practice" in the current Code.

Nevertheless, there are parts of the current ACOP which are still required and which would need to have the status of an ACOP. The TUC has identified a number of these.

- Risk assessment. This makes it clear that safety representatives and the workforce need to be consulted on risk assessments. This is crucial and cannot be left to guidance.
- The definition of "Suitable and Sufficient". This is an important and useful section that could not be replicated simply by guidance.
- New or Expectant mothers. The wording of the ACOP in respect of expectant mothers is still needed.

2.7.9 Proposals to make minor revisions or no changes to ACOPs for delivery by end-2014

The TUC made no comments on this section and broadly supported the proposals.

2.7.10 Introducing a limit on the length of ACOPs to 32 pages

Both the TUC and the EIS expressed the view that a random limit to any ACOP would be unhelpful and may lead to some ACOPs being unable to fulfil their function clearly and sufficiently. Neither the TUC nor the EIS supports a specific maximum.

3. RIDDOR

- 3.1 In August 2012, the HSE opened a 12-week consultation on proposals to simplify and clarify how businesses comply with the requirements under the Reporting of Injuries, Disease and Dangerous Occurrences Regulations 1995 (as amended) (RIDDOR '95). The review is part of HSE's work to make it easier for businesses and other users to understand what they need to do to comply with health and safety law, following recommendations made in Professor Löfstedt's independent review of health and safety legislation.

4. Discussion

- 4.1 The proposals to revoke the Notification of Conventional Tower Cranes Regulations 2010, the Docks Regulations 1988 and the Construction (Head Protection) Regulations 1989 will not result any deterioration in health and safety at work of teaching staff.
- 4.2 The only current HSE proposal which may potentially affect the health and safety at work of staff relates to the Management of Health and Safety at Work Regulations 1999 and the proposal to withdraw this ACOP and replace it with more specific, updated guidance. These proposals are to be delivered by end-2013. However, it is unclear whether or not the HSE will accommodate the counter-proposals and suggestions put forward by the TUC and its affiliates. Therefore, it is not possible at this stage to progress this matter further.

5. Personal Injury Claims

- 5.1 A new clause has been inserted into the Enterprise and Regulatory Reform Bill (ERRB). The effect of this will be that employers will no longer be liable in the civil courts for the criminal offence of a breach of the Health and Safety at Work Act (HSWA) regulations. Section 61 of ERRB will mean that a worker who is injured as a result of an employer's breach of a statutory duty within HSWA regulations will be prevented from enforcing that breach. In every case, rather than be able to rely on the breach of the regulations, the worker will have to prove the employer was negligent.
- 5.2 The new clause was introduced on 16 October 2012 at the end of the Commons debate on the Bill as a whole. There was no public consultation on removing or amending civil liability in health and safety and there has been no impact assessment. The Third Reading of the Bill took place on 17 October and it now passes to the House of Lords for consideration.

6. A worked example of a typical claim

- 6.1 At 4.30pm a teacher was leaving her classroom at the end of her working day. As she stepped from the classroom into the corridor she slipped and fell. She sustained a laceration to her head and broke her wrist. She lodged an accident at work claim on the grounds that a liquid cleaner had been placed on the floor and had not had sufficient time to dry before she slipped and fell. There were no warning signs in the corridor and the floor surface is a type of linoleum. She was wearing shoes with a modest heel.
- 6.2 There is a common law duty of care on her employer to ensure that the workplace is fit for purpose. As well as a common law duty of care, the employer has statutory obligations in terms of the Workplace (Health Safety and Welfare) Regulations 1992 and Regulation 3 of the Management of Health & Safety at Work Regulations 1999 which deals with the issue of risk assessments. With regard to the 1992 Workplace Regulations, Regulation 5 relates to maintenance of the workplace, and of equipment, devices and systems; Regulation 9 of the 1992 Regulations relates to cleanliness and waste materials; and Regulation 12 condition of floors and traffic routes.

- 6.3 If this new clause remains, employers will no longer be liable in the civil courts for the criminal offence of a breach of the HSWA regulations. Therefore, in this case, the teacher will have to prove the floor was unsafe AND that the employer knew or should have known about that AND it was the employer's fault.
- 6.4 This case finally settled for £7500. It makes no difference to quantum whether the EIS establishes liability at common law or under statute. What is likely if the Bill is given Royal Assent is that Proofs (hearings) will last longer (and be more expensive) as more evidence will be needed to prove a case rather than relying on a statutory breach.

7. Criminal Injuries Compensation Scheme - Further Update

- 7.1 Proposals to change the Criminal Injuries Compensation Scheme (CICS) were withdrawn in September 2012 after cross-party opposition and opposition from the TUC. The proposals were reintroduced and were discussed by the Delegated Legislation Committee on Thursday 1 November. They came into effect on 27 November 2012. These changes will have a huge effect on many EIS members who will now be unable to receive compensation from any other course following an assault or attack at work.

8. Conclusions

- 8.1 While there is concern regarding the Government's approach to health and safety in the workplace, the Criminal Injuries Compensation Scheme, and in particular removing or amending civil liability, at the present moment of time, the UK government's proposals to deregulate existing Health and Safety protections on teaching and lecturing staff is limited.
- 8.2 The Committee is invited to note the contents of this report and to resolve that the terms of the AGM resolution passed to the Committee have been processed.
- 8.3 It is recommended that the Committee maintains an overview of any proposed legislative changes and gives powers to the Convener and the servicing officials to co-ordinate the response of the EIS to education sector specific issues and changes to ACoPs through the TUC.
- 8.4 It is the recommended that this report is communicated to the Executive Committee.