

**EXPLANATORY MEMORANDUM TO**  
**The Health and Safety (Miscellaneous Repeals, Revocations and Amendments)**  
**Regulations (Northern Ireland) 2015**

**S.R. 2015 No. 223**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Articles 17(1) to (6), 20(2), 40(2), 45(1), 54(1) and (2) and 55(2) and paragraphs 1(1), (2), (3), (4), (8), (9), (10) and (11) and 3, 5, 7, 8, 9, 10, 11, 12(1), 13, 14, 15, 17 and 20(a) and (b) of Schedule 3 to, the [Health and Safety at Work \(Northern Ireland\) Order 1978 \(1978 No. 1039 \(N.I. 9\)\)](#) and is subject to the negative resolution procedure.
- 1.3 The rule is due to come into operation on 1st June 2015.

**2. Purpose**

- 2.1 The Regulations repeal one Act and revoke sixteen Statutory Rules plus a related provision in the Factories Act (Northern Ireland) 1965 (c.20), listed below, relating to health and safety provisions. They are being revoked because they have either been overtaken by more up to date Regulations or they are redundant.

**3. Content**

- 3.1 The Regulations repeal the [Celluloid and Cinematograph Film Act 1922 \(c.35\)](#):

The Celluloid and Cinematograph Film Act 1922 (c.35) relates to the prevention of fire in premises where raw celluloid or cinematograph film is kept or stored. It relates to non-workplaces (e.g. domestic premises and premises used by civil societies, such as film clubs). The Celluloid and Cinematograph Film Act 1922 (c.35) no longer applies to workplaces within the meaning of the [Fire Precautions \(Workplace\) Regulations \(Northern Ireland\) 2001 \(S.R. 2001 No.348\)](#). This element has been superseded by more recent legislation – workplaces are now covered by the [Dangerous Substances and Explosive Atmospheres Regulations \(Northern Ireland\) 2003 \(S.R. 2003 No.152\)](#) in relation to any special, technical or organisational workplace fire precautions and, in relation to general fire safety precautions (such as the means for escape), by the [Fire Precautions \(Workplace\) Regulations \(Northern Ireland\) 2001 \(S.R. 2001 No.348\)](#). The Celluloid and Cinematograph Film Act 1922 (c.35) does

still relate to the self-employed, however both the Fire Precautions (Workplace) Regulations (Northern Ireland) 2001 and the Dangerous Substances and Explosive Atmospheres Regulations (Northern Ireland) 2003 apply to the self-employed with business premises, so if the Act is repealed, standards for health and safety for the self-employed with business premises will be maintained. Repeal of the Celluloid and Cinematograph Film Act 1922 (c.35) will also require the Health and Safety at Work Order (Northern Ireland) 1978 (1978 No. 1039 (N.I. 9)) to be amended to remove the Celluloid and Cinematograph Film Act 1922 (c.35) from the list of existing enactments which are relevant statutory provisions in Schedule 1 to the 1978 Order.

3.2 The Regulations also revoke the following legislative instruments:

**Construction (Head Protection) Regulations (Northern Ireland) 1990 (S.R. 1990 No.424) (No hyperlink available)**

The Regulations require the provision of suitable head protection for workers who are engaged in construction work and place a duty on employers and persons in control of others to ensure the head protection is worn if there is a foreseeable risk of head injury other than by falling. The duty to provide suitable head protection includes the provision of protection other than safety helmets, such as bump caps, where other risks of injury are present. The Regulations also provide for the making of rules and directions where it is necessary to ensure that head protection is worn and a duty on workers to wear protection where such rules and directions require it. The [Personal Protective Equipment at Work Regulations \(Northern Ireland\) 1993 \(S.R. 1993 No.20\)](#) require, amongst other things, the provision and use of head protection as part of a hierarchy of control measures to protect workers and others against head injury across all industries other than construction. This together with regulation 22 of the [Construction \(Design and Management\) Regulations \(Northern Ireland\) 2007 \(S.R. 2007 No.291\)](#) (which provides for the drawing up of site rules used widely to ensure compliance with health and safety requirements such as the need to wear hard hats) provides at least an equivalent level of protection against head injury as those contained in the Construction (Head Protection) Regulations (Northern Ireland) 1990. Revocation of the Construction (Head Protection) Regulations (Northern Ireland) 1990 will require changes to some other sets of Regulations. In particular a disapplication in the Personal Protective Equipment at Work Regulations (Northern Ireland) 1993 will be removed so that the requirement to provide and wear head protection on construction sites will be within the scope of the Personal Protective Equipment at Work Regulations (Northern Ireland) 1993; Minor consequential amendments will also need to be made to the [Provision and Use of Work Equipment Regulations 1999 \(S.R. 1999 No. 305\)](#)

**The Shipbuilding etc (Metrication) Regulations (Northern Ireland) 1990 (S.R. 1990 No.5) (No hyperlink available)**

These Regulations amend the Shipbuilding (Lifting Appliances etc. Forms) Order (Northern Ireland) 1975 (S.R. 1975 No. 191) (No hyperlink available) and the Shipbuilding and Ship-repairing Regulations (Northern Ireland) 1971 (S.R. No. 372) (No hyperlink available) by substituting amounts or quantities expressed in metric units for amounts or quantities not so expressed. The Shipbuilding (Lifting Appliances etc. Forms) Order (Northern Ireland) 1975 was revoked by [SR 1999 No. 304 \(Lifting Operations and Lifting Equipment Regulations \(Northern Ireland\) 1999\)](#). With the revocation of the Shipbuilding and Ship-repairing Regulations (Northern Ireland) 1971 (see below) these Regulations can be revoked.

**Factories (Gasholders—Record of Examinations) Order (Northern Ireland) 1939 (S.R. 1939 No.65) (No hyperlink available); and Section 40 (2) of [Factories Act \(NI\) 1965 \(1965 c.20\)](#)**

Section 40 of the Factories Act (NI) 1965 (c.20) sets out precautions as respects watersealed gasholders with a storage capacity of not less than 140 cubic metres. Section 40(2) requires a duty holder to “have the gasholder thoroughly examined by a competent person at least once in every period of two years and a record containing the prescribed particulars of every such examination shall be kept available for inspection”.

The Factories (Gasholders - (Record of Examinations) Order (Northern Ireland) 1939 gives the details of the “prescribed particulars” which must be included in each record of examination of these water-sealed gasholders.

These legislative measures can be repealed/revoked because they are no longer needed to control health and safety risks having been overtaken by more up to date Regulations such as the 1978 Order, [the Provision and Use of Work Equipment Regulations \(Northern Ireland\) 1999 \(S.R. 1999 No. 305\)](#), the [Control Of Major Accident Hazards Regulations \(Northern Ireland\) 2000 \(S.R. 2000 No.93\)](#) and the [Management of Health and Safety at Work Regulations \(Northern Ireland\) 2000 \(S.R. 2000 No.388\)](#).

The repeal of section 40(2) of the Factories Act 1965 (c.20) also requires the consequential revocation of regulation 4(1) of the Factories Act (NI) 1965 and [Offices and Shop Premises Act \(Northern Ireland\) 1966 \(Repeals and Modifications\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011 No. 283\)](#) which amended this section.

**Gasholders and Steam Boilers Regulations (Metrication) Regulations (Northern Ireland) 1982 (S.R. 1982 No.125) (No hyperlink available)**

These Regulations substitute measurements expressed in metric units (cubic metres) for imperial measurements (cubic feet) in The Examination of Steam Boilers Regulations (Northern Ireland) 1965 (SR&O 1965 No. 35) (No hyperlink available) which were revoked by

S.R. 1991 No.471 (Pressure Systems and Transportable Gas Containers Regulations (Northern Ireland) 1991) (**No hyperlink available**) and The Factories (Gasholders - (Record of Examinations) Order (Northern Ireland) 1939 which it is intended to revoke. As the statutory measures to which these Regulations apply have been revoked or it is intended that they will be revoked then these Regulations are redundant and can also be revoked.

**The Locomotives (Metrication) Regulations (Northern Ireland) 1983 (S.R. 1983 No. 287) (**No hyperlink available**)**

These Regulations substitute measurements expressed in metric units for measurements not so expressed in Regulations for use of Locomotives and Waggon on Lines and Sidings in or used in connection with Premises under the [Factory and Workshop Act 1901 \(1906\) \(S.R.&O. 1906 No.679\)](#). These Regulations are redundant as the Regulations to which they refer have been revoked by the [Health and Safety \(Miscellaneous Revocations\) Regulations 2012 \(S.I.2012/1537\)](#). They can therefore be revoked without any adverse impact.

**Notification of Installations Handling Hazardous Substances Regulations (Northern Ireland) 1984 (S.R. 1984 No.177) (**No hyperlink available**) and [Notification of Installations Handling Hazardous Substances \(Amendment\) Regulations \(Northern Ireland\) 2003 \(S.R. 2003 No.415\)](#)**

The Notification of Installations Handling Hazardous Substances Regulations (Northern Ireland) 1984 require a person who stores, manufactures, processes or transfers a specified minimum quantity of a defined hazardous substance, as set out in the Regulations, to notify HSENI about the activity. The person has to notify their name, address and inventory of the hazardous materials on site three months before starting the activity. There is also a requirement to update HSENI if the information in the original notification has changed or there is significant intensification or an increase in the scale of activities at a site. This requirement would also include de-notification. The Regulations also make HSENI the enforcing authority for health and safety requirements at all notified sites.

The Notification of Installations Handling Hazardous Substances Regulations (Northern Ireland) 1984 were amended in 2003 by the Notification of Installations Handling Hazardous Substances (Amendment) Regulations (Northern Ireland) 2003. The amendment changed the period of notice for ammonium nitrate (AN) from three months to at least four weeks, and lowered the specified quantity to 150 tonnes for AN and mixtures containing AN where the nitrogen content exceeds 15.75% of the mixture by weight. Both Regulations have been revoked because they are superseded by the [European Seveso II Directive](#). This Directive is implemented in Northern Ireland through the [Control of Major Accident Hazards Regulations \(Northern Ireland\) 2000 \(as amended\) \(S.R. 2000 No.93\)](#) and the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 (S.R. 1993 No.275)

**(No hyperlink available)** both of which contain notification requirements.

Revocation of the Regulations will require changes to other legislation. A consequential amendment will be made to the Dangerous Substances (Notification and Marking of Sites) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 71) **(No hyperlink available)**. This will bring into the scope of the Dangerous Substances (Notification and Marking of Sites) Regulations (Northern Ireland) 1992 the notification requirement from the Notification of Installations Handling Hazardous Substances (Amendment) Regulations (Northern Ireland) 2003 for AN and mixtures containing AN where the nitrogen content exceeds 15.75% of the mixture by weight. This means that operators who store this type of AN will need to notify the Northern Ireland Fire and Rescue Service if they have this substance on site at or above the threshold quantity of 150 tonnes.

The following legislation will be slightly amended to remove spent provisions from the statute book: [Petroleum \(Consolidation\) Act \(Northern Ireland\) 1929 \(c.13\)](#); Petroleum-Spirit (Motor Vehicles, etc) Regulations (Northern Ireland) 1930 (S.R. 1930 No. 11) **(No hyperlink available)**; Petroleum-Spirit (Plastic Containers) Regulations (Northern Ireland) 1983 (S.R.1983 No.43) **(No hyperlink available)**; and the [Pipelines Safety Regulations \(Northern Ireland\) 1997 \(S.R. 1997 No. 193\)](#).

### **Shipbuilding and Ship-repairing Regulations (Northern Ireland) 1971 (S.R. 1971 No.372) (No hyperlink available)**

The Shipbuilding and Ship-Repairing Regulations 1971 are designed for the safety, health and welfare of people employed in the construction and repair of ships and vessels in a yard or dry dock and in the construction and repair of ships (but not of vessels other than ships) in a harbour or wet dock.

These Regulations can be revoked because the majority of their provisions have been revoked previously and much that remains is covered by more recent goal setting legislation including the 1978 Order; [Management of Health and Safety at Work Regulations \(Northern Ireland\) 2000 \(S.R. 2000 No.388\)](#); [Confined Spaces Regulations \(Northern Ireland\) 1999 \(S.R. 1999 No.13\)](#); [Provision and Use of Work Equipment Regulations \(Northern Ireland\) 1999 \(S.R. 1999 No. 305\)](#); [Lifting Operations and Lifting Equipment Regulations \(Northern Ireland\) 1999 \(S.R. 1999 No. 304\)](#); [Work at Height Regulations \(Northern Ireland\) 2005 \(S.R. 2005 No. 279\)](#) and the [Dangerous Substances and Explosive Atmospheres Regulations \(Northern Ireland\) 2003 \(S.R. 2003 No.152\)](#), and enforcement action can be taken without having to apply the Shipbuilding and Ship-repairing Regulations (Northern Ireland) 1971.

Revocation of the Regulations would also require consequential revocations to a number of Regulations which referred to or amended the Shipbuilding and Ship-repairing Regulations (Northern Ireland) 1971 including Schedule 2 of the [Personal Protective Equipment at Work](#)

[Regulations \(Northern Ireland\) 1993 \(S.R. 1993 No. 20\)](#) and Schedule 3 of the [Lifting Operations and Lifting Equipment Regulations \(Northern Ireland\) 1999 \(S.R. 1999 No. 304\)](#).

[The Workplace \(Health, Safety and Welfare\) Regulations \(Northern Ireland\) 1993 \(S.R. 1993 No. 37\)](#) will also be amended so that comparable duties under them will apply to a “workplace which is or is in or on a ship. This is specifically in respect of regulation 8 (Lighting) and regulation 12 (Condition of floors and traffic routes) for ships under repair since the [Workplace \(Health, Safety and Welfare\) Regulations \(Northern Ireland\) 1993](#) already apply to ships under construction.

**The Docks Regulations (Northern Ireland) 1989 (S.R. 1989 No. 320) (No hyperlink available)**

The Docks Regulations (Northern Ireland) 1989 impose duties for the management of workers health, safety and welfare in relation to specific docks-related activities. They were conceived as a single set of Regulations which addressed port-specific activities and risks at a time when there was limited published guidance and standards for docks and the ship/shore interface, and accident rates were high.

The Regulations are being revoked because parts have already been revoked by the [Work at Height Regulations \(Northern Ireland\) 2005 \(S.R. 2005 No. 279\)](#); the [Lifting Operations and Lifting Equipment Regulations \(Northern Ireland\) 1999 \(S.R. 1999 No. 304\)](#); and the [Confined Spaces Regulations \(Northern Ireland\) 1999 \(S.R.1999 No.13\)](#).

The remainder has been superseded by more general requirements of recent legislation such as the [Management of Health & Safety at Work Regulations \(Northern Ireland\) 2000 \(S.R. 2000 No.388\)](#), the [Workplace \(Health, Safety and Welfare\) Regulations \(Northern Ireland\) 1993 \(S.R. 1993 No.37\)](#) and the Manual Handling Operations Regulations (Northern Ireland) 1992 (S.R. 1992 No.535) (No hyperlink available), along with the more specific requirements of the [Provision and Use of Work Equipment Regulations \(Northern Ireland\) 1999 \(S.R. 1999 No.305\)](#). Revocation of these Regulations will not introduce new duties on employers, nor will it reduce protection for workers or those affected by work activities.

The Docks Regulations (Northern Ireland) 1989 also deal with some activities and work practices which are no longer commonplace. The recent development of health and safety guidance by the industry confirmed that the Regulations are outdated. Health and safety standards in ports can now be dealt with more effectively through other existing legislation.

These Regulations also include a consequential amendment to The Work at Height Regulations (Northern Ireland) (S.R. 2005 No. 279) to import provisions from regulations 7(6) of the Docks Regulations (Northern Ireland) 1989 and also remove a disapplication to ensure that the same level of protection is retained.

Minor consequential amendments are also needed to the Workplace (Health, Safety and Welfare) Regulations (Northern Ireland) 1993 (S.R. 1993 No. 37) to, for example, transfer the definition of a “ship” from the Docks Regulations (Northern Ireland) 1989, and to the Lifting Operations and Lifting Equipment Regulations (Northern Ireland) (S.R. 1999 No. 304) (LOLER) to remove spent provisions.

**The Docks (Amendment) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 374) (No hyperlink available)**

These Regulations amend the Docks Regulations (Northern Ireland) 1989 (S.R. 1989 No. 320) (see above) and are technical in nature. With the revocation of the Docks Regulations (Northern Ireland) 1989 these Regulations can be revoked.

**Factories (Postponement of Certain Requirements) Order (Northern Ireland) 1939 (S.R. & O. 1939 No. 74) (No hyperlink available)**

These Regulations relate to the Factories Act (Northern Ireland) 1938 which was repealed by the [Factories Act \(Northern Ireland\) 1965 \(1965 Chapter 20\)](#). These Regulations are therefore redundant and can be revoked.

**Reports of Appointed Factory Doctors Order (Northern Ireland) 1968 (S.R. & O. 1968 No. 228) (No hyperlink available)**

These Regulations require reports to be made under Section 151(6) of the [Factories Act \(Northern Ireland\) 1965](#). This Section was repealed by the [Health and Safety at Work Order \(Northern Ireland\) 1978 \(S.I. 1978 No. 1039\)](#). These Regulations are therefore redundant and can be revoked.

**Construction (Metrication) Regulations (Northern Ireland) 1989 (S.R. 1989 No. 300) (No hyperlink available)**

These Regulations enacted amendments to seven sets of Regulations which have all now been revoked in their entirety. The Regulations are therefore considered redundant and can be revoked.

**Construction Plant and Equipment (Noise Emission) (Amendment) Regulations (NI) 1990 (S.R. 1990 No. 102) (No hyperlink available) and**

**[Construction Plant and Equipment \(Noise Emission\) \(Amendment\) Regulations \(NI\) 1999 \(S.R. 1999 No. 123\)](#)**

These Regulations enacted amendments to the Construction Plant and Equipment (Noise Emission) Regulations (NI) 1987 (S.R. 1987 No. 328) (**No hyperlink available**). This principal legislative measure was revoked by the [Noise Emission in the Environment by Equipment for use Outdoors Regulations 2001 \(S.I. 2001 No.1701\)](#). These amending Regulations are therefore redundant.

**Provision and Use of Work Equipment (Amendment) Regulations (Northern Ireland) 1995 (S.R. 1995 No. 26) ) (No hyperlink available)**

These Regulations enacted amendments to the [Provision and Use of Work Equipment Regulations \(Northern Ireland\) 1993 \(S.R. 1993 No. 19\)](#). These principal Regulations have been subsequently revoked in their entirety by the [Provision and Use of Work Equipment Regulations \(Northern Ireland\) 1999 \(S.R. 1999 No. 305\)](#). The Regulations are therefore considered redundant and can be revoked.

- 3.3 In addition, the Regulations effect a technical amendment to the Borehole Sites and Operations Regulations (Northern Ireland) 1995 (S.R. 1995 No. 491) (**No hyperlink available**), and minor consequential amendments to the [Health and Safety \(Enforcing Authority\) Regulations \(Northern Ireland\) 1999 \(S.R. 1999 No. 90\)](#) and the [REACH Enforcement Regulations 2008 \(S.I. 2008 No. 2852\)](#).

**4. Consultation**

- 4.1 A consultation ran from 14 April 2014 to 7 July 2014. There were approximately 600 consultees, including individuals and bodies representative of section 75 of the Northern Ireland Act 1998 and other organisations with an interest in equality and related issues (including each member of the Northern Ireland Assembly).
- 4.2 A total of 5 replies were received, with no adverse comments from respondents in relation to the proposed Regulations.

**5. Position in Great Britain**

- 5.1 In Great Britain corresponding measures are implemented by elements of the following Statutory Instruments: the Health and Safety (Miscellaneous Repeals, Revocations and Amendments) Regulations 2013 (S.I. 2013/448) and the Health and Safety (Miscellaneous Revocations and Amendments) Regulations 2013 (S.I. 2013/1512).
- 5.2 S.I. 2013/448 revokes four additional instruments which have no corresponding NI equivalents. In addition, S.I. 2013 No. 1512 makes amendments to the Health and Safety (First-Aid) Regulations 1981 (S.I. 1981/917) and revokes related provisions in the Health and Safety (Fees) Regulations 2012 (S.I. 2012/1652) which are not replicated in these Regulations.

**6. Equality Impact**

- 6.1 The Statutory Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or differential aspects were identified.

**7. Regulatory Impact**

- 7.1 Impact assessments completed by HSE in respect of the corresponding proposals in Great Britain indicated that there are either no or minimal net costs to business associated with the removal of:
- Celluloid and cinematograph film legislation;
  - Notification of Installations Handling Hazardous Substances Regulations (2 sets of Regulations);
  - Gasholders (Record of Examinations) Order and a related section of the Factories Act;
  - Shipbuilding and Ship-repairing Regulations;
  - The Docks Regulations; and
  - Gasholders and Steam Boilers (Metrication) Regulations, Locomotives etc Regulations 1906 (Metrication) Regulations, Docks, Shipbuilding etc (Metrication) Regulations.
- 7.2 Cost savings are estimated for the Construction (Head Protection) Regulations – estimated net saving to business per year of approximately £1000.
- 7.3 No IAs have been completed for the remaining items of legislation which are subject to revocation or amendment, as the changes are of a minor/technical nature or they relate to Regulations which make amendments to principal Regulations that have already been revoked. The current action is therefore purely technical in nature.
- 7.4 An overall benefit of the revocations included in these regulations will arise from the contribution made towards streamlining the Health and Safety legislative framework.

## **8. Financial Implications**

8.1 As detailed in paragraph 7 above.

## **9. Section 24 of the Northern Ireland Act 1998**

9.1 The Department has considered the matter of Convention rights and is satisfied that there are no matters of concern.

## **10. EU Implications**

10.1 None. This Statutory Rule does not implement any European Directives.

## **11. Additional Information**

11.1 Not applicable.

Department of Enterprise, Trade and Investment  
April 2015

<b>Title:</b> Revocation of the Gasholders (Record of Examinations) Order 1938 and repeal of Section 39 (2) of the Factories Act 1961 <b>IA No:</b> <a href="#">HSE0069c</a> <b>Lead department or agency:</b> Health and Safety Executive <b>Other departments or agencies:</b> None	<b>Impact Assessment (IA)</b>					
	<b>Date:</b> 18/07/2012					
	<b>Stage:</b> Final					
	<b>Source of intervention:</b> Domestic					
	<b>Type of measure:</b> Secondary legislation					
<b>Contact for enquiries:</b> <a href="#">Karen McDonough</a> . <a href="mailto:karen.mcdonough@hse.gsi.gov.uk">karen.mcdonough@hse.gsi.gov.uk</a> . <a href="#">Tara McNally</a> <a href="mailto:tara.mcnally@hse.gsi.gov.uk">tara.mcnally@hse.gsi.gov.uk</a>						
<b>Summary: Intervention and Options</b>						<b>RPC Opinion:</b> RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£0m	£0m	£0m	No	NA

**What is the problem under consideration? Why is government intervention necessary?**

In response to the Lofstedt review and the Red Tape Challenge HSE has identified a number of health and safety regulations, including the Gasholder (Record of Examinations) Order 1938 and a related provision section 39(2) in the Factories Act 1961, which are either redundant or have been overtaken by more modern legislation. Without any intervention these regulations would remain in force and contribute to the impression that health and safety law is complex, confusing and out of date. This work is one element of a much wider programme of work to make the legislative framework simpler and easier to understand, while maintaining the same standards of protection for those in the workplace or affected by work activities.

**What are the policy objectives and the intended effects?**

The policy objective of this work is to streamline the legislative framework by removing the Gasholders (Record of Examinations) Order 1938 and a related provision section 39(2) in the Factories Act 1961 as redundant or out-of-date legislation that is no longer needed to control health and safety risks in the workplace. Added to this, if the 1938 Order is revoked, the Gasholder and Steam Boilers (Metrication) Regulations 1981 can also be revoked. (These Regulations amend the 1938 Order by substituting the measurements expressed in metric units for imperial measures and is analysed in a

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 1 - Do nothing - the Gasholder (Record of Examinations) Order 1938 and a related provision section 39(2) in the Factories Act 1961 would remain on the statute book.

Option 2 - Revoke the Gasholder (Record of Examinations) Order 1938 and a related provision section 39 (2) in the Factories Act 1961.

No alternatives to regulation have been considered as this is a deregulatory measure Option 2 is the preferred option as it will remove unnecessary out of date regulation from the statute books. Almost 90% of the responses to HSE's consultation question "the proposal to revoke the Gasholder (Records of Examinations) Order 1938 and

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** Month /Year

Does implementation go beyond minimum EU requirements?	No				
Are any of these organisations in scope? If Micros not exempted set out reason in	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No

Evidence Base.					
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? <i>(Million tonnes CO<sub>2</sub> equivalent)</i>	<b>Traded:</b>		<b>Non-traded:</b>		

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible Minister: \_\_\_\_\_ Date: \_\_\_\_\_

## Summary: Analysis &amp; Evidence Policy Option 1

Description: Do Nothing

## FULL ECONOMIC ASSESSMENT

Price Base Year na	PV Base Year na	Time Period Years na	Net Benefit (Present Value (PV)) (£m)			
			Low: 0	High: 0	Best Estimate: 0	
<b>COSTS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Cost</b> (Present Value)		
Low	0	0	0	0		
High	0		0	0		
Best Estimate	0		0	0		
<b>Description and scale of key monetised costs by 'main affected groups'</b>						
This is the baseline option and as such has zero costs						
<b>Other key non-monetised costs by 'main affected groups'</b>						
<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Benefit</b> (Present Value)		
Low	0	0	0	0		
High	0		0	0		
Best Estimate	0		0	0		
<b>Description and scale of key monetised benefits by 'main affected groups'</b>						
This is the baseline option and as such has zero benefits						
<b>Other key non-monetised benefits by 'main affected groups'</b>						
Key assumptions/sensitivities/risks				Discount rate (%)	na	

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as	
Costs: 0	Benefits: 0	Net: 0	No	NA	

**Summary: Analysis & Evidence** Policy Option 2

**Description:** Revoke Gasholder (Record of Examinations) Order 1938 and a related provision section 39(2) in the Factories Act 1961.

**FULL ECONOMIC ASSESSMENT**

Price Base Year na	PV Base Year na	Time Period Years na	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>	
Low	0		0	0	
High	0		0	0	
Best Estimate	0		0	0	
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
There will be no costs to business from revoking the Gasholder (Record of Examinations) Order 1938 and a related provision section 39(2) in the Factories Act 1961. Industry use an industry standard to determine their examination process and the advice in this industry standard will not change as a result of the revocation.					
<b>Other key non-monetised costs by 'main affected groups'</b>					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>	
Low	0		0	0	
High	0		0	0	
Best Estimate	0		0	0	
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
The removal of this Regulation plus the related provision in the FA 1961 will contribute towards streamlining the Health and Safety legislative framework.					
Key assumptions/sensitivities/risks				Discount rate (%)	na

**BUSINESS ASSESSMENT (Option 2)**

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

**Evidence Base for Revocation of the Gasholders (Record of Examinations) Order 1938 and repeal of Section 39 (2) of the Factories Act 1961**

**Problem under consideration;**

1. Professor Löfstedt's independent review of health and safety legislation 'Reclaiming health and safety for all' (<http://www.dwp.gov.uk/docs/lofstedt-report.pdf>) was published in November 2011. In response to this, and the Red Tape Challenge, HSE has identified a number of health and safety regulations that are either redundant, have been overtaken by more modern legislation or do not deliver their intended benefits. Measures identified include the Gasholder (Record of Examinations) Order 1938 and a related provision section 39(2) in the Factories Act 1961. Without any intervention these would remain in force and contribute to the impression that health and safety law is extensive, complex and out of date. This work is only one small element of a much wider programme of work to make the legislative framework simpler and easier to understand, while maintaining the same standards of protection for those in the workplace or affected by work activities.
2. The public were given the opportunity to comment on Regulations under the Government's Red Tape Challenge initiative – those that work well and those that do not. This exercise was launched on 7 April 2011 with a new theme in the spotlight on the website every three weeks. Workplace Health and Safety is a cross cutting theme and open to challenge throughout the initiative. It was also in the spotlight from 30 June for 3 weeks. Some 197 Regulations were in scope for the Workplace Health and Safety theme. All Red Tape Challenge comments are collated to provide a clearer picture for Government of which Regulations should stay, which should go and which should change. All the Health and Safety Theme comments received are now being considered by HSE.
3. Section 39 of the Factories Act (FA) 1961 sets out precautions as respects water-sealed gasholders with a storage capacity of not less than 140 cubic metres. Section 39(2) was amended in 2009 (by S.I. 2009/605) and requires a duty holder to have the gasholder "*thoroughly examined externally by a competent person at least once in every two years and a record containing the prescribed particulars of every such examination shall be entered in or attached to the general register*". The 1938 Order gives the details of the "prescribed particulars" which must be included in each record of examination of these water-sealed gasholders.
4. Both section 39 of the FA and the 1938 Order originated at a time when the production of town gas (made from coal) at gas works was commonplace and widespread. Gas works required on-site storage capacity to cope with diurnal demand patterns and water-sealed gasholders were most commonly used for this purpose. Above ground water-sealed gas-holders can contain very significant quantities of water as well as gas. Failure to manage the integrity of the holder can

lead to catastrophic releases of both substances. In the 1930's it was not uncommon for individual factories to produce their own town gas and operate their own gas holders. Since the introduction of natural gas to the UK in the 1960s and 70s there has been a drastic reduction in the number of water-sealed gasholders in operation (informal consultation with industry identified less than 80 operational water-sealed gasholders. Those water –sealed gasholders still in operation are connected to the gas distribution networks. If the 1938 Order is revoked, the Gasholders and Steam Boilers (Metrication) Regulations 1981 will also be redundant and can also be revoked. These Regulations amend the 1938 Order by substituting measurements expressed in metric units for imperial measurements.

5. Links to legislation:

- Gasholders (Record of Examinations) Order 1938 SI 1938/ 598 <http://www.legislation.gov.uk/ukstro/1938/598/contents/made;>
- Section 39 (2) of the Factories Act 1961 – SI 1961/34; [http://www.legislation.gov.uk/ukpga/Eliz2/9-10/34/section/39.](http://www.legislation.gov.uk/ukpga/Eliz2/9-10/34/section/39)

**Rationale for intervention;**

6. Intervention is necessary to implement the Government response to the above mentioned Red Tape Challenge and Löfstedt Review. The Gasholder (Records of Examinations) Order 1938 and related provision section 39(2) of the FA are not used as other provisions are applied instead. However they are in the statute books and principles of good regulation suggest that they should be removed.
7. This proposal is part of a wider deregulatory process. In general, the removal of duplicate legislation removes the need for dutyholders to spend resource on reading and understanding the additional legislation, it would also save dutyholder resource by reducing the uncertainty and complexity of the health and safety legislative framework. Deregulation, on the whole, would reduce the burden on industry and therefore reduces barriers to entry and fixed start-up costs thus making markets more contestable. This theory is supported by some anecdotal evidence from consultation:

*“The TUC welcomes simpler and better regulation and supports moves to remove, merge, simplify or amend outdated, overly complex or unnecessary regulations.”*

**Policy objective and intended effects**

8. The policy objective of this work is to contribute to the streamlining of the legislative framework by removing the Gasholders (Record of Examinations) Order 1938 and a related provision section 39(2) of the FA 1961, that are no longer needed to control health and safety risks in the workplace as other provisions are applied instead. Without any intervention these would remain in force and contribute to the impression that health and safety law is complex, confusing and out-of-date.

9. If the proposed revocation goes ahead the Gasholders and Steam Boilers (Metrication Regulations 1981 can also be revoked. These Regulations amend the 1938 Order by substituting the measurements expressed in metric units for imperial measures.
10. This work forms part of HSE's programme of wider reforms to help employers understand quickly and easily what they need to do to manage workplace risks.

#### **Alternatives to regulation**

11. No alternatives to regulation have been considered as this is a deregulatory measure. However;
12. The Institute of Gas Engineers and Managers (IGEM) has established technical standards relating to water-sealed gasholders in their SR/4 publication. These publications are established as trusted gas industry standards and are used to assist in compliance with legislation and official approved codes of practice and guidance. HSE will continue to work with IGEM and industry to amend SR/4 following the revocation of the 1938 Order and related provision in the FA 1961.

#### **One In One Out (OIOO)**

13. This deregulatory measure is not within scope of One In One Out as there will not be any additional cost or cost savings to industry as a result of the revocation proposal.

#### **Description of options considered (including do nothing);**

14. Option 1 – Do nothing - the Gasholder (Records of Examinations) Order 1938 and a related provision section 39(2) in the Factories Act 1961 would remain on the statute book.
15. Option 2 – Revoke the Gasholder (Record of Examinations) Order 1938 and a related provision section 39 (2) in the Factories Act 1961
16. Option 2 is the preferred option as it will remove unnecessary or out of date regulation from the statute books. Almost 90% of the responses to HSE's consultation question "Do you agree with the proposal to revoke the Gasholder (Records of Examinations) Order 1938 and section 39(2) in the Factories Act 1961?" were in favour of this option.

#### **Consultation and data analysis**

17. Consultation on the proposed revocation of the Gasholders (Records of Examination) Order 1938 and related provision section 39(2) of the Factories Act 1961 ran for 12 weeks ending on the 4 July 2012 and consisted of both formal and informal elements. 40 responses were received, however not all respondents answered every question.
18. **Annex 1** provides a summary of the consultation responses relating to the Gasholders (Records of Examination) Order 1938 and related provision section 39(2) of the Factories Act 1961. This Annex also provides details of the organisations that responded and the proportion

of the respondents within these organisations compared to total responses and gives a summary of the responses to the specific questions as set out in the consultative document.

19. The results of the specific questions posed at consultation were:

- Of the 40 respondents who answered the question “*Do you agree with the proposal to revoke the Gasholder (Records of Examinations) Order 1938 and section 39(2) in the Factories Act 1961*”? 36 (88%) were in favour. Of the four that disagreed, two responders felt that they did not have the relevant experience to answer the question, one wanted clarification that gasholders fell within the remit of Provision and Use of Work Equipment Regulations (PUWER) and the fourth felt that the revocation should not go ahead in case gas holders became more widely used again when North Sea gas is depleted. Therefore, in fact, only one respondent was against the revocation.
- Of the 30 respondents who answered the question “*Would this revocation have any implications (positive or negative) for businesses, workers or others that HSE has not identified?*” 24 (86%) agreed that it would have no implications and the remaining respondents did not raise any areas of contention.
- To the question “*To help HSE prepare the Impact Assessment (IA) please estimate what changes to your business you would make (if any) as a result of the Order being revoked*” all 16 responders had no comment and did not provide any information to be used in the IA.

20. HSE also consulted informally with key stakeholders i.e. gas distribution networks and IGEM to request further information regarding the proposals which would help inform the IA. Three of the four duty holders contacted replied with detailed responses and confirmed that they based their inspections on the IGEM industry guidance and would not change their current behaviour in relation to the inspection of gasholders. Furthermore, IGEM confirmed that they would not change their inspection recommendations in respect of water sealed gas holders, as set out in the IGEM technical standards publication SR/4 Edition 3 titled “*Variable Volume Gasholders Storing Lighter than Air Gases*”.

21. Analysis also included examining HSE records on the use of this set of Regulations and the FA over the last 13 years. During this time Section 39 of the FA and the 1938 Order has been cited in one improvement notice (in relation to a non-network gasholder) issued in the same period.

### **Monetised and non-monetised costs and benefits of each option (including administrative burden);**

#### *General Assumptions*

22. Given the nature of the deregulatory measure, no assumptions have been made with reference to base year, analysis period or discount value.

*Option 1: do nothing*

23. Option 1 would maintain the status quo and so would have no costs or benefits.

*Option 2: Revoke the Gasholder (Record of Examinations) Order 1938 and a related provision section 39 (2) in the Factories Act 1961*

24. Option 2 would require the removal of the 1938 Order and related provision in the FA 1961. The evidence for this assessment is set out below.

*Costs to business*

25. HSE's assessment is that the 1938 Order and related provision in the FA 1961 are currently not used by businesses as the industry standard provided by IGEM is the primary guidance for examination of water-sealed gasholders. The only potential cost to industry would be IGEM needing to update the industry standard. Having spoken to IGEM, they would only consider an urgent amendment to their guidance if the changes would compromise safety, as this is not the case, there is no plan for them to bring forward their next re-drafting of the industry standard.

26. IGEM would respond to this change by sending an email to dutyholders. This is unlikely to take a lot of time for either IGEM or dutyholders who read the email and as such, there will be no significant cost to industry from this revocation. Furthermore, when an updated standard is sent to dutyholders, it will simply be a case of taking out the references to the FA and 1938 Order.

27. Respondents broadly agreed with the revocation of the 1938 Order and related provision in the FA 1961, with one respondent stating that as the use of gasholders has greatly declined the legislative provisions have reduced and they are superseded by other legislation.

28. While consultation responses are undoubtedly biased, those that responded are likely to be the more engaged and most likely to know/use the statutory instruments analysed in this IA. Hence, if there were any costs to business, this group would be the most likely to know about it. Given their negative responses to the question "Are any of these Regulations used in practice in the relevant sector/industry?" it is reasonable to assume there will be no cost to industry.

29. HSE initially identified a potential cost saving if industry, as a result of the revocation, reduced their inspections from every year to every two years (which, although inspection every two years is the current regulatory requirement, the industry standard recommends every year) However, IGEM have confirmed that they will not change their recommendation for an annual inspection on the basis that;

*"Most, if not all water-sealed holders in the gas distribution network are decommissioned during the summer months, and inspection is required as part of the re-commissioning process to verify integrity after the period out of service. The SR/4 committee believes that annual*

*inspection is appropriate and that the clause should remain in the IGEM/SR/4 Standard.”*

30. Industry has also confirmed that while they are aware of the legal two yearly inspection requirements, they will continue to use the IGEM industry standard as guidance and will also continue with annual inspections.
31. HSE also identified a second potential cost saving for new entrants into the market having less regulation to familiarise themselves with. This however, is not likely to be realised due to no new entrants coming into the market and due to the industry standard being the main guidance rather than the legislation itself.
32. In summary, HSE analysis indicates that there will be no costs or cost savings to industry as a result of the revocation.

#### *Costs to HSE*

33. There will be no additional costs to HSE as a result of revoking the Gasholders (Records of Examinations) Order 1938 and a related provision section 39(2) of the Factories Act 1961. HSE will continue to work with IGEM and industry in developing the industry standards. IGEM consult with HSE when they make changes to their industry standard, having said this, when an updated standard is sent to dutyholders, they will simply take out the references to the FA and 1938 Order.

#### *Benefits and impact on health and safety*

34. As previously described, the 1938 Order and section 39(2) of the FA are out-of-date, and there will be no impact on health and safety protection because when appropriate, adequate controls are maintained through more modern legislation.
35. There is also an overarching benefit which is to simplifying the legislative framework.
36. HSE believes that section 39(2) of the FA and the 1938 Order can be removed without lowering health and safety protections. This is because a substantial body of other legislation applies to these gasholders and to the records that should be kept to demonstrate that a gasholders material integrity is being adequately managed. It is considered that these regulations provide sufficient legislative cover to maintain health and safety (namely: the Health and Safety at Work etc. Act 1974 (HSWA), the Provision and Use of Work Equipment Regulations 1998 (PUWER), the Control of Major Accident Hazards regulations 1999 (COMAH) and the Management of Health and Safety at Work regulations (MHSWR) Regulation 3).
37. COMAH qualifying water-sealed gasholders (i.e. those with a capacity of 50 tonnes of methane or more) attract the general duty of COMAH Regulation 4 which states that “every operator shall take all measures necessary to prevent

major accidents and limit their consequences to persons and the environment”. The demonstration by the operator, through thorough record keeping, of an adequate integrity management regime is an essential and accepted part of meeting that duty.

38. In the case of non-COMAH gasholders, PUWER Regulation 6(2) and (3) provides adequate cover for inspection purposes of such gasholders (although it does not contain a strict requirement for an examination at set intervals). These regulations are supported by the Approved Code of Practice (ACoP) “Safe use of work equipment – Provision of Use of Work Equipment Regulations 1999 (publication L22. This also refers to the MHSWR 1999 reg 3). Together with PUWER this ACoP supports the legal requirement for an appropriate inspection and details of what should form part of the inspection i.e. visual checks, functional checks and testing.
39. The Institution of Gas Engineers and Managers (IGEM) have published technical standards since the 1960s. These are established as trusted gas industry standards and are used to assist in compliance with legislation and official approved codes of practice and guidance.

40. Of their publications IGEM/SR/4 Edition 3 entitled “Variable Volume Gasholders Storing Lighter than Air Gases” (Section 6.2) covers the inspection of water-sealed gasholders, based on section 39 of the FA and the information requirements as detailed in the 1938 Order. This industry standard recommends that an intermediate examination is undertaken, meaning a potential annual inspection which goes further than the “every 2 years” inspection specified in the FA.
41. Informal consultation with the gas distribution networks that operate water sealed gasholders has identified that they do not have any objections to the proposed revocations. It also highlighted that although aware that the legal requirement under section 39(2) of the FA is to undertake a two yearly inspection; they actually conduct an annual inspection in line with the recommendations in the publication IGEM SR/4 and will continue to do so even if the proposed revocation goes ahead.
42. HSE contacted IGEM to determine what impact the revocation will have in terms of their industry guidance publication. They have confirmed the following:
  - They will not change the advice that they give in their publication and will continue to recommend an annual inspection;
  - Amendments will be made depending on the nature and impact of the changes. If deemed urgent (i.e. where safety could be compromised) amendments would be made as soon as possible or if not, at the next review. (Currently every 4/5 years).
  - Amendments would be freely available to download through their website. IGEM would also consider emailing members.
43. The nature of the impacts will not be urgent and therefore it is expected that the changes will be made at the next review.
44. HSE will continue to work in partnership with IGEM and industry to support any changes to the SR/4 standard that might be required as they have done with previous updates. This will focus on a goal setting approach to ensure the standards in place are both adequate and appropriate.

**Rationale and evidence that justify the level of analysis used in the IA (proportionality approach);**

45. The analyses of HSE records and both internal and external consultation have identified the proposed 1938 Order and related provision in the FA 1961 has been overtaken by more modern legislation. A proportionate cost analysis has been presented above.
46. Although a consultation stage IA was not produced for assessing the impacts of the removal of the Regulation, formal and informal consultation was used to gather information for the analysis presented here.
47. While consultation responses are undoubtedly biased, those that responded are likely to be the more engaged and most likely to know/use the statutory instruments analysed in this IA. Hence, if there were any costs to business, this group would be the most likely to know about it. Furthermore, consultation responses have been triangulated with responses from informal consultation discussions with industry.
48. There remain some uncertainties of the impacts of the policy proposal that it would not be proportionate to estimate, these are detailed in the following section.

### **Risks and assumptions**

49. HSE's initial assessment was that these legislative measures were either redundant or had been overtaken by other more modern regulation so there would be no risk associated with them being revoked.
50. Almost 90% of the responses to HSE's consultation question "Do you agree with the proposal to revoke the Gasholder (Records of Examinations) Order 1938 and section 39(2) in the Factories Act 1961?" agreed with the proposals.
51. The two uncertainties raised through consultation where:
  - The potential reduction in health and safety standards;
  - Moving from a prescriptive basis to a target base
52. Consultation with dutyholders affected by the revocation indicates that there will be no changes to their behaviour as a result of this revocation and therefore, the potential for a reduction in health and safety standards is low.
53. HSE will continue to work with IGEM and industry to maintain the industry standard which should sufficiently eliminate any potential for a reduction in health and safety standards.
54. The change from a prescriptive to goal setting legislative framework has been separately identified as both a positive and negative aspect of the revocation proposals as a whole. Goal setting legislation allows duty holders to choose the most appropriate methods or equipment available to meet the legal requirements

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(although it can be seen as introducing a level of uncertainty). Businesses are already complying with a range of goal setting Regulations such as the Personal Protective Equipment Regulations so removing prescriptive legislation should assist dutyholders (once they are familiar with the changes) because they have to comply with only one, goal setting, framework.

### **Direct costs and benefits to business calculations (following OIOO methodology);**

55. This deregulatory measure is not within scope of One In One Out as there will not be any additional cost or cost savings to industry as a result of the revocation proposal.

### **Wider impacts**

56. There would be no wider impacts as a result of this simplification.

### **Summary and preferred option with description of implementation plan.**

57. HSE's preferred option, on the basis of HSE's expert analysis and the responses to the consultation, is therefore that these legislative measures referred to in this IA can be revoked without any lowering of health and safety standards.

58. The aim following Ministerial approval is to implement the revoking Regulations with effect from April 2013, subject to Parliamentary scrutiny.

59. HSE will ensure that stakeholders are alerted to the proposed changes and will update the relevant HSE web pages to provide signposts to key guidance for the gas distribution sector.

**Annex 1 – Gasholder (Record of Examinations) Order 1938 and related provision section 39 (2) of the Factories Act 1961 - Consultation responses**

**Table 1 - General information**

**a) Type of organisation**

<b>Option</b>	<b>Number of respondents</b>	<b>Percentage of total (%)</b>
Consultancy	4	10
Local government	7	18
Industry	10	25
Trade association	4	10
National government	2	5
Non-departmental public body	0	0
Charity	1	3
Academic	2	5
Trade union	3	8
Non-governmental organisation	0	0
Member of the public	0	0
Pressure group	0	0
Other (please specify)	5	13
Not stated	2	5
<b>Total</b>	<b>40</b>	

**b) Capacity of respondent**

<b>Option</b>	<b>Number of respondents</b>	<b>Percentage of total (%)</b>
Health and Safety professional	22	56
An employer	2	5
An employee	7	18
Trade union official	2	5
Training provider	1	3
Other (please specify)	2	5
Not stated	4	10
<b>Total</b>	<b>40</b>	

**Table 2 – Summary of responses to specific questions**

**Question 4.1 - Do you agree with the proposal (as outlined in Annex 4) to revoke the Gasholder (Records of Examinations) Order 1938 and section 39(2) in the Factories Act 1961?**

Option	Number of respondents	Percentage of total (%)
Yes	35	88
No	4	10
No comment	1	3
<b>Total</b>	<b>40</b>	

\*Percentages may not add up to 100 due to rounding

**If “No” what are your objections?**

HSE has not accounted for the likely re-introduction of such installations in the near future when north sea natural gas is depleted.

**Question 4.2 – To help HSE prepare the Impact Assessment please estimate what changes to your business would you make (if any) as a result of the Order being revoked.**

HSE received 16 responses to this question; however no respondees offered any information to inform the Impact Assessment. Twelve respondents answered ‘none’ and the other four responses were - ‘no comment’; ‘0’; ‘no impact’; and ‘no individual data available’.

**Question 4.3 – Would this revocation have any implications (positive or negative) for businesses, workers or others that HSE has not identified?**

Option	Number of respondents	Percentage of total (%)
Yes	4	14
No	24	86
<b>Total</b>	<b>28</b>	

**If you have answered “Yes” please explain what these are.**

1. It was not clear from the CD if there had been consideration of the use of water-sealed gasholders outside the gas distribution networks. For example the use of water-sealed gas holders at: waste water treatment plants, and steel manufacturing plants is a common occurrence. Whilst gas distribution networks will be familiar with the wide range of industry guidance produced by IGEM, this would be less likely with other groups. The respondent also commented that it was unclear how non-gas networks users will be used.

2. It is not clear what current regulation would ensure that gasholders are included in the remit of gasholders, as Provision of Use of Work Equipment Regulations 1998 (PUWER) is imprecise on the matter. PUWER 98 differs from PUWER 92 in a number of ways. They are: (a) an extension of the definition of “work equipment” to include installations”. And yet later leaves it unclear as to whether gasholders would be considered as work equipment.

<b>Title:</b> Revocation of the Shipbuilding and Ship-repairing Regulations, 1960 <b>IA No:</b> <a href="#">HSE0069d</a> <b>Lead department or agency:</b> Health and Safety Executive <b>Other departments or agencies:</b> None	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 18/07/2012
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
<b>Contact for enquiries:</b> <a href="mailto:simon.edwards@hse.gsi.gov.uk">Simon Edwards</a> <a href="mailto:simon.edwards@hse.gsi.gov.uk">simon.edwards@hse.gsi.gov.uk</a> <a href="mailto:Tara.McNally@hse.gsi.gov.uk">Tara McNally</a> <a href="mailto:tara.mcnally@hse.gsi.gov.uk">tara.mcnally@hse.gsi.gov.uk</a>	

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as Zero Net Cost
0	0	0	Yes	Zero Net Cost

**What is the problem under consideration? Why is government intervention necessary?**

In response to the Lofstedt review and the Red Tape Challenge HSE has identified a number of health and safety Regulations that are either redundant or that have been overtaken by more modern legislation. Without any intervention these would remain in force and contribute to the impression that health and safety law is complex, confusing and out of date. This work is one element of a much wider programme of work to make the legislative framework simpler and easier to understand, while maintaining the same standards of protection for those in the workplace or affected by work activities.

**What are the policy objectives and the intended effects?**

The policy objective of this work is to streamline the legislative framework by removing redundant or out-of-date legislation that is no longer needed to control health and safety risks in the workplace.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 1 - Do nothing - the Shipbuilding and Ship-repairing Regulations, 1960 would remain on the statute book.

Option 2 - Revoke the Shipbuilding and Ship-repairing Regulations, 1960.

Option 2 is the preferred option as it will remove unnecessary or out of date regulation from the statute books. The majority of responses to the question on whether HSE should revoke the Shipbuilding and Ship-repairing Regulations agreed with the proposal.

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** Month /Year

Does implementation go beyond minimum EU requirements?	No
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Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro Yes</b>	<b>&lt; 20 Yes</b>	<b>Small Yes</b>	<b>Medium Yes</b>	<b>Large Yes</b>
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? <i>(Million tonnes CO<sub>2</sub> equivalent)</i>			<b>Traded:</b>	<b>Non-traded:</b>	

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible Minister: \_\_\_\_\_ Date: \_\_\_\_\_

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**Summary: Analysis & Evidence    Policy Option 3**

**Description:** Do Nothing

**FULL ECONOMIC ASSESSMENT**

Price Base Year na	PV Base Year na	Time Period Years na	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>	
Low	0	0	0	0	
High	0		0	0	
Best Estimate	0		0	0	
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
This is the baseline option and as such has no costs					
<b>Other key non-monetised costs by 'main affected groups'</b>					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>	
Low	0	0	0	0	
High	0		0	0	
Best Estimate	0		0	0	
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
This is the baseline option and as such has no benefits					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
Key assumptions/sensitivities/risks				<b>Discount rate (%)</b>	na

**BUSINESS ASSESSMENT (Option 3)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
Costs: 0	Benefits: 0	Net: 0	No	NA

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**Summary: Analysis & Evidence**    Policy Option 4

**Description:** Revoke the Shipbuilding and Ship-repairing Regulations, 1960.

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2012	PV Base Year 2010	Time Period Years 1	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

**Description and scale of key monetised costs by 'main affected groups'**

There are no envisaged significant costs as a result of this proposal.

**Other key non-monetised costs by 'main affected groups'**

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

**Description and scale of key monetised benefits by 'main affected groups'**

**Other key non-monetised benefits by 'main affected groups'**

The removal of these sets of regulation will contribute towards streamlining the Health and Safety legislative framework.

Key assumptions/sensitivities/risks

Discount rate (%)

na

**BUSINESS ASSESSMENT (Option 4)**

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0      Benefits: 0      Net: 0	Yes	Zero net cost

## **Evidence Base for Revocation of the Shipbuilding and Ship-repairing Regulations, 1960**

### **Problem under consideration;**

1. HSE has identified a number of health and safety related legislative measures that are redundant or that have been overtaken by more modern legislation or do not deliver their intended benefits. This work is only one small element of a much wider programme of work to make the legislative framework simpler and easier to understand, while maintaining the same standards of protection for those in the workplace or affected by work activities.

### **Background**

2. Professor Löfstedt's independent review of health and safety legislation 'Reclaiming health and safety for all' (<http://www.dwp.gov.uk/docs/lofstedt-report.pdf>) was published in November 2011. In response to this, and the Red Tape Challenge, HSE has identified a number of health and safety regulations that are either redundant, have been overtaken by more modern legislation or do not deliver their intended benefits. Without any intervention these would remain in force and contribute to the impression that health and safety law is extensive, complex and out of date.
3. The public were given the opportunity to comment on Regulations under the Government's Red Tape Challenge initiative – those that work well and those that do not. This exercise was launched on 7 April 2011 with a new theme in the spotlight on the website every three weeks. Workplace Health and Safety is a cross cutting theme and open to challenge throughout the initiative. It was also in the spotlight from 30 June for 3 weeks. Some 197 Regulations were in scope for the Workplace Health and Safety theme. All Red Tape Challenge comments are collated to provide a clearer picture for Government of which Regulations should stay, which should go and which should change. All the Health and Safety Theme comments received are now being considered by HSE.
4. It is proposed that the following legislation is removed:
  - Shipbuilding and Ship-repairing Regulations, 1960, including
  - regulation 6: safe access in general
  - regulation 11: vessels used for access or as a working place
  - regulation 69: lighting
  - regulation 70: work in boilers
  - regulation 80: young persons
  - regulation 81: safety supervision
5. A summary of each regulation, what they cover, and why there are no longer needed, is provided below. The full text of the Regulations can be found at <http://www.legislation.gov.uk/uksi/1960/1932/contents/made>.

6. The Shipbuilding and Ship-Repairing Regulations (SSRR) 1960 are designed for the safety, health and welfare of people employed in the construction and repair of ships and vessels in a yard or dry dock and in the construction and repair of ships (but not of vessels other than ships) in a harbour or wet dock.
7. These Regulations revoked the Shipbuilding and Ship-repairing Regulations 1932 and were intended to constitute a comprehensive code of safety provisions for the shipbuilding and ship repair industry.
8. The majority of these Regulations have been revoked, and much of what remains is covered by more recent goal setting legislation including the Health and Safety at Work etc Act 1974; Management of Health and Safety at Work Regulations 1999 (MHSWR); Confined Spaces Regulations 1997; Provision and Use of Work Equipment Regulations 1998 (PUWER); Lifting Operations and Lifting Equipment Regulations 1998 (LOLER); Work at Height Regulations 2005 (WAHR) and the Dangerous Substances and Explosive Atmospheres Regulations 2002.
9. HSE believes that these Regulations can be revoked without reducing health and safety protections. HSE has carefully considered the implications for revoking the remaining duties and further information on these areas is set out below.
10. The Workplace (Health, Safety and Welfare) Regulations 1992 (WHSWR) are, by virtue of regulation 3(1) (a), disapplied to a “workplace which is or is in or on a ship within the meaning assigned to that word by regulation 2(1) of the Docks Regulations 1988”. The extent to which these Regulations may apply will depend on the point at which a ship being built becomes a ship. If the proposal is approved HSE will use the revoking Statutory Instrument to amend the WHSWR 1992 so that comparable duties under them will apply to a “workplace which is or is in or on a ship” to cover any gaps created by the revocation of SSRR (as highlighted in the following paragraphs)..
11. **Regulation 6** safe access in general - can be generally covered by HSWA and for fire emergencies by the Regulatory Reform (Fire Safety) Order 2005 in relation to England and Wales and The Fire (Scotland) Act 2005. HSE will amend the WHSWR so that comparable duties under them will apply.
12. **Regulation 11** vessels used for access or as a working place – can be covered by sections 2 and 3 of the Health and Safety at Work Act (HSWA). However, PUWER 98 will apply to most mobile offshore installations while at or near their work stations and when in transit to their working stations. PUWER would also apply to boats, scows and floating platforms used for the purpose of shipbuilding or repair. Overcrowding of such equipment would be covered by the MHSWR.
13. **Regulation 69 lighting** – Where the work is under the control of the shipyard the essential provision for the provision of lighting on the vessel

and access routes can be covered by Sections 2 and 3 of the HSWA. On rare occasions the ship owner remains in control of repair work while the ship is in the shipyard and under SSRR has the responsibility to provide suitable lighting. HSE will amend the WHSWR so that comparable duties under them will apply.

14. **Regulation 70 (work in boilers)** - specifically prohibits work in any boiler, boiler furnace or boiler flue until it has been sufficiently cooled to make work safe for the persons employed. The more recent MHSWR require an employer to do a risk assessment (Regulation 3) and the Confined Spaces Regulations 1997 states that, so far as is reasonably practicable, no person at work shall enter or carry out any work in a confined space otherwise than in accordance with a system of work which, in relation to any relevant "specified risks", renders that work safe and without risks to health. Furthermore the ACoP, Regulations and guidance to the Confined Spaces Regulations (Safe Work in Confined Spaces) contains guidance in relation to boilers.
15. **Regulation 80** prohibits a young person from some activities until they have been employed in a shipyard for at least six months. HSE believes that this prescriptive requirement has been superseded by obligations (for young workers under 18) under the MHSWR. Under MHSWR issues such as whether a young person has an appreciation of the accident risks or is psychologically mature enough for the work have to be specifically addressed through risk assessment before a young worker can do such work regardless of how long they have been employed.
16. **Regulation 81** requires every shipyard where there are in excess of 500 employed to employ someone with relevant experience to supervise the observance of these regulations and to promote safe work generally. The revocation of the remaining regulations would render this requirement obsolete and the general requirements under MHSWR (regs 5 and 7) would extend to the general duties under this regulation in any event. Current industry practice is consistent with the requirements of MHSWR rather than the SSRR.
17. The Shipbuilding and Ship-Repairing Regulations (SSRR) 1960 are designed for the safety, health and welfare of people employed in the construction and repair of ships and vessels in a yard or dry dock and in the construction and repair of ships (but not of vessels other than ships) in a harbour or wet dock.
18. These Regulations revoked the Shipbuilding and Ship-repairing Regulations 1932 and were intended to constitute a comprehensive code of safety provisions for the shipbuilding and ship repair industry

**Rationale for intervention;**

19. Intervention is necessary to implement the Government response to the above mentioned Red Tape Challenge and Löfstedt Review. These regulations are not used, but are in the statute books and principles of good regulation suggest that they should be removed.
20. In general, the removal of duplicate legislation removes the need for dutyholders to spend resource on reading and understanding the additional legislation, it would also save dutyholder resource by reducing the uncertainty and complexity of the health and safety legislative framework. Deregulation, on the whole, would reduce the burden on industry and therefore reduces barriers to entry and start-up fixed costs thus making markets more contestable. This theory is supported by some anecdotal evidence from consultation:

*“The TUC welcomes simpler and better regulation and supports moves to remove, merge, simplify or amend outdated, overly complex or unnecessary regulations.”*

**Policy objective and intended effects;**

21. The policy objective of this work is to contribute to the streamlining of the legislative framework by removing legislative measures that are no longer needed to control health and safety risks in the workplace. Without any intervention these would remain in force and contribute to the impression that health and safety law is complex, confusing and out-of-date.
22. This work forms part of HSE’s programme of wider reforms to help employers understand quickly and easily what they need to do to manage workplace risks

**Alternatives to regulation**

23. No alternatives to regulation have been considered because this is a deregulatory measure.
24. HSE will update its web pages to signpost duty holders to other relevant guidance that provides details of how to comply with the more recent goal setting (i.e. less prescriptive) legislation.

**Microbusinesses exemption**

25. Microbusinesses are not exempt as this is a deregulatory measure.

**One In One Out (OIOO)**

26. This deregulatory measure is within scope of One In One Out and is deemed as having “Zero net costs”. A monetised cost of £530 (EANCB) has been calculated in the costs section; however it is highly likely that the majority of these costs would be subsumed into “business as usual” for industry. Furthermore, the non-monetised benefits from the overall slimming of regulation are likely to more than compensate for this small cost. In addition, the calculation for familiarisation have been based on maximum estimates for the number of managers who would take the time to familiarise themselves with the changes. While it is expected that hardly any of industry would do this, there is no evidence base to determine what proportion of total industry would do so, hence maximum estimates being

used. The £530 figure is therefore expected to be a large overestimate of this cost.

**Description of options considered (including do nothing);**

27. Option 1 – Do nothing - the Shipbuilding and Ship-repairing Regulations, 1960 would remain on the statute book.
28. Option 2 – Revoke the Shipbuilding and Ship-repairing Regulations, 1960

**Consultation and data analysis**

29. Consultation consisted of both formal and informal elements. Informal consultation included discussions with representatives of the shipbuilding industry which were confirmed during the formal consultation. Formal consultation took place between 3 April 2012 and 4 July 2012. A summary of the responses follows.
30. Annex 1 provides more detail of formal consultation responses. Table 1 summarises the type of organisations that responded and the capacity of the respondents. Table 2 gives a summary of the responses to the specific questions in the consultative document. The results were that:

Question 5.4 – Do you agree with the proposal to revoke the Shipbuilding and Ship-repairing Regulations 1960?

31. 28 respondents (over 95%) who answered the question “Do you agree with the proposal (as outlined in the Annex) to revoke the Shipbuilding and Ship-repairing Regulations 1960?” said ‘Yes’.
32. 7 respondents gave answers to the question “if you have answered ‘No’ what are your objections”, although none had actually answered ‘no’ to the question.
33. While two responses qualified their ‘yes’ answers. A number of the remaining responses raised concerns that HSE maintain health and safety standards.
34. The key issue raised in these comments is the need to ensure that the removal of these regulations does not create any gaps in workplace protection, or lead to a lowering in safety standards. In addition any measures identified to fill any gaps created need to be in place before the regulations are removed. HSE undertook, within the Consultative Document, to review existing guidance on this topic and ensure it was signposted. In addition the WHSWR would be amended so that they would apply to shipbuilding and repair activity in a shipyard in respect of both general access and lighting.
35. One response from a representative of the shipbuilding industry stated that the revocation would have little or no impact on their undertakings and that consensus (from a meeting they held) was that the regulations have been overtaken by newer regulations such as Work at Height, DSEAR, Confined Spaces Regs, and the Dock Regs etc. to the extent that they are rarely if ever looked at. This would support the view that these regulations are of limited influence within the industry.

36. There were 23 responses submitted for the question relating to costs and 26 responses on positive or negative implications of change. Only one of those identified a negative implication for business, however, no impact was identified.
37. Analysis also included examining HSE records on the use of these sets of Regulations over the last 13 years. During this time 14 of the regulations have been cited on 4 Notices issued however, none were issued within the last 10 years and none have been cited in approved prosecution activity in the same period.

**Monetised and non-monetised costs and benefits of each option  
(including administrative burden);**

*General Assumptions*

38. Costs and benefits are not assessed over 10 years as all one-off costs are anticipated to occur in year 1. However, for OIOO calculations, the guidance says that an “in” needs to be assessed over the same time period as a corresponding out (OIOO FAQ’s). The corresponding “out” for this legislation is assessed over a ten year analysis period and therefore the EANCB is analysed over 10 years also.
39. No discount rate is used due to all monetised costs occurring in year 1.
40. The year of analysis is 2013. The regulatory change comes into force in April 2013 and expected that any one-off costs will take place in 2013.
41. Industry costs per hour are assumed to be approximately £30. This is based on costs presented in the Annual Survey of Hours and Earnings (Table 14 - 2010) (Office for national statistics)<sup>1</sup> and up-rating by 30% to allow for non-wage costs (in accordance with the Green Book)
42. Cost calculations for OIOO will have a present value base year of 2010 and a price base year of 2009, in line with the published OIOO guidance.
43. Figures presented in this IA are, in general, rounded to two significant figures; however, calculations are based on non-rounded numbers. Given this, some figures presented may not add up to the totals presented.

*Option 1: do nothing*

44. Option 1 would maintain the status quo and so would have no cost or benefit implications.

*Option 2: Revoke the Shipbuilding and Ship-repairing Regulations, 1960.*

45. Option 2 would require the removal one redundant SI, the Shipbuilding and Ship-repairing Regulations, 1960.
46. The evidence for this assessment is set out below.

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<sup>1</sup> See <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-200444>

*Costs to business*

47. HSE's assessment is that these SIs are currently not used by businesses. Despite industry in general no longer using this legislation, there will be a one-off familiarisation cost simply due to removing the 12 instruments. One respondent from the shipbuilding industry (Marine National Interest Group – Marine NIG) stated that:

*“With regard to the Ship Building and Ship Repair Regulations I had intended sending you the extract of the minutes along with a paragraph outlining how we as a group examined the regulations and concluded that their revocation would have little or no impact on our undertakings. The consensus of the meeting was that the regulations have been overtaken by newer regulations such as Work at Height, DSEAR, Confined Spaces Regs, and the Dock Regs etc. to the extent that they are rarely if ever looked at, indeed several members commented that they no longer use or refer to them at all. The NIG as a whole was supportive of the initiative to remove the regulations from the Statute.”*

48. Which emphasises that familiarisation will be a small burden and not take much time.
49. At consultation, respondents were asked how long it would take to appreciate that the changes would not change their day-to-day operations. Responses varied from “zero” to “90 minutes” with the mode and median response being 20 minutes. On this basis, we use 20 minutes as our best estimate. Although this is based on a small sample, this seems like an appropriate length of time to understand that the revocation will not change anything for the day-to-day running of dutyholders.
50. Using the Industry Departmental Business Register (IDBR) data base for business premises, we assume that a manager from each business premise in sector industry code (SIC) “building of ships and floating structures” will spend 20 minutes on familiarisation. Give the cost of a managers time at £30 per hour, this equates to a one off cost in the region of £4600. This is likely to be an overestimate as it is not expected that all of industry are aware of the revocation process and there is no planned HSE communication programme to make dutyholders aware.
51. Total one-off costs to industry will be in the region of £4600.
52. HSE originally identified the potential for cost saving for new dutyholders who would have less regulation to familiarise themselves with. However, given that industry no longer use these legislation, this potential cost saving is not likely to be a real one and therefore has not been included in our analysis.

*Costs to HSE*

53. There will be no significant additional costs to HSE as a result of revoking the Regulations. There will be HSE involvement in ensuring that the duties under the revoked legislation are sufficiently covered by alternative legislation and that duties to industry are still understood (e.g. improving industry guidance) however, this is something that HSE are involved in on

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an ongoing basis already and will form a part of “business as usual” therefore, there are no additional costs to HSE.

### *Benefits and impact on health and safety*

54. As previously described, these are redundant regulations so there will be no impact on health and safety protection. In some cases, this assessment has been echoed through industry responses to consultation. However, it has also been cited as a risk of revocation. Gap analysis has identified that when appropriate, adequate controls are maintained through more modern legislation. This will be re-emphasised through a sign-posting website to ensure industry are directed to the more up-to-date legislation.
55. There is an overarching benefit which is simplifying the legislative framework.

### **Rationale and evidence that justify the level of analysis used in the IA (proportionality approach);**

56. Both the analysis of HSE records and consultation (internal and external) identified the proposed SIs as redundant, or having been overtaken by more modern legislation. A proportionate cost analysis has been presented above.
57. Although a consultation stage IA was not produced for assessing the impacts of the removal of the Shipbuilding and Ship-repairing Regulations, formal consultation was used to gather information for the analysis presented here.
58. While consultation responses are undoubtedly biased, those that responded are likely to be the more engaged and most likely to know/use the statutory instruments analysed in this IA. Hence, if there were any costs to business, this group would be the most likely to know about it. Furthermore, consultation responses have been triangulated with responses from informal consultation.
59. There remain some uncertainties of the impacts of the policy proposal that it would not be proportionate to estimate, these are detailed in the following section.

### **Risks and assumptions;**

60. HSE’s initial assessment was that these legislative measures were either redundant or had been overtaken by other more modern regulation so there would be no risk associated with them being revoked.
61. Thirty two (97%) of those who responded to the consultation exercise agreed with the proposals. However, when specifically asked if there were any other impacts of the removal, the following issues were raised:
- “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”

- “It will take time for an employer to read and understand the revocations and introduce general confusion”
- “No, on the basis that HSE can meet its intended aim in para 5.19 Annex 5-13 of amending WHSWR 1992 to cover gaps caused by revoking SSRR1960”

These concerns will be mitigated by creating an HSE Shipbuilding and repair web site, signposting appropriate existing HSE, industry guidance and amendments to the WHSWR. It is not believed that these changes will have a significant impact on employers understanding of their responsibilities.

### **Direct costs and benefits to business calculations (following OIOO methodology);**

62. This deregulatory measure is within scope of One In One Out and is deemed as having “Zero net costs”. A monetised cost of £530 (EANCB) has been calculated in the costs section; however it is highly likely that the majority of these costs would be subsumed into “business as usual” for industry. Furthermore, the non-monetised benefits from the overall slim-lining of regulation are likely to more than compensate for this small cost. In addition, the calculation for familiarisation have been based on maximum estimates for the number of managers who would take the time to familiarise themselves with the changes. While it is expected that hardly any of industry would do this, there is no evidence base to determine what proportion of total industry would do so, hence maximum estimates being used. The £530 figure is therefore expected to be a large overestimate of this cost.

### **Wider impacts**

63. There would be no wider impacts as a result of this simplification.

### **Summary and preferred option with description of implementation plan.**

64. HSE’s preferred option, on the basis of HSE’s expert analysis and the responses to the consultation, is therefore that these measures can be revoked without any lowering of health and safety standards
65. If the proposal is approved HSE will explore how to use the revoking Statutory Instrument to amend the W(HSW)R so that comparable duties under them will apply to a “workplace which is or is in or on a ship”. This is specifically in respect of Regulation 8 – Lighting and Regulation 12 – Condition of floors and traffic routes. In addition the W(HSW)R ACOP would need to be updated to ensure the guidance to Regulation 4 – Requirements under these regulations, was updated to include reference to owners of ships as people other than employees who may have responsibility for lighting.

66. HSE will update its web pages to signpost duty holders to other relevant guidance that provides details of how to comply with the more recent goal setting (i.e. less prescriptive) legislation. This work would need to be completed by 31<sup>st</sup> March 2013 and is part of HSE sector experts' work plan.

**Annex 1 – Consultation responses**

**Table 1 - General information**

**a) Type of organisation**

<b>Option</b>	<b>Number of respondents</b>	<b>Percentage of total (%)</b>
Consultancy	3	9
Local government	6	19
Industry	10	31
Trade association	1	3
National government	1	3
Non-departmental public body		
Charity	1	3
Academic	2	6
Trade union	1	3
Non-governmental organisation		
Member of the public		
Pressure group		
Other (please specify)	2 (not specified)	6
Not stated	5	16
<b>Total</b>	<b>32</b>	<b>100*</b>

\*individual figures may not add up to totals due to rounding

**b) Capacity of respondent**

<b>Option</b>	<b>Number of respondents</b>	<b>Percentage of total (%)</b>
Health and Safety professional	16	50
An employer	2	6
An employee	4	13
Trade union official	2	6
Training provider	1	3
Other (please specify)	2 (not specified)	6
Not stated	5	16
<b>Total</b>	<b>32</b>	<b>100*</b>

\*individual figures may not add up to totals due to rounding

**Table 2 – Summary of responses to questions**

**Question 1 - Do you agree with the proposal to revoke the Shipbuilding and Ship-repairing Regulations 1960?**

<b>Option</b>	<b>Number of respondents</b>	<b>Percentage of total (%)</b>
Yes	28	97
No	1	3
<b>Total</b>	<b>29</b>	

**If you have answered ‘No’ what are your objections?**

This question was answered 7 times although none had specifically responded ‘No’ to Q5.4 (See the “additional comments received” box below for actual responses)

2 responses qualified their ‘Yes’ answer

1 raised concerns about the proposals but didn’t say ‘No’

1 provided qualified support but had not answered ‘Yes’ or ‘No’

1 provided support from industry but had not answered ‘Yes’ or ‘No’

2 have made additional comments which refer generally to docks and shipbuilding being dangerous places to work, but have not raised any specific concerns in respect of this proposal

**Supplementary questions**

**a) To help HSE prepare the impact assessment please consider how long you estimate it will take for an employer to appreciate that this revocation will not change their day to day operations?**

<b>Time</b>	<b>Responses</b>
Approximately 20 minutes	9
Approximately 40 minutes	4
Approximately 60 minutes	2
Approximately 90 minutes	4
Other (please state)	4 (all ‘0’ or no response)

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

<b>Option</b>	<b>Number of respondents</b>	<b>Percentage of total (%)</b>
Yes	1	4
No	25	96
<b>Total</b>	<b>26</b>	

**If you have answered ‘Yes’ please explain what these are**

No explanation given

**Additional comments received in respect of question 1**

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.

With regard to the Ship Building and Ship Repair Regulations I had intended sending you the extract of the minutes along with a paragraph outlining how we as a group examined the regulations and concluded that their revocation would have little or no impact on our undertakings. The consensus of the meeting was that the regulations have been overtaken by newer regulations such as Work at Height, DSEAR, Confined Spaces Regs, and the Dock Regs etc. to the extent that they are rarely if ever looked at, indeed several members commented that they no longer use or refer to them at all. The NIG as a whole was supportive of the initiative to remove the regulations from the Statute.

#### Ship Building and Shiprepairing Regulations

A number of changes and alternative provisions are suggested in the CD and we mention a few below. We are concerned that revocation is being proposed without ensuring that equivalent protection is first in place.

All of the changes and alternative provisions must be brought together to provide clear and explicit guidance concerning shipbuilding and repairing that sets out legal requirements, guidance etc.

Examples:

#### Reg 6 Safe Access in General

In response to the statements made in the consultation document

"If the proposal is approved HSE will explore how to use the revoking Statutory Instrument to amend the W(HSW)R so that comparable duties under them will apply to a "workplace which is or is in or on a ship".

Some partially relevant guidance exists on HSE's Ports web pages"

This needs to be explored and implemented before revocation.

#### Reg 11 Vessels used for access or as a working place

It is noted that the British Marine Federation produce a members-only guide on working near water <http://www.britishmarine.co.uk/publications.aspx?category=Technical>

Members only access is not good enough and we can only accept unrestricted access. If the guidances has to be placed on a web site it should be HSE's website..

#### Reg 69 - Lighting

We note that if the proposal is approved HSE will explore how to use the revoking Statutory Instrument to amend the WHSWR so that comparable duties under them will apply to a "workplace which is or is in or on a ship". It is also stated that there is existing guidance for lighting in docks and for dock operations produced jointly by HSE and Port Skills and Safety. All this needs to be explored and implemented before revocation.

Reg 80 - Young Persons

It is noted that specific guidance on "Young people" on HSE's website, which refers to this regulation. If this proposal is agreed the guidance could be linked to a new "Shipbuilding" micro site and the wording amended.

<http://www.hse.gov.uk/youngpeople/law/prohibitions/ship.htm>

Once again these actions need to be in place before revocation.

Reg 81 - Safety supervision

Existing non-shipbuilding specific guidance exists at  
<http://www.hse.gov.uk/managing/index.htm>

It is not believed that current workplace practice would be to employ a person exclusively for this role and that such a person might well have additional responsibilities. Even though this may not be current practice it needs to be dealt with explicitly.

Provided there is no lowering of health and safety standards, we agree with the proposal (as outlined in the Annex) to revoke the Shipbuilding and Ship-repairing Regulations 1960.

Yes, provided there is no lowering of health and safety standards and the Workplace (Health, Safety and Welfare) Regulations 1992 are amended so that they apply to a "workplace which is or is in or on a ship"

<b>Title:</b> Removal of Celluloid and Cinematograph Film Legislation <b>IA No:</b> <a href="#">HSE0069e</a>  <b>Lead department or agency:</b> Health and Safety Executive <b>Other departments or agencies:</b> None	<b>Impact Assessment (IA)</b>	
	<b>Date:</b> 18/07/2012	
	<b>Stage:</b> Final	
	<b>Source of intervention:</b> Domestic	
	<b>Type of measure:</b> Secondary legislation	
<b>Contact for enquiries:</b> <a href="#">Julian Delic</a> <a href="mailto:julian.delic@hse.gsi.gov.uk">julian.delic@hse.gsi.gov.uk</a> ; <a href="#">Tara McNally</a> <a href="mailto:tara.mcnally@hse.gsi.gov.uk">tara.mcnally@hse.gsi.gov.uk</a>		

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£0m	£0m	£0m	No	NA

**What is the problem under consideration? Why is government intervention necessary?**

In response to the Löfstedt review and the Red Tape Challenge, HSE has identified a number of health and safety Regulations that are either redundant, have been overtaken by more up to date Regulations or do not deliver their expected benefits. Without any intervention these would remain in force and contribute to the impression that health and safety law is complex, confusing and out of date. This work is one element of a much wider programme of work to make the legislative framework simpler and easier to understand, while maintaining the same standards of protection for those in the workplace or affected by work activities.

**What are the policy objectives and the intended effects?**

The policy objective of this work is to streamline the legislative framework by removing redundant or out-of-date legislation that is no longer needed to control health and safety risks in the workplace.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 1 - Do nothing - 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 would remain on the statute book.

Option 2 - 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.

No alternatives to regulation have been considered as this is a deregulatory proposal. Option 2 is the preferred option as it will remove unnecessary or out of date regulation from the statute books - the vast majority of the respondents to the consultation

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** Month /Year

Does implementation go beyond minimum EU requirements?	No
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Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? <i>(Million tonnes CO<sub>2</sub> equivalent)</i>			<b>Traded:</b>	<b>Non-traded:</b>	

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible Minister: \_\_\_\_\_ Date: \_\_\_\_\_

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**Summary: Analysis & Evidence    Policy Option 5**

**Description:** Do Nothing

**FULL ECONOMIC ASSESSMENT**

Price Base Year na	PV Base Year na	Time Period Years na	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

**Description and scale of key monetised costs by 'main affected groups'**

This is the do nothing option and as such has no costs

**Other key non-monetised costs by 'main affected groups'**

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

**Description and scale of key monetised benefits by 'main affected groups'**

This is the do nothing option and as such has no benefits

**Other key non-monetised benefits by 'main affected groups'**

Key assumptions/sensitivities/risks

Discount rate (%)

na

**BUSINESS ASSESSMENT (Option 5)**

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0      Benefits: 0      Net: 0	No	NA

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**Summary: Analysis & Evidence**      Policy Option 6

**Description:** Revoke the Celluloid and Cinematograph Film Act 1922

**FULL ECONOMIC ASSESSMENT**

Price Base Year na	PV Base Year na	Time Period Years na	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0
<b>COSTS (£m)</b>	<b>Total Transition</b> (Constant Price)    Years		<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Cost</b> (Present Value)	
Low	0	0	0	0	
High	0		0	0	
Best Estimate	0		0	0	
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
HSE's assessment, based on consultation (formal and informal), analysis of enforcement activity and internal sector experts knowledge, is that these sets of regulations are no longer used by business or used by HSE for enforcement. Therefore there are no expected costs from the removal of the Celluloid and Cinematograph Film Act 1922.					
<b>Other key non-monetised costs by 'main affected groups'</b>					
<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price)    Years		<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Benefit</b> (Present Value)	
Low	0	0	0	0	
High	0		0	0	
Best Estimate	0		0	0	
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
The removal of these sets of regulation will contribute towards streamlining the Health and Safety legislative framework.					
Key assumptions/sensitivities/risks				Discount rate (%)	na

**BUSINESS ASSESSMENT (Option 6)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
Costs: 0	Benefits: 0	Net: 0	No	NA

**Evidence Base (for summary sheets)**

**Problem under consideration**

67. HSE has identified a number of health and safety related legislative measures that are redundant or that have been overtaken by more modern legislation or do not deliver their intended benefits. This work will remove redundant legislation that has been overtaken by more modern measures, and is only one small element of a much wider programme of work to make the legislative framework simpler and easier to understand, while maintaining the same standards of protection for those in the workplace or affected by work activities.

*Background*

68. Professor Löfstedt's independent review of health and safety legislation 'Reclaiming health and safety for all' (<http://www.dwp.gov.uk/docs/lofstedt-report.pdf>) was published in November 2011. In response to this, and the Red Tape Challenge, HSE has identified a number of health and safety regulations that are either redundant, have been overtaken by more modern legislation or do not deliver their intended benefits. Without any intervention these would remain in force and contribute to the impression that health and safety law is extensive, complex and out of date.

69. The public were given the opportunity to comment on Regulations under the Government's Red Tape Challenge initiative – those that work well and those that do not. This exercise was launched on 7 April 2011 with a new theme in the spotlight on the website every three weeks. Workplace Health and Safety is a cross cutting theme and open to challenge throughout the initiative. It was also in the spotlight from 30 June for 3 weeks. Some 197 Regulations were in scope for the Workplace Health and Safety theme. All Red Tape Challenge comments are collated to provide a clearer picture for Government of which Regulations should stay, which should go and which should change. All the Health and Safety Theme comments received are now being considered by HSE.

70. On the basis of these reviews, it is proposed that the following legislative measures are removed:

- **Celluloid and Cinematograph Film Act 1922**
- **Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974**
- **Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations 1980**

71. A summary of each measure, what they cover, and why there are no longer needed, is provided below:

- **Celluloid and Cinematograph Film Act 1922 (S.I. 1922/35) –**  
<http://www.legislation.gov.uk/ukpga/Geo5/12-13/35/contents>

This Act (and the following two sets of regulations) relate to the prevention of fire in premises where raw celluloid or cinematograph film is kept or stored. It relates to non-workplaces (e.g. domestic premises and premises used by civil societies, such as film clubs).

The legislation no longer applies to workplaces, within the meaning of the Regulatory Reform (Fire Safety) Order 2005 (RR(FS)O). This element has been superseded by more recent legislation - they are now covered by the Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR), in relation to any special, technical or organisational workplace fire precautions and, in relation to general fire safety precautions (such as the means for escape), by the RR(FS)O. The Act does still relate to the self-employed, however both the RR(FS)O and DSEAR apply to the self-employed with business premises, so if the Act is repealed, standards for health and safety for the self-employed with business premises will be maintained<sup>1</sup>.

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<sup>1</sup> Lofstedt recommendations also include an exemption for the self-employed who do not pose a risk to others. This proposal is being considered in a separate Impact Assessment

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If this Act is repealed, then the following two sets of amending Regulations can also be revoked.

- **Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974 (S.I. 1974/1841) –**

<http://www.legislation.gov.uk/ukxi/1974/1841/contents/made>

These Regulations repeal and modify provisions of the 1922 Act in consequence of the establishment of the Health and Safety Executive and the coming into operation of the Health and Safety at Work etc Act 1974.

- **Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations 1980 (S.I. 1980/1314) –**

<http://www.legislation.gov.uk/ukxi/1980/1314/contents/made>

These Regulations allow HSE to grant exceptions from any requirement or prohibition imposed by or under section 1(1) of the 1922 Act, or any order made under section 1(4) of that Act.

- HSE believes that this Act and the two sets of Regulations are no longer required. The prevention of fire in workplaces is covered by more recent legislation. The risk from work activities involving plant or machinery and the use or storage of dangerous substances that have a particular risk of fire or explosion (such as raw celluloid and cinematograph film) are covered by DSEAR. In addition, general fire safety (including in small venues such as clubs and church halls that film clubs might use) is covered by the Regulatory Reform (Fire Safety) Order 2005 in England and Wales, and Part 3 of the Fire (Scotland) Act 2005, supported by the Fire Safety (Scotland) Regulations 2006 in Scotland.
- HSE does not believe that raw celluloid (nitro-cellulose) is used or stored in non-workplace premises (based on a previous consultation exercise related to the introduction of DSEAR). Cinematograph film (also known as nitrate-base film material or cellulose nitrate film) has not been used to produce motion pictures since 1951. Some old nitrate-base film materials may still be present in private premises but this will be a reducing amount. HSE is not aware of any formal reports of fires being caused by nitrate-base film materials in non-workplace premises in recent years.

### **Rationale for intervention**

72. Intervention is necessary to implement the Government response to the above mentioned Red Tape Challenge and Löfstedt Review. These regulations are not used, but are in the statute books and principles of good regulation suggest that they should be removed.
73. In general, the removal of duplicate legislation removes the need for dutyholders to spend resource on reading and understanding the additional legislation, it would also save dutyholder resource by reducing the uncertainty and complexity of the health and safety legislative framework. Deregulation, on the whole, would reduce the burden on industry and therefore reduces barriers to entry and start-up fixed costs thus making markets more contestable. This theory is supported by some anecdotal evidence from consultation:

*“The TUC welcomes simpler and better regulation and supports moves to remove, merge, simplify or amend outdated, overly complex or unnecessary regulations.”*

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74. HSE believes that this legislation is no longer required. The prevention of fire in workplaces is covered by more recent legislation. The risk from work activities involving plant or machinery and the use or storage of dangerous substances that have a particular risk of fire or explosion (such as raw celluloid and cinematograph film) are covered by the Dangerous Substances and Explosive Atmospheres Regulations 2002. In addition, general fire safety (including in small venues such as clubs and church halls that film clubs might use, and in some multiple-occupancy domestic premises) is covered by the Regulatory Reform (Fire Safety) Order 2005 in England and Wales, and Part 3 of the Fire (Scotland) Act 2005, supported by the Fire Safety (Scotland) Regulations 2006 in Scotland.

75. HSE does not believe that raw celluloid (nitro-cellulose) is used or stored in non-workplace premises (based on a previous consultation exercise related to the introduction of DSEAR). Cinematograph film (also known as nitrate-base film material or cellulose nitrate film) has not been used to produce motion pictures since 1951. Some old nitrate-base film materials may still be present in domestic premises but this will be a reducing amount. HSE is not aware of any formal reports of fires being caused by nitrate-base film materials in non-workplace premises in recent years.

### **Policy objective and intended effects**

76. The policy objective of this work is to contribute to the streamlining of the legislative framework by removing three legislative measures (one Act and two Regulations) that are no longer needed to control health and safety risks in the workplace. Without any intervention these would remain in force and contribute to the impression that health and safety law is complex, confusing and out-of-date.

77. This work forms part of HSE's programme of wider reforms to help employers understand quickly and easily what they need to do to manage workplace risks.

### **Alternatives to regulation**

78. No alternatives to regulation have been considered because this is a deregulatory measure.

79. If this legislation is removed HSE will continue work with stakeholders to review the available guidance on cellulose nitrate film.

### **One In One Out (OIOO)**

80. The removal of the Celluloid and Cinematograph Film Act 1922 et al. would not have a direct impact on business and therefore this is out of scope of One In One Out. This is consistent with the OIOO guidance and Scope Decision Guide (FAQs document).

### **Description of options considered (including do nothing)**

81. Option 1 – Do nothing - the three legislative measures would remain on the statute book.

82. Option 2 – Revoke the following measures:

- Celluloid and Cinematograph Film Act 1922
- Celluloid and Cinematograph Film Act 1922 (Repeals and Modifications) Regulations 1974
- Celluloid and Cinematograph Film Act 1922 (Exemptions) Regulations 1980

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83. Option 2 is the preferred option as it will remove unnecessary or out of date regulation from the statute books – furthermore, 91% of the total respondents to the consultation question regarding the removal of the three pieces of legislation were in favour of this option.

### **Consultation and data analysis**

84. Consultation consisted of both formal and informal elements. Formal consultation took place between 3 April 2012 and 4 July 2012.

85. 91% of the total respondents to the question regarding the removal of the three pieces of legislation agreed with the proposal.

86. Annex 1 provides more detail of formal consultation responses. Table 1 (in annex 1) summarises the organisations that responded and the proportion of the respondents within these organisations compared to total responses. Table 2 (in annex 1) gives a summary of the responses to the specific questions in the consultative document. A summary of the results:

#### Question 1.1 – Do you agree with the proposal

- 39 respondents (91%) who answered the question “Do you agree with the proposal 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?” said ‘Yes’.
- Of the respondents to this question that said ‘Yes’, 24 made comments. 10 of these stated that more recent legislation provides adequate cover on this issue. Seven more suggested that the legislation is now out-of-date and unnecessary. Two respondents suggested that there is still a need for guidance materials on this topic.
- Four respondents (9%) disagreed with the proposal, but of these only one, an organisation representing UK film archives, made a comment. This said:

*“Whilst it is agreed that:*

- *criminalising individuals who keep nitrate film in domestic or non-work premises is heavy-handed,*
- *that individuals are often unaware of both the dangers and the legislation,*
- *that the film continues to deteriorate if not stored in correct conditions, and*
- *that it is difficult to know how much material remains to be found*

*the fact is that it remains an issue, albeit on a small scale these days. The presence of legislation could provide leverage when negotiating with those who do have nitrate film, and help induce them to relocate their material to an appropriate archive.”*

- The key issue raised in this comment is the leverage legislation offers in persuading someone to pass on their nitrate film to an archive. The current legislation sets down suitable control methods for storing nitrate film but, because it was drafted in a different era, the legislation does not impose duties on individuals to dispose of any film materials they possess. Therefore, this leverage is perceived rather than actual, and keeping legislation stating that nitrate film can be kept (under certain conditions) may present a confusing picture, when good practice advice would suggest the materials should not be kept from a fire safety perspective. HSE committed, within the Consultative Document, to reviewing currently available guidance on this topic to ensure the appropriate advice is available. This advice should be sufficient leverage because, as the comment acknowledges, individuals are often unaware of the dangers of nitrate film.

#### Question 1.2 – Are there any groups who keep film materials

- 36 respondents (92%) who answered the question “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?” said ‘No’.
- Of these ‘No’ respondents, none made a comment.

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- Of the three respondents (8%) who said ‘Yes’ to this question, two made comments. One comment questioned whether HSE had considered if there are any private collections containing nitrate film. HSE has been unable to find any specific examples of private collectors who keep nitrate film – information from archive organisations suggests that nitrate film materials tend to come to light during house clearances and similar circumstances, when the film materials have been forgotten.
- The other ‘Yes’ came from an organisation representing UK film archives and it agrees with this premise; it says:

*“[Our] members and associates are still offered nitrate films, though less frequently. There is no list of contacts as such as most offers are dealt with straight away.”*

## General Question – Any further comments

- One specific comment regarding the celluloid legislation was also made by an individual film archive organisation under the general question “Are there any further comments you would like to make on the issues raised in this consultation document that you have not already responded to in this questionnaire?”. This said:

*“With the repeal of the legislation how might the authorities deal with (the unlikely case of) a private collector of nitrate films who recklessly decided to store them in residential premises? Do other laws exist which would require a collector to remove such a nitrate collection?”*

- As previously mentioned, the current legislation does not prevent the storage of nitrate film in domestic premises, but imposes certain control measures. HSE will be working to ensure guidance is available to individuals to give advice on what to do with nitrate film. Local Authorities enforce the current legislation but anecdotal evidence suggests enforcement levels are negligible. This is because, in order to investigate or take action, they need significant grounds for concern, something which is not forthcoming for nitrate film when quantities are low, and reducing in domestic premises. It is also unlikely that this topic would be a priority due to the relatively low risk level and the substance becoming obsolete.

## Question 1.3 – Help in preparing the Impact Assessment

- There were 17 responses submitted to the question relating to what impact the removal of the legislation would have, and there were 15 responses in relation to the costs and savings of this proposal. The general consensus of responses was that there would be little or no costs or cost-savings as a result of the removal of this legislation. The reasons for this were either that alternative legislation is already in place covering these issues or they were unaware of individuals or groups that used Celluloid and Cinematograph Film.

- Reference was made to:

*“those familiar with the old legislation may take time to acclimatise to using new legislation”*

However, the same individual went on to comment that those affected should already be up to speed with more modern legislation. In any case, it is expected that those affected will be a very small number of people and therefore the costs associated with this would be negligible.

87. The responses to the consultation show that a significant majority of the respondents agree with HSE’s view that this legislation is no longer required. HSE’s commitment to reviewing the available guidance on nitrate film will ensure that any individuals that do come across these materials are able to deal with them safely.
88. This legislation is enforced by Local Authorities and there is no central information on enforcement levels. However, anecdotal responses from a small number of Local Authorities suggests that the amount of enforcement activity is likely to be nil or negligible.

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**Monetised and non-monetised costs and benefits of each option (including administrative burden)**

*General Assumptions*

89. Given the nature of the deregulatory measure, no assumptions have been made with reference to base year, analysis period or discount value.

*Option 1: Do nothing*

90. Option 1 would maintain the status quo and so would have no cost or benefit implications.

*Option 2: 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.*

91. Option 2 would require the removal of 3 redundant SIs.

92. The evidence for this assessment is set out below.

*Costs to business*

93. These SIs are no longer used by industry and so their revocation would not impose any significant costs on them.

94. The majority of consultation respondents agreed with HSE's assessment that the legislation was out of date and not used by industry, furthermore, no current users of celluloid or cinematograph film were identified through either formal or informal consultation. This evidence was triangulated with feedback from Local Authorities who enforce the current legislation who said that anecdotal evidence suggests enforcement levels are negligible.

95. Evidence from consultation did however suggest that if there were users of celluloid or cinematograph film, they would most likely be unaware of the legislation surrounding it. Therefore, they would be unlikely to familiarise themselves with the revocation of the Act.

96. While consultation responses are undoubtedly biased, those that responded are likely to be the more engaged and most likely to know/use the statutory instruments analysed in this IA. Hence, if there were any costs to business, this group would be the most likely to know about it. Given their negative responses to the question "What impact would the removal of the legislation have on the health and safety of these groups / individuals?" it is reasonable to assume there will be no cost to industry.

*Costs to HSE*

97. There will be a small amount of additional costs to HSE as a result of revoking the Regulations for updating the available guidance materials. However, some of this work was already planned and the remaining work can be met from existing resources already dedicated to this work stream.

*Benefits and impact on health and safety*

98. As previously described, these are redundant or out-of-date SIs so there will be no impact on health and safety protection. When appropriate, adequate controls are maintained through more modern legislation.

99. HSE believes that this legislation is no longer required. The prevention of fire in workplaces is covered by more recent legislation. The risk from work activities involving plant or machinery and the use or storage of dangerous substances that have a particular risk of fire or explosion (such as raw celluloid and cinematograph film) are covered by the Dangerous Substances and Explosive Atmospheres Regulations 2002. In addition, general fire safety (including in small venues such as clubs and church halls that film clubs might use, and in some multiple-occupancy domestic premises) is covered by the Regulatory Reform (Fire

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Safety) Order 2005 in England and Wales, and Part 3 of the Fire (Scotland) Act 2005, supported by the Fire Safety (Scotland) Regulations 2006 in Scotland.

100. HSE does not believe that raw celluloid (nitro-cellulose) is used or stored in non-workplace premises (based on a previous consultation exercise related to the introduction of DSEAR). Cinematograph film (also known as nitrate-base film material or cellulose nitrate film) has not been used to produce motion pictures since 1951. Some old nitrate-base film materials may still be present in domestic premises but this will be a reducing amount. HSE is not aware of any formal reports of fires being caused by nitrate-base film materials in non-workplace premises in recent years.

101. To support HSE's view, 15 out of the 17 respondents who gave comments on the consultation question "What impact would the removal of the legislation have on the health and safety of these groups / individuals?" either said that it is unlikely that the removal of the legislation would have any significant impact or that they could not identify any groups who it would impact on. Of the remaining responses, two issues were raised in regard to the impact on health and safety;

- One response highlighted that this raised potential health issues if the groups storing film would be at risk if they didn't consider the issues in light of DSEAR. However, HSE consultation has not been able to identify any such groups that exist and, consultation has also highlighted that industry do not know about the Celluloid and Cinematograph film Act. Hence, if such a group does exist and they are not already aware and acting in accordance with DSEAR, they are even less likely to be aware and acting in accordance with the Celluloid and Cinematograph film Act.
- A second response suggested that the Act should be expanded to suit different sectors and company sizes. However, doing this would increase the amount of duplicated legislation as this is already the covered by DSEAR. This would therefore go against the policy objectives of the revocation.

102. There is an overarching benefit of simplifying the legislative framework as a result of removing duplicate and out-of-date legislation which is justified via the arguments presented in paragraph 12.

**Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)**

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103. Analysis of HSE records and consultation (internal and external) both identified the proposed SIs as redundant, having been overtaken by more modern legislation. A proportionate cost analysis has been presented above.
104. Although a consultation stage IA was not produced for assessing the impacts of the removal of the Celluloid and Cinematograph Film legislation, formal consultation was used to gather information for the analysis presented here.
105. While consultation responses are undoubtedly biased, those that responded are likely to be the more engaged and most likely to know/use the statutory instruments analysed in this IA. Hence, if there were any costs to business, this group would be the most likely to know about it. Furthermore, consultation responses have been triangulated with responses from informal consultation and a discussion with Local Authority enforcers.
106. There remain some uncertainties of the impacts of the policy proposal that it would not be proportionate to estimate, these are detailed in the following section.

### **Risks and assumptions**

107. HSE's initial assessment was that these legislative measures are redundant, having been overtaken by other more modern regulation so there is no risk associated with them being revoked.
108. Over 90% of the total respondents to the consultation question regarding the removal of the three pieces of legislation agreed with the proposal.
109. However, during consultation the following issues were raised:
  - The ability to use the current legislation for leverage when dealing with private individuals
  - The incidence of private collections

Both of these issues have been considered and addressed in paragraph 8.

### **Direct costs and benefits to business calculations (following OIOO methodology)**

110. The removal of the Celluloid and Cinematograph Film Act 1922 et al. would not have a direct impact on business and therefore this is out of scope of One In One Out. This is consistent with the OIOO guidance and Scope Decision Guide (FAQs document).

### **Wider impacts**

111. There would be no wider impacts as a result of this simplification.

### **Summary and preferred option with description of implementation plan**

112. HSE's preferred option, on the basis of expert analysis and the responses to the consultation, is therefore that these measures can be revoked without any lowering of health and safety standards in workplaces.
113. The preferred option will remove unnecessary and out of date regulation from the statute books – furthermore, 91% of the total respondents to the consultation question regarding the removal of the three pieces of legislation were in favour of this option.
114. Subject to relevant approvals and clearances, this legislation will be removed via a new statutory instrument.

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## **Annex 1 – Consultation responses**

**Table 1 - General information**

### **a) Type of organisation**

<b>Option</b>	<b>Number of respondents</b>	<b>Percentage of total (%)</b>
Consultancy	5	9
Local government	9	17
Industry	11	21
Trade association	3	6
National government	2	4
Non-departmental public body	1	2
Charity	3	6
Academic	3	6
Trade union	4	8
Non-governmental organisation	1	2
Member of the public	1	2
Pressure group	0	0
Other (please specify)	5	9
Not stated	5	9
<b>Total</b>	<b>53</b>	

### **b) Capacity of respondent**

<b>Option</b>	<b>Number of respondents</b>	<b>Percentage of total (%)</b>
Health and Safety professional	23	43
An employer	2	4
An employee	8	15
Trade union official	5	9
Training provider	1	2
Other (please specify)	10	19
Not stated	4	8
<b>Total</b>	<b>53</b>	

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**Table 2 – Summary of responses to questions**

**Question 1.1 - Do you agree with the proposal 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?**

<b>Option</b>	<b>Number of respondents</b>	<b>Percentage of total %</b>
Yes	39	91
No	4	9
<b>Total</b>	<b>43</b>	

**Comments made to support the responses**

**‘Yes’ respondents’ comments**

We received 24 comments both via the questionnaire and written responses. Amongst these comments, these key points were raised:

- 4 expressed general agreement to the proposal.
- 8 suggested that the nitrate film medium is virtually obsolete and therefore the legislation is also no longer required.
- 10 said that this issue is adequately covered by more modern legislation; two of these confirmed that this is also the case in Scotland.
- 2 said that guidance on this issue should remain available, and one of these suggested current guidance should be improved.
- 1 advised that any film stocks still in domestic premises would further decline over time, and that these householders would not be aware of the current legislation so it would not be affecting their behaviour.
- 1 said that this change would not decrease the legislative burden on industry.
- 1 said that this change would not impact on the ports industry.

**‘No’ respondents’ comments**

We received one comment via the questionnaire, which suggested that keeping the legislation could provide leverage in influencing people to dispose of nitrate film, although it did acknowledge that people were unlikely to be aware of either the legislation or the dangers of nitrate film.

One respondent provided a comment without having answered Question 1.1, which said that they did not wish to comment based on their lack of experience of this issue.

**Question 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?**

<b>Option</b>	<b>Number of respondents</b>	<b>Percentage of total %</b>
Yes	3	8
No	36	92
<b>Total</b>	<b>39</b>	

**If you have answered ‘Yes’, please can you provide contact details for any groups/ individuals who do keep or store raw celluloid or cinematograph film so they can be contacted to discuss the impact of this proposal?**

**‘Yes’ respondents’ comments**

We received two comments via the questionnaire raising these points:

- That archive organisations are still offered nitrate films, although less frequently, but there is no list of contacts, because these offers are dealt with straight away.

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- Whether HSE had considered the incidence of private collections.

One respondent provided a comment without having answered Question 1.2, which said that they could not estimate how much film may be stored in individual collections and film clubs, but understand that it is stored in some museum and library collections. They acknowledged that these workplaces are covered by DSEAR, but suggested that guidance for workplace situations should be improved, and that they would be keen to contribute to this work.

**Question 1.3 To help HSE prepare the Impact Assessment we would be grateful if you would answer the following questions:**

### **a) What impact would the removal of the legislation have on the health and safety of these groups / individuals?**

We received 17 comments via the questionnaire raising these points:

- 10 comments said either no or low impact as other more modern legislation applies, and guidance is also available from both HSE and archive organisations.
- 5 said either that they did not know, were unaware of any groups/individuals affected, had nothing to add, or felt this was not applicable to them.
- 1 said that any groups storing film will be at risk if they are not considering the issue in light of DSEAR.
- 1 suggested that the change would mean that a best practice approach would remain, requiring a risk management process.
- 1 argued that the legislation should not be removed but adapted to suit different sectors and sized companies.

### **b) What additional costs or savings do you estimate the removal of the legislation would impose on these groups / individuals, e.g. in terms of monetary costs, or in time spent?**

We received 15 comments via the questionnaire raising these points:

- 8 said either no or low costs or savings due to the limited number of groups/individuals affected.
- 2 said this would depend on the individual circumstances.
- 2 said they were unaware of any groups/individuals affected, or had nothing to add.
- 1 suggested that those familiar with the current legislation may take time to acclimatise, but they should already be up to speed with more modern legislation.
- 1 suggested there could be significant savings for SMEs if the legislation were adapted to suit differing sectors and organisations sizes.
- 1 raised the point that it took 10 minutes to complete the consultation so this could be multiplied by several thousand.

## **Additional comments received**

**General Question across all 14 legislative measures being consulted on: ‘Are there any further comments you would like to make on the issues raised in this consultation document that you have not already responded to in this questionnaire?’. Comments here relate to either the general consultation or specifically to celluloid legislation:**

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We received 14 comments, both via the questionnaire and written responses, which either relate to the general consultation or specifically to celluloid legislation. Amongst these comments, these key points were raised:

- 8 comments are supportive, and broadly agree with reducing burdens on business by removing red tape. 1 of these acknowledged that the small number of the proposals that impact on fire hazards and/or fire fighting have largely been superseded by more modern legislation.
- 1 said that removing the legislation would not reduce burdens on business.
- 2 comments are opposed to the proposals to remove legislation, although 1 does acknowledge that in some cases the measures have been superseded by more modern legislation.
- 3 have no specific comments to make on celluloid, but have made comments on other parts of the consultation.
- 1 comment expressed disappointment that an Impact Assessment had not been prepared, and another 1 raised the need for an evidence base analysis before final judgement on removal is taken.
- 1 questioned how the authorities might tackle domestic enforcement following the removal of the legislation.

<b>Title:</b> Revocation of the Locomotives etc. Regulations 1906 (Metrication) Regulations 1981 (S.I. 1981/1327); Gasholders and Steam Boilers (Metrication) Regulations 1981 (S.I. 1981/687); Docks, Shipbuilding etc (Metrication) Regulations 1983 (S.I. 1983/644) <b>IA No:</b> <a href="#">HSE0069f</a>  <b>Lead department or agency:</b> Health and Safety Executive <b>Other departments or agencies:</b> None	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 18/07/2012
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> <a href="mailto:Malcolm.McDowall@hse.gsi.gov.uk">Malcolm McDowall - malcolm.mcdowall@hse.gsi.gov.uk</a> , <a href="mailto:Tara.McNally@hse.gsi.gov.uk">Tara McNally tara.mcnally@hse.gsi.gov.uk</a>

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0m	£0m	£0m	No
			NA

**What is the problem under consideration? Why is government intervention necessary?**

In response to the Lofstedt review and the Red Tape Challenge HSE has identified a number of health and safety Regulations that are either redundant or that have been overtaken by more modern legislation. Without any intervention these would remain in force and contribute to the impression that health and safety law is complex, confusing and out of date. This work is one element of a much wider programme of work to make the legislative framework simpler and easier to understand, while maintaining the same standards of protection for those in the workplace or affected by work activities.

**What are the policy objectives and the intended effects?**

The policy objective of this work is contribute to the streamlining of the legislative framework by removing three sets of metrication Regulations that are no longer needed to control health and safety risks in the workplace. Without any intervention these would remain in force and contribute to the impression that health and safety law is complex, confusing and out-of-date. This work therefore forms part of HSE's programme of wider reforms to help employers understand quickly and easily what they need to do to manage workplace risks.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 1 - Do nothing - the Regulations would remain on the statute book.

Option 2 - Revoke the Locomotives etc. Regulations 1906 (Metrication) Regulations 1981 (S.I. 1981/1327); Gasholders and Steam Boilers (Metrication) Regulations 1981 (S.I. 1981/687); and Docks, Shipbuilding etc (Metrication) Regulations 1983 (S.I. 1983/644) .

Option 2 is the preferred option as it will remove unnecessary or out of date regulation from the statute books. Over 90% of the responses to the relevant questions in HSE's consultation exercise were supportive of this option.

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** Month /Year

Does implementation go beyond minimum EU requirements?	No
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Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? <i>(Million tonnes CO<sub>2</sub> equivalent)</i>			<b>Traded:</b>	<b>Non-traded:</b>	

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible Minister: \_\_\_\_\_ Date: \_\_\_\_\_

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**Summary: Analysis & Evidence Policy Option 7**

**Description:** Do Nothing

**FULL ECONOMIC ASSESSMENT**

Price Base Year na	PV Base Year na	Time Period Years na	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

**Description and scale of key monetised costs by 'main affected groups'**

This is the baseline option and as such costs are zero

**Other key non-monetised costs by 'main affected groups'**

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

**Description and scale of key monetised benefits by 'main affected groups'**

This is the baseline option and as such benefits are zero

**Other key non-monetised benefits by 'main affected groups'**

Key assumptions/sensitivities/risks

Discount rate (%)

na

**BUSINESS ASSESSMENT (Option 7)**

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0      Benefits: 0      Net: 0	No	NA

Summary: Analysis & Evidence Policy Option 8

Description: Revoke Metrication Regulations

FULL ECONOMIC ASSESSMENT

Price Base Year na	PV Base Year na	Time Period Years na	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

HSE's assessment, based on consultation (formal and informal), analysis of enforcement activity and internal sector experts knowledge, is that these sets of regulations are either not used by industry (Locomotive etc Regulations), or will become redundant when other revocations take place, and are not used for enforcement by HSE. Therefore there will be no costs associated with their removal.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

The removal of these sets of regulation will contribute towards streamlining the Health and Safety legislative framework.

Key assumptions/sensitivities/risks	Discount rate (%)	na
These regulations are redundant on the basis of the revocation of their parent regulations.		

BUSINESS ASSESSMENT (Option 8)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0	No	NA
Benefits: 0		
Net: 0		

**Evidence Base for Revocation of the Locomotives etc. Regulations 1906 (Metrication) Regulations 1981 (S.I. 1981/1327); Gasholders and Steam Boilers (Metrication) Regulations 1981 (S.I. 1981/687); Docks, Shipbuilding etc (Metrication) Regulations 1983 (S.I. 1983/644)**

**Problem under consideration;**

115. HSE has identified a number of health and safety related legislative measure that are redundant or that have been overtaken by more modern legislation or do not deliver their intended benefits. This work is only one small element of a much wider programme of work to make the legislative framework simpler and easier to understand, while maintaining the same standards of protection for those in the workplace or affected by work activities.

**Background**

116. Professor Löfstedt's independent review of health and safety legislation 'Reclaiming health and safety for all' (<http://www.dwp.gov.uk/docs/lofstedt-report.pdf>) was published in November 2011. In response to this, and the Red Tape Challenge, HSE has identified a number of health and safety regulations that are either redundant, have been overtaken by more modern legislation or do not deliver their intended benefits. Without any intervention these would remain in force and contribute to the impression that health and safety law is extensive, complex and out of date.

117. The public were given the opportunity to comment on Regulations under the Government's Red Tape Challenge initiative – those that work well and those that do not. This exercise was launched on 7 April 2011 with a new theme in the spotlight on the website every three weeks. Workplace Health and Safety is a cross cutting theme and open to challenge throughout the initiative. It was also in the spotlight from 30 June for 3 weeks. Some 197 Regulations were in scope for the Workplace Health and Safety theme. All Red Tape Challenge comments are collated to provide a clearer picture for Government of which Regulations should stay, which should go and which should change. All the Health and Safety Theme comments received are now being considered by HSE.

118. It is proposed that the following legislative measures are removed:

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

**Rationale for intervention;**

119. Intervention is necessary to implement the Government response to the above mentioned Red Tape Challenge and Löfstedt Review. The Locomotives etc metrication Regulations are now redundant, as their 'parent' Regulations are to be revoked. In the case of the other 2 sets of metrication regulations if, following this consultation, their 'parent' Regulations are to be revoked, then they too will become equally

redundant. They are all currently on the statute books and principles of good regulation suggest that they should be removed, subject to the qualifying revocation of their 'parent' Regulations.

120. In general, the removal of redundant legislation removes the need for dutyholders to spend resource on reading and understanding the additional legislation, it would also save dutyholder resource by reducing the uncertainty and complexity of the health and safety legislative framework. Deregulation, on the whole, would reduce the burden on industry and therefore reduces barriers to entry and start-up fixed costs thus making markets more contestable (Contestable Market Theory, W. J. Baumol). This theory is supported by some anecdotal evidence from consultation:

*“The TUC welcomes simpler and better regulation and supports moves to remove, merge, simplify or amend outdated, overly complex or unnecessary regulations.”*

### **Policy objective and intended effects**

121. The policy objective of this work is to contribute to the streamlining of the legislative framework by removing 3 legislative measures: 2 sets of Regulations and 1 Order, all metrification SIs that are, or will become, no longer needed to control health and safety risks in the workplace. Without any intervention these would remain in force and contribute to the impression that health and safety law is complex, confusing and out-of-date.
122. This work forms part of HSE’s programme of wider reforms to help employers understand quickly and easily what they need to do to manage workplace risks.

### **Alternatives to regulation**

123. No alternatives to regulation have been considered because this is a deregulatory measure.

### **One In One Out (OIOO)**

124. The removal of these metrification regulations would not have a direct impact on business and therefore this is out of scope of One In One Out. This is consistent with the OIOO guidance and Scope Decision Guide (FAQ’s document).

### **Description of options considered (including do nothing);**

125. Option 1 – Do nothing - the 3 legislative measures would remain on the statute book.
126. Option 2 – Revoke the following measures:

- **The Locomotives etc Regulations 1906 (Metrication) Regulations 1981 (SI 1981/1327**
- **The Gasholders and Steam Boilers (Metrication) Regulations 1981 (SI 1981/687)**
- **The Docks, Shipbuilding etc (Metrication) Regulations 1983 (SI 1983/644)**

### **Consultation and data analysis**

127. Consultation consisted of both formal and informal elements. Formal consultation took place between 3 April 2012 and 4 July 2012. Informal consultation took place prior to the publication of HSE CD 239, and involved other Government Regulators (eg. Office of Rail Regulation ORR), relevant HSE Sectors and policy teams, and industry trade associations and lead bodies (see separate Impact assessment Annexes and documentation associated with HSE Consultation CD 238).
128. Of those persons specifically responding to the question relating to these Regulations, over 90% supported their repeal.
129. Annex 1 provides more detail of formal consultation responses, it summarises the organisations that responded and the proportion of the respondents within these organisations compared to total responses. The annex also provides a summary of the responses to the specific questions in the consultative document. The results were that:
- 33 out of 35 respondents who answered the question “Do you agree with the proposal (as outlined in the Annex) to revoke the... *3 sets of metrication Regulations... ?*” were in favour.
  - 2 persons who answered the same question said *No*. Of those, 1 qualified their response by saying that if the parent legislation to which these Regulations referred were to be repealed/revoked, then these Regulations would be redundant, and on that basis would support their revocation (NB the SI revoking the Locomotives etc Regulations 1906 has already been laid, and thus this is already the case for that example). 1 of the respondents who voted *Yes*, also made this same point in the Free-text section
  - A small number of respondents, commenting in text form rather than answering the questionnaire itself, argued that the whole CD should be withdrawn. Although not directly referencing the question dealing with these metrication Regulations, such a view might be construed as a negative response. Also, a number of respondents dealt with specific questions in the CD, and made no comment either way regarding other questions. These two classes of responses have not been included in the analysis, as it would be inappropriate to construe or imply a *Yes* or *No* response from them.
  - The overarching nature of the response agrees with what sector experts in HSE have opined, that the Locomotives etc metrication Regulations are now redundant, as the legislation to which they refer is about to be revoked. They can therefore be revoked without any adverse impact. And that as the Shipbuilding and Ship Repair Regulations 1960 and Gasholders (Records of Examinations) Order are themselves going to be revoked following consultation, their 'metrication' Regulations can also be revoked without risk.

130. Analysis also included examining HSE records on the use of these sets of Regulations over the last 13 years. During this time none of these SIs have been cited on Notices issued nor have they been cited in approved prosecution activity in the same period. This is, however, to be expected, as they are modifying Regulations, rather than duty-bearing Regulations.

**Monetised and non-monetised costs and benefits of each option (including administrative burden);**

*General Assumptions*

131. Given the nature of the deregulatory measure, no assumptions have been made with reference to base year, analysis period or discount value.

*Option 1: do nothing*

132. Option 1 would maintain the status quo and so would have no cost or benefit implications.

*Option 2: revoke/peel The Locomotives etc Regulations 1906 (Metrication) Regulations 1981 (SI 1981/1327), the Gasholders and Steam Boilers (Metrication) Regulations 1981 (SI 1981/687), and the Docks, Shipbuilding etc (Metrication) Regulations 1983 (SI 1983/644):*

133. Option 2 would require the removal of 3 redundant SIs.  
134. The evidence for this assessment is set out below.

*Costs to business*

135. HSE's assessment is that 1 of these SIs is currently not used by businesses (Locomotive etc Regulations) with the other 2 will become redundant following the revocation of their parent regulations and so their revocation would not impose costs on them.
136. The majority of responses from consultation agreed with this assessment. Where there was disagreement (in 2 cases) the only supporting comment was that as the parent legislation was to be removed, these would be redundant anyway. No additional impacts were identified during consultation.
137. While consultation responses are undoubtedly biased, those that responded are likely to be the more engaged and most likely to know/use the statutory instruments analysed in this IA. Hence, if there were any costs to business, this group would be the most likely to know about it. Given the lack of substantive objections, costs or issues raised in the free text box for Question 6.1, it is reasonable to assume there will be no cost to industry.
138. HSE has also examined its records on the use of these sets of Regulations over the last 13 years. During this time none of the SIs have been cited on Notices issued nor have they been cited in approved prosecution activity in the same period. Sector experts in HSE agree that these sets of Regulations are not used for enforcement purposes.

139. A summary of each measure, what they cover, and why there are no longer needed, is provided below.

- Gasholders and Steam Boilers (Metrication) Regulations 1981 (SI 1981/687): these Regulations amend the Examination of Steam Boilers Regulations 1964 and the Gasholders (Record of Examinations) Order 1938 by substituting measurements expressed in metric units (cubic metres) for imperial measurements (cubic feet). The Examination of Steam Boilers Regulations 1964 (SI 1964/781) were revoked by SI 1989/2169 (Pressure Systems and Transportable Gas Containers Regulation 1989). So if the Gasholders (Record of Examinations) Order 1938 is revoked as proposed, then these Regulations are redundant and can be revoked.
- Docks, Shipbuilding etc (Metrication) Regulations 1983 (SI 1983/644): these Regulations amended the Docks Regulations 1925; the Docks Regulations 1934; the Shipbuilding and Ship-repairing Regulations 1960; the Shipbuilding (Lifting Appliances etc. Forms) Order 1961; and the Docks Certificates (No. 2) Order 1964, by substituting amounts or quantities expressed in metric units for amounts or quantities not so expressed. Of the Regulations mentioned above only the Shipbuilding and Ship-repairing Regulations 1960 remain so if the Shipbuilding and Ship-repairing Regulations 1960 are revoked as proposed then these Regulations can be revoked.
- The Locomotives etc. Regulations 1906 (Metrication) Regulations 1981 (SI 1981/1327): these Regulations amend the Locomotives and Waggon (Used on Lines and Sidings) Regulations 1906 by substituting measurements expressed in metric units for measurements not so expressed. As the Regulations for use of locomotives and waggons on lines and sidings in or used in connection with premises under the Factory and Workshop Act 1901 (1906) (1906 No.679), previously included in HSE's consultation 'Proposals to revoke seven Statutory Instruments' (CD238), are now to be revoked then these Regulations can also be revoked.

*Costs to HSE*

140. There will be no additional costs to HSE as a result of revoking the Regulations as the removal of these regulations will not require any further engagement with industry and there is no intention of conducting a post implementation review of this revocation.

*Benefits and impact on health and safety*

141. As previously described, these are redundant or out-of-date SIs so there will be no impact on health and safety protection.

142. The specific benefits from removing these Regulations is a contribution to the overarching benefit of simplifying the legislative framework.

**Rationale and evidence that justify the level of analysis used in the IA (proportionality approach);**

143. Analysis of HSE records and consultation (internal and external) both identified the proposed SIs as redundant, or potentially so. The full costs and benefits of their removal have been presented above.

**Risks and assumptions;**

144. HSE's initial assessment was that these legislative measures were redundant, or potentially so, so there would be no risk associated with them being revoked.

145. The majority of respondents to the relevant part of the consultation exercise agreed with the proposals. As such, we deem that there are negligible risks or uncertainties with respect to the analysis presented.

146. Risks that were identified related to the dependencies of two of the sets of Regulations on other revocations. If those revocations go ahead, then there is no risk. If they do not, then the relevant metrication Regulations may need to be retained or some saving provision made so as to ensure that their modifications do not lapse.

**Direct costs and benefits to business calculations (following OIOO methodology);**

147. The removal of these metrication regulations would not have a direct impact on business and therefore this is out of scope of One In One Out. This is consistent with the OIOO guidance and Scope Decision Guide (FAQs document).

**Wider impacts**

148. There would be no wider impacts as a result of this simplification.

**Summary and preferred option with description of implementation plan.**

149. HSE's preferred option, on the basis of HSE's expert analysis and the responses to the consultation, is therefore that these measures can be revoked without any lowering of health and safety standards.

## Annex 1 – Consultation responses

**Table 1 - General information**

### a) Type of organisation

Type of organisation	Number of respondents	Percentage of total (%)
Consultancy	3	8
Local government	8	22
Industry	10	27
Trade association	3	8
National government	1	3
Non-departmental public body	1	3
Charity	1	3
Academic	2	5
Trade union	0	0
Non-governmental organisation	0	0
Member of the public	1	3
Pressure group		0
Other (please specify)	4	11
Not stated	3	8
<b>Total</b>	<b>37</b>	

### b) Capacity of respondent

Capacity of respondent	Number of respondents	Percentage of total (%)
Health and Safety professional	21	57
An employer	3	8
An employee	4	11
Trade union official	1	3
Training provider	1	3
Other (please specify)	4	11
Not stated	3	8
<b>Total</b>	<b>37</b>	

**Table 2 – Summary of responses to questions**

**Responses to question 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**

<b>Option</b>	<b>Number of respondents</b>	<b>Percentage of total (%)</b>
Yes	33	94
No	2	6
<b>Total</b>	<b>35</b>	

**If you have answered ‘No’ what are your objections?**

**3 people made comments on this proposal (although none of them had responded ‘no’)**

**1 qualifying their ‘yes’ response**

- Yes, we agree with the proposal (as outlined in the Annex) to revoke the regulations listed above if the statutory instruments they relate to are revoked.

**1 giving qualified support to the proposal**

- 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.

**1 was a nil response**

- We do not have enough experience in this area to give appropriate answers the questions

<b>Title:</b> <b>Revocation of the Notification of Installations Handling Hazardous Substances Regulations 1982 and 2002 (as amended) and a consequential amendment to The Dangerous Substances (Notification and Marking of Sites) Regulations 1990</b> <b>IA No: <a href="#">HSE0069g</a></b> <b>Lead department or agency:</b> Health and Safety Executive <b>Other departments or agencies:</b> N/a	<b>Impact Assessment (IA)</b>	
	<b>Date:</b> 26/07/2012	
	<b>Stage:</b> Final	
	<b>Source of intervention:</b> Domestic	
	<b>Type of measure:</b> Secondary legislation	
<b>Contact for enquiries:</b> Pauline Nash: 0151 951 4235 Anna Barnes: 0151 951 4865		

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
Zero	Zero	Zero net cost	Yes
			Zero net cost

**What is the problem under consideration? Why is government intervention necessary?**

HSE is working to deliver the recommendations in Professor Lofstedts independent review of health and safety legislation ‘Reclaiming health and safety for all’ which was published in November 2011. In his report he recommended a number of regulations should be revoked. In response to Government initiatives such as the Red Tape Challenge, HSE officials have also looked closely at health and safety legislation and have identified some further measures they believe are no longer required. This includes the NIHHS Regulations. The NIHHS Regulations were in force before the Seveso II Directive. However, the Hazardous Substances Consent procedure and the COMAH Regulations now largely subsume the NIHHS procedure.

**What are the policy objectives and the intended effects?**

The policy objective of this work is to contribute to the streamlining of the legislative framework by removing two sets of regulations that are no longer needed to control health and safety risks in the workplace. Without any intervention these regulations would remain in force and contribute to the impression that health and safety law is complex, confusing and out of date.

This work forms part of HSE’s programme of wider reforms to help employers understand quickly and easily what they need to do to manage workplace risks.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 1 –Do nothing: Do not revoke the NIHHS Regulations or the amending Regulations.  
 Option 2 - Revoke both sets of NIHHS Regulations and do not make a consequential amendment.  
 Option 3 - Revoke both sets of NIHHS Regulations and make a consequential amendment to the NAMOS Regulations.

The preferred option is option 3. On the basis of the analysis it is concluded that this option satisfies the main objective to streamline and simplify the notification system for businesses, whilst maintaining health and safety standards through existing legislation.

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?	No
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Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base <sup>3</sup> .	<b>Micro Yes</b>	<b>&lt; 20 Yes</b>	<b>Small Yes</b>	<b>Medium Yes</b>	<b>Large Yes</b>
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? <i>(Million tonnes CO<sub>2</sub> equivalent)</i>			<b>Traded: N/a</b>	<b>Non-traded: N/a</b>	

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible  
SELECT SIGNATORY:

Date: \_\_\_\_\_  
e: \_\_\_\_\_

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<sup>3</sup> Micro businesses are in scope of the revocation as the intention of the revocation is to simplify the notification procedure for business.

**Summary: Analysis & Evidence Policy Option 9**

Description: Do nothing

**FULL ECONOMIC ASSESSMENT<sup>1</sup>**

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate: Nil	
<b>COSTS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Cost</b> (Present Value)	
Low	Optional		Optional		<b>Optional</b>	
High	Optional		Optional		<b>Optional</b>	
Best Estimate	Nil		Nil		<b>Nil</b>	
<b>Description and scale of key monetised costs by 'main affected groups'</b>						
This is the baseline option in which it is assumed the status quo continues and so there are no costs associated with this option						
<b>Other key non-monetised costs by 'main affected groups'</b>						
N/a						
<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Benefit</b> (Present Value)	
Low	Optional		Optional		<b>Optional</b>	
High	Optional		Optional		<b>Optional</b>	
Best Estimate	Nil		Nil		<b>Nil</b>	
<b>Description and scale of key monetised benefits by 'main affected groups'</b>						
This is the baseline option in which it is assumed the status quo continues and so there are no benefits associated with this option						
<b>Other key non-monetised benefits by 'main affected groups'</b>						
N/a						
Key assumptions/sensitivities/risks					<b>Discount rate (%)</b>	3.5
N/a						

**BUSINESS ASSESSMENT (Option 9)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
Costs: Nil	Benefits: Nil	Net: Nil	N/a	N/a

<sup>1</sup> Where the likely Equivalent Annual Net Cost or Benefit is less than £5 thousand, all costs and benefits are rounded to Zero as per BRE guidance and to reflect that reporting these minimal estimates implies more accuracy than is reasonable to assume.

**Summary: Analysis & Evidence Policy Option 2**

**Description: Revoke both sets of NIHHS Regulations and do not make a consequential amendment.**

**FULL ECONOMIC ASSESSMENT<sup>1</sup>**

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Zero	High: Zero	Best Estimate: Zero

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Zero	Zero	Zero
High	Zero	Zero	Zero
Best Estimate	Zero	Zero	Zero

**Description and scale of key monetised costs by ‘main affected groups’**

Costs include familiarisation costs to duty holders who notify under Ammonium Nitrate (AN) and to the Fire and Rescue Services.. These are both one off costs and are based on consultation evidence. The total costs are expected to be minimal and are estimated in paragraphs 29 and 39 of the Evidence Base.

**Other key non-monetised costs by ‘main affected groups’**

There is the potential for negative health and safety consequences if HSE no longer receives notifications about Ammonium Nitrate at the specified quantities in the NIHHS (Amendment) Regulations but it is not possible to quantify these impacts although they could be significant. There could also be certain sites that fall under the Petroleum Consolidation Act (PCA) when NIHHS is revoked. Limited evidence from consultation with stakeholders and with HSE experts indicates that the number of sites affected and the cost per site will be small. There could also be costs to Local Authorities who are required to take on enforcement of certain sites whose activities fall within their jurisdiction. Whilst HSE cannot estimate which sites these are at this stage and so the total cost cannot be quantified, it is expected that the total number of LAs affected will be small.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Zero	Zero	Zero
High	Zero	Zero	Zero
Best Estimate	Zero	Zero	Zero

**Description and scale of key monetised benefits by ‘main affected groups’**

It is estimated that there will be time savings to duty holders who currently notify AN under the NIHHS regulations and cost saving to government (HSE) from no longer having to process the AN notifications received. These cost savings are expected to be small over the 10 year appraisal period and are estimated in paragraphs 54 and 56.

**Other key non-monetised benefits by ‘main affected groups’**

There will be a reputational benefit to Government as they will be streamlining and simplifying notification processes by removing unnecessary regulations that have since been superseded.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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It has not been possible to estimate the number of sites that might fall into scope of the PCA, or the number of LAs that might have to take on enforcement of new sites. The main difficulty in providing such quantification is that the NIHHS regulations are not in common use by industry, which is the main justification for making the changes proposed. However, both costs are not expected to be significant.

**BUSINESS ASSESSMENT (Option 10)**

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: Minimal	Benefits: Minimal	Net: Zero	Yes	Zero net cost

<sup>1</sup> Where the likely Equivalent Annual Net Cost or Benefit is less than £5 thousand, all costs and benefits are rounded to Zero as per BRE guidance and to reflect that reporting these minimal estimates implies more accuracy than is reasonable to assume.

**Summary: Analysis & Evidence Policy Option 3**

**Description: Revoke both sets of NIHHS Regulations and make a consequential amendment to the NAMOS Regulations.**

**FULL ECONOMIC ASSESSMENT<sup>1</sup>**

<b>Price Base Year</b> 2012	<b>PV Base Year</b> 2012	<b>Time Period Years</b> 10	<b>Net Benefit (Present Value (PV)) (£m)</b>		
			<b>Low: Zero</b>	<b>High: Zero</b>	<b>Best Estimate: Zero</b>

<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>
<b>Low</b>	Zero	Zero	<b>Zero</b>
<b>High</b>	Zero	Zero	<b>Zero</b>
<b>Best Estimate</b>	Zero	Zero	<b>Zero</b>

**Description and scale of key monetised costs by 'main affected groups'**

Costs include familiarisation costs for duty holders and to the Fire and Rescue Services. These are both one off costs and are based on consultation evidence. The total costs are expected to be minimal and are estimated in paragraphs 43 and 48 of the Evidence Base

**Other key non-monetised costs by 'main affected groups'**

As explained under option 2, there could be certain sites that fall under the PCA when NIHHS is revoked, but the total cost impact is expected to be small. There could also be costs to Local Authorities who are required to take on enforcement of certain sites whose activities fall within their jurisdiction. Total costs cannot be estimated due to uncertainty in the number of sites that will be affected however the total cost is expected to be small .

<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>
<b>Low</b>	Optional	Optional	<b>Optional</b>
<b>High</b>	Optional	Optional	<b>Optional</b>
<b>Best Estimate</b>	Nil	Nil	<b>Nil</b>

**Description and scale of key monetised benefits by 'main affected groups'**

There are no quantified benefits that will arise from option 3. Nothing is changing in practice for duty holders working with AN, so there wont be any cost savings around these notifications.

**Other key non-monetised benefits by 'main affected groups'**

It is expected that there will be some health and safety benefit from option 3, as the Fire and Rescue Services (FRSs) will be notified of sites storing AN at the quantities specified in the NIHHS (Amendment) Regulations 2002. This will enable the FRSs to take the necessary precautions when dealing with incidents at these sites, which will in turn limit the health and safety consequences caused by these incidents and the consequences to the site itself. It is not possible to quantify this effect however.

There will be a reputational benefit to Government as they will be streamlining and simplifying notification processes by removing unnecessary regulations that have since been superseded.

Key assumptions/sensitivities/risks	<b>Discount rate (%)</b>	3.5
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It has not been possible to estimate the number of sites that might fall into scope of the PCA, or the number of LAs that might have to take on new sites. The main difficulty in providing such quantification is that the NIHHS regulations are not in common use by industry, which is the main justification for making the changes proposed. However, both costs are not expected to be significant.

**BUSINESS ASSESSMENT (Option 11)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b> Zero	<b>Benefits:</b> Zero	<b>Net:</b> Zero	Yes	Zero net cost

<sup>1</sup> Where the likely Equivalent Annual Net Cost or Benefit is less than £5 thousand, all costs and benefits are rounded to Zero as per BRE guidance and to reflect that reporting these minimal estimates implies more accuracy than is reasonable to assume

## Evidence Base for the Revocation of the Notification of Installations Handling Hazardous Substances Regulations 1982

### Background

1. **The NIHHS Regulations 1982**  
<http://www.legislation.gov.uk/ukxi/1982/1357/contents/made> were introduced following the <sup>7</sup>Flixborough disaster in 1974 to address public concern about industrial plant safety.
2. **The 1982 regulations were amended in 2002**  
<http://www.legislation.gov.uk/ukxi/2002/2979/contents/made>. They changed the period of notice for ammonium nitrate (AN) from three months to at least four weeks, and lowered the specified quantity to 150 tonnes for AN and mixtures containing AN where the nitrogen content exceeds 15.75% of the mixture by weight<sup>8</sup>.
3. **The NIHHS Regulations provided the first element of the three measures (identification, control of risks and mitigation of consequences) for the management of risks from installations handling hazardous substances. They require a person who stores, manufactures, processes or transfers a specified minimum quantity of a defined hazardous substance, as set out in the regulations, to notify HSE about the activity. The person has to notify their name, address and inventory of the hazardous materials on site three months before starting the activity.**
4. **The notifications provided HSE with details about hazardous sites and helped to define priorities in inspection programmes. HSE used the information to inform Local Planning Authorities (LPAs) about the location of sites in their areas to assist them in development control. However, notifications are now also obtained through other legislation<sup>9</sup> including the Control of Major Accident Hazard (COMAH) Regulations, the Hazardous Substances Consent (HSC) Regulations and the Planning (Hazardous Substances) Regulations (PHS), so LPAs can now obtain that information via the planning legislation.**
5. **The NIHHS Regulations contain a requirement to update HSE if the information in the original notification has changed or there is significant intensification or an increase in the scale of activities at a site. This**

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<sup>7</sup> The Flixborough disaster was an explosion at a chemical plant close to the village of Flixborough on 1 June 1974. It killed 28 people and seriously injured 36.

<sup>8</sup> Regulation 6 of NIHHS Amendment Regulations 2002

<sup>9</sup> The complete list of related legislation is as follows: The Dangerous Substances (Notification and Marking of Sites) Regulations 1990 (NAMOS); the Control of Major Accident Hazards (COMAH) Regulations 1999 as amended; The Petroleum (Consolidation) Act 1928 and associated Regulations; The Planning (Hazardous Substances) (PHS) Regulations 1992; The Planning (Hazardous Substances) (PHS) (Scotland) Regulations 1993; The Town and Country Planning (Development Management Procedure) (England) Order 2010; The Town and Country Planning (General Development Procedure) Order 1995; and the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.

requirement would also include de-notification. They also make HSE the enforcing authority for health and safety requirements at all notified sites.

**.Problem under consideration**

- 6. HSE is working to deliver the recommendations in Professor Lofstedts independent review of health and safety legislation ‘Reclaiming health and safety for all’ which was published in November 2011. In his report he recommended a number of regulations should be revoked. In response to Government initiatives such as the Red Tape Challenge, HSE officials have also looked closely at health and safety legislation and have identified some further measures that they believe are no longer required. This includes the NIHHS regulations.**
- 7. The NIHHS Regulations were in force before the Seveso II Directive. However, the Hazardous Substances Consent procedure and the Control of Major Accident Hazard Regulations (COMAH Regulations ) which implement the Seveso II Directive into national legislation, now largely subsume the NIHHS procedure. It is difficult to make a like for like comparison between the threshold values in the two sets of regulations but any differences between COMAH and NIHHS are covered by the Planning Hazardous Substances (PHS) Regulations 1992.**
- 8. The PHS regulations brought about a significant change to the regime under NIHHS because they control the type of substance, the quantity, location and storage arrangements, where as the NIHHS Regulations only require notification and do not include any controls.**
- 9. Under NIHHS, a small number of substances (seven) have lower thresholds than in COMAH/Seveso (eg, the NIHHS threshold for methane is 15 tonnes, for COMAH it is 50 tonnes). However, if NIHHS is revoked, existing protection will remain the same because the PHS Regulations contain the same notifying threshold levels as NIHHS in respect of the seven substances that have lower thresholds, when compared to COMAH. Therefore HSE will be aware of sites containing these substances through the PHS regime.**
- 10. There is however, one outstanding issue in relation to Ammonium Nitrate (AN) which needs to be considered if the NIHHS Regulations are revoked. Operators who use AN<sup>10</sup> at or above the specified threshold as set out in the NIHHS (Amendment) Regulations 2002 are currently required to notify HSE. This requirement will be removed if the NIHHS Regulations are revoked.**
- 11. Schedule 1 paragraph 2 of the The Dangerous Substances (Notification and Marking of Sites) Regulations 1990 (NAMOS<sup>11</sup>) Regulations provides that Regulation 4 (which relates to notification), does not apply to substances which are notifiable to HSE under the NIHHS Regulations – this includes AN at or above the specified threshold as set out in the NIHHS (Amendment) Regulations 2002. However, with the revocation of NIHHS, it needs to be**

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<sup>10</sup> As defined in the NIHHS (Amendment) Regulations 2002

<sup>11</sup> Schedule 1 – Exceptions – Regulation 4 (which relates to notification) shall not apply to (a) sites which are notifiable to the Executive in accordance with the Notification of Installations Handling Hazardous Substances Regulations 1982(2)

ensured that there is a specific requirement for the notification of AN at this specified threshold. This can be achieved by a consequential amendment to the NAMOS Regulations to require operators to notify the Fire and Rescue Services<sup>12</sup> if they have or exceed 150 tonnes of AN (and mixtures containing AN with the same nitrogen content as in NIHHS) on site. This will continue to provide the FRS with necessary intelligence if they have to attend an incident.

### **Rationale for Intervention**

#### **12. There are key benefits supporting the revocation of the NIHHS Regulations 1982 and 2002, and the consequential amendment to NAMOS, which are as follows:**

- a. It will help to ensure that fire fighters are aware of sites containing 150 tonnes of AN (as currently defined in the NIHHS (Amendment) Regulations 2002) as such sites will be notified to the FRSs. Appropriate precautions can then be taken to minimise heightened risk. Currently, these notifications are received by HSE who do not pass them onto the FRSs.
- b. It is an opportunity to streamline and simplify a notification system which, over the years, has gradually become complicated because of new legislation from Europe and the UK;
- c. The COMAH Regulations which implement the Seveso II Directive have been considered more recently and are based on more up to date scientific views from across Europe;
- d. It will remove a burden from any UK businesses who are currently required to notify if they are storing hazardous substances at or above the qualifying thresholds under NIHHS/NAMOS, PHS Regulations and the COMAH Regulations. This involves potential duplication and provides grounds for confusion. Revoking NIHHS will make the notification process clearer and easier for businesses;
- e. It will be in line with current Government policy not to impose higher standards than are necessary under EU legislation;
- f. The thresholds in the planning legislation (PHS) which require consent for hazardous substances are virtually identical to NIHHS; this will continue to ensure public protection and HSE will be aware of these sites via this regime.

#### **Response to consultation**

**13. This Impact Assessment (IA) has been prepared post consultation. The analysis of the responses shows that 87% of those who responded agreed to the revocation of the NIHHS Regulations 1982 and 86% agreed to the revocation of the 2002 Amending Regulations. Evidence collected during the consultation and from HSE experts who understand the NIHHS and NAMOS Regulations has supported the analysis of the IA.**

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<sup>12</sup> In England, Scotland or Wales

### **Policy Objectives**

- 14. The policy objective of this work is to contribute to the streamlining of the legislative framework by removing two sets of regulations that are no longer needed to control health and safety risks in the workplace. Without any intervention these regulations would remain in force and contribute to the impression that health and safety law is complex, confusing and out of date.**
- 15. This work forms part of HSE's programme of wider reforms to help employers understand quickly and easily what they need to do to manage workplace risks.**

### **Options**

- 16. *Option 1* –Do nothing: Do not revoke the NIHHS Regulations or the amending Regulations.**
- 17. *Option 2* - Revoke both sets of NIHHS Regulations and do not make a consequential amendment to the NAMOS Regulations.**
- 18. *Option 3* - Revoke both sets of NIHHS Regulations and make a consequential amendment to the NAMOS Regulations.**

### **Preferred Option**

- 19. The preferred option is option 3. On the basis of the analysis below, it is concluded that this option satisfies the main objective to streamline and simplify the notification system for businesses, whilst maintaining health and safety standards through existing legislation.**
- 20. Revocation of the NIHHS (Amendment) Regulations 2002 will remove the requirement for operators to notify HSE when they use or store 150 tonnes or more of Ammonium Nitrate (AN)<sup>13</sup>. This preferred option 3 involves HSE making a consequential amendment to the NAMOS Regulations to protect Fire and Rescue Services (FRSs) personnel. This change will mean that duty holders will be required to notify the FRSs (rather than the current requirement to notify HSE) of the presence of AN (and mixtures containing AN where the nitrogen content exceeds 15.75% of the mixture by weight) at or above 150 tonnes. This will maintain existing health and safety protection for sites and could have an additional health and safety benefit for the FRSs. The information about the specified quantity of AN that will be received by FRSs under this option will allow them to take the necessary precautions when dealing with sites storing this substance, in order to mitigate, as far as possible, the consequences of accidents.**
- 21. We consider it is appropriate to revoke these regulations because they have been superseded by the European Seveso II Directive. This Directive was implemented in Great Britain through the COMAH regulations and the PHS Regulations. These regulations now largely subsume the NIHHS procedure.**

### **Analysis of Costs and Benefits**

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<sup>13</sup> As defined in the NIHHS (Amendment) Regulations 2002

### *Risks and Assumptions*

22. This impact assessment considers costs and benefits that extend into the future. Consequently, it is important that any monetised impacts are expressed in present values to enable comparison between policy options. The discount rate used to generate these present values is defined in the Green Book<sup>14</sup> as 3.5% for any appraisal period of less than 30 years.
23. Guidance issued by the Department for Business, Innovation and Skills<sup>15</sup> states that where a policy has costs and benefits that extend into the future and the policy has no identifiable end point, the impacts of the policy should be appraised over ten years. As this is the case for this policy, an appraisal period of ten years is used when considering the impact of costs and benefits in the future.
24. Where an individual or company is required to spend time doing something identified in this impact assessment, the value of their time (referred to as the opportunity cost of time) is approximated using wage data from the Annual Survey of Hours and Earnings (ASHE)<sup>16</sup>. The wage data extracted from ASHE is then uprated by 30% to reflect non-wage costs such as employer pension or National Insurance contributions, in line with guidance from the Green Book. The exception is where time spent by HSE is valued, in which case an internal source of data, the Global Ready Reckoner, is used. The wage data extracted from this source is not uprated by 30% as it already contains all non-wage costs.
25. Estimates and assumptions have been supported by evidence collected at consultation. In total 47 people responded to the consultation questions. The majority of responses came from industry (11%) and local government (8%) with a fairly even but smaller spread across most of the other types of organisations. The capacity in which the respondents replied were as health and safety professionals (47%), employees 15% and employers (9%), there was a smaller spread across the other types of respondents. The overall results from the consultation showed that a substantial majority of respondents supported the proposals for revocation. The estimates and assumptions have also been supported by an internal consultation with HSE operational staff who have expertise in dealing with duty holders who fall within scope of the NIHHS regulations.

### **Analysis of Costs**

#### **Option 1 – Do Nothing**

26. As the Do Nothing option continues with the status quo, there will be no costs to either businesses or government. There may however be a negative impact

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<sup>14</sup> [http://www.hm-treasury.gov.uk/d/green\\_book\\_complete.pdf](http://www.hm-treasury.gov.uk/d/green_book_complete.pdf)

<sup>15</sup> <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/i/11-1112-impact-assessment-toolkit.doc>  
paragraphs 82-84

<sup>16</sup> <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcM%3A77-235202>

on the reputation of government by maintaining a regulation that is no longer required. It is not possible to quantify this reputational risk so we assume there are zero costs associated with the do-nothing option.

## **Option 2 – Revoke both sets of NIHHS Regulations and do not make a consequential amendment**

### **Costs to Business**

#### *Familiarisation*

27. The main cost to businesses from Option 2 is familiarisation with the fact that the NIHHS Regulations are being revoked. In terms of familiarisation costs, two distinct groups of businesses should be considered; those that notify AN and those that notify general chemicals and are therefore covered by the COMAH Regulations.
28. Evidence gathered from HSE experts shows that notifications for general substances under the NIHHS Regulations are very rare, as all but 7 of the substances have the same (or stricter) requirements to notify under COMAH as they do under NIHHS and the dangerous substances listed in the Planning (Hazardous Substances) Regulations 1992 virtually mirror those in NIHHS. This has also been backed up by the responses to the public consultation whereby the majority of respondents (86%) said that their business does not have to produce notifications under NIHHS. Consequently, it is believed that general awareness of the NIHHS Regulations in this sector is low, and given that the majority of companies do not notify under these Regulations, they are unlikely to familiarise themselves with the fact that they are being revoked. For companies that are covered by the COMAH Regulations, we therefore assume zero familiarisation costs associated with the revocation of the NIHHS Regulations.
29. However, those companies that currently notify HSE that they store 150 tonnes or more of ammonium nitrate under NIHHS are expected to familiarise themselves with the proposed changes. Based on HSE records, there are around 100 such notifications and re-notifications received each year and a total of 700<sup>17</sup> separate duty holders that have made notifications since the regulations came into force. Any of these sites that no longer hold AN should de-notify HSE and so would be captured in the numbers. So, we assume that all 700 (with a range of +/- 10%) of these duty holders will familiarise themselves with the fact that they no longer have to re-notify HSE if there is a change in their activity or an increase in the quantity of the AN they store by 3 or more times, (HSE understands that some of the re-notifications received each year are from duty holders who choose to re-notify on an annual basis even though nothing has changed in their business). The majority of these businesses are farmers, with an average full economic hourly wage of £17.50<sup>18</sup>. Based on estimates provided to HSE via consultation, we have assumed that familiarisation with the fact that such duty holders no longer need to notify HSE will take approximately 15 minutes to complete (with a

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<sup>17</sup> Based on unique records held in HSE's database.

<sup>18</sup> Source: Annual Survey of Hours and Earning; Mean wage for a farm manager (SOC 1211) uprated by 30% to reflect non-wage costs

range of +/- 10% either side) and so cost between about £4 and £5 per business. It is expected that these familiarisation costs will be spread evenly over the first three years of the appraisal period, reflecting the fact that farmers will probably not undertake this familiarisation immediately, but that to assume it would take place over the 10 year period would be too conservative. This results in a total familiarisation cost of between **£3 thousand and £4 thousand** over the appraisal period, which is a one off cost.

30. This is also thought to be the maximum familiarisation costs likely for those users of AN under option 2. This is because the estimates are based on the total number of duty holders that have ever notified HSE. It may be the case that some of these duty holders may no longer hold AN but forgot to de-notify HSE. Thus they would not spend time understanding the changes proposed. Although on this basis the familiarisation costs could be an over estimate, because the maximum estimate calculated is £4 thousand, and there is no readily available method by which to estimate the quantities of sites that should have de-notified HSE, it is not proportionate to analyse this cost any further.

#### *Petroleum*

31. There are references to NIHHS in Section 25a (1)(b) of the Petroleum (Consolidation) Act 1928 (PCA) and its associated Regulations, namely Regulation 15a of the Petroleum-Spirit (Motor Vehicles etc) Regulations 1929; Regulation 8(b) of the Petroleum-Spirit (Plastic Containers) Regulations 1982; and 2(4)(c) of The Petroleum (Consolidation) Act 1928 (Enforcement) Regulations 1979. All these references are included to dis-apply NIHHS sites from that legislation. If the NIHHS Regulations are revoked any current NIHHS sites where petrol is 'dispensed'<sup>19</sup> that are not covered by the COMAH Regulations, will be subject to the PCA and therefore subject to the licensing regime.
32. HSE expert opinion is that there will only be a very small number of sites that are currently dispensing petrol and are covered by the NIHHS regulations rather than PCA. For example, a site that dispenses petrol into its own on-site vehicles rather than using a petrol filling station. Following the revocation of NIHHS, it is understood that the majority of these NIHHS sites dispensing petrol would have sufficient quantities to fall under the scope of COMAH. Discussions with a small sample of HSE inspectors found that none had ever come across sites that are dispensing petrol but are not covered by COMAH.
33. As well as the expectation that only a small number of sites would actually fall under the scope of PCA, it is estimated that the actual cost per site would be minimal. The cost would comprise the payment of an annual licence fee, currently ranging from £42 to £120<sup>20</sup> depending on the quantity stored. The Dangerous Substances and Explosive Atmospheres Regulations (DSEAR) 2002 already apply at such sites, therefore both the annual cost per site and the present value of the costs over a 10 year period would be minimal.

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<sup>19</sup> Dispensing means manual or electric pumping of petroleum-spirit from a storage tank into the fuel tank for an internal combustion engine, whether for the purposes of sale or not. (Section 23 of PCA, inserted by the Dangerous Substances and Explosive Atmospheres Regulations, DSEAR, 2002).

<sup>20</sup> Reg 9 of Health and Safety (Fees) Regulations 2012

34. Given that the number of sites is expected to be very small and the impact per relevant site is expected to be minimal, no further analysis of this cost has been provided on the grounds of proportionality.

## **Costs to Government**

### *HSE*

35. HSE is currently revoking a number of regulations and will communicate this as part of one package. The means by which these revocations will be communicated has not yet been decided, but any costs incurred will be part of business as usual on-going HSE costs and so are not relevant to be included in this IA .
36. There are unlikely to be significant familiarisation costs for government. In reality, very little will change for HSE. A small number of sites will be transferred to Local Authorities where the main activity falls within their jurisdiction. HSE does not know at this stage which sites these will be or how many there will be but believes this would only affect a fairly small number of sites which it should be able to identify via the HSE data base COIN and through local intelligence. Details will then be forwarded to the relevant LAs. However, as HSE cannot identify the number of sites at this stage, it is not possible to estimate how many LAs will be affected and so what the familiarisation costs will be. However, the familiarisation costs per LA would be reasonably small (less than £100 on the assumption that the familiarisation would take less than 3 hours).

### *Fire and Rescue Services*

37. It is assumed that there will be a cost to the Fire and Rescue Services around familiarisation with the changes. HSE understands from the FRSs that there are almost 2 thousand fire stations in the UK. HSE also understands from discussion with the FRSs that each station could have no watches, two watches or four watches. As nothing will be changing for the FRSs under this option 2, it is estimated that only one member of staff per station will take time understanding the changes, and this will take around 5 minutes (with a range of +/- 10%).
38. The salary range for frontline fire staff ranges from £21 thousand to £35 thousand<sup>21</sup>. Assuming there are 220 working days in a year on average, this equates to a day rate of between £96 and £159. The true economic cost of this day rate is 30% greater, to reflect the full costs of employment, (such as employer tax and pension contributions). So the day rate is estimated to be between £125 and £207, or between £17 and £28 per hour.
39. The total cost of familiarisation for the FRSs is therefore estimated to be somewhere between **£2 thousand and £5** thousand one off costs in the first year the revocation takes place.

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<sup>21</sup> Information sourced from Prospects, the official graduate recruitment site, see [http://www.prospects.ac.uk/firefighter\\_salary.htm](http://www.prospects.ac.uk/firefighter_salary.htm)

**Health and safety costs**

40. If the NIHHS Regulations are revoked and no amendment is made to NAMOS to capture AN at the specified threshold in the NIHHS Amendment regulations, then there could be negative health and safety consequences as HSE would no longer be receiving the notifications. However, due to the complex relationship between the notification process and health and safety outcomes, it is not possible to quantify the detrimental effect that not having these notifications could have on accident outcomes and injury rates.

**Total costs of Option 2**

Total costs Option 2	Total costs £'000s		
	Low	Likely	High
Familiarisation costs for users of AN	£3	£3	£4
Familiarisation time for FRSs	£2	£4	£5
<b>Total quantified costs</b>	<b>£5</b>	<b>£7</b>	<b>£9</b>
Cost of sites falling under PCA	~£2 per site		
Costs of familiarisation for Las	~ £0.1 per LA		
Health and safety impacts	Potentially significant		

41. The total present value of the costs to business over the appraisal period in option 2 are estimated to be between £3 and £4 thousand.

**Option 3 – Revoke both sets of NIHHS Regulations and make a consequential amendment to NAMOS**

**Costs to Business**

*Familiarisation*

42. Notifications via NIHHS are very infrequent and so it is reasonable to assume that the number of duty holders actually familiarising themselves with the changes will be very low and the costs of familiarisation have not therefore been quantified (see analysis under option 2).

43. Those companies that notify ammonium nitrate (under the NIHHS (Amendment) Regulations will continue to do so, but the regulations that require them to do so will be the NAMOS Regulations rather than the NIHHS Regulations and they will be required to send the notification to the FRSs rather than HSE. The only change that will occur is the legal power behind the requirement to report, but it is expected that duty holders will spend some time considering what has changed and where the notifications have to be sent and how to do this under NAMOS. As explained in paragraph 29, it is assumed that all 700 relevant duty holders will familiarise themselves and that the costs will take place over the first 3 years after implementation. As noted in paragraph 29, the familiarisation cost estimated is thought to be the maximum likely as some of the duty holders may have since gone out of

business or will decide that they do not need to understand the changes. However, on the basis that the total familiarisation costs are estimated to be low anyway, it is not proportionate to further investigate the number of duty holders that might be involved with the familiarisation process. Based on consultation responses about the average time that familiarisation will take, it is assumed that duty holders may spend around 30 minutes on familiarisation (+/- 10%). (N. B. this is longer than in option 2 as it is assumed it will take longer to understand the new notification procedure under NAMOS in option 3 than to understand the requirement has simply been revoked as in option 2). Based on the same assumptions about costs of time as in paragraph 29, the estimated costs of familiarisation for AN duty holders is between **£5 thousand and £8 thousand** one off costs.

#### *Petroleum*

44. The analysis for petroleum is the same as in paragraphs 31 – 34 above. The total number of sites that will have to start complying with the PCA cannot be estimated but the overall impact is expected to be minimal.

#### **Costs to Government**

##### *HSE*

45. HSE is currently revoking a number of regulations and will communicate this as part of one package. The means by which these revocations will be communicated has not yet been decided, but any costs incurred will be part of business as usual on-going HSE costs and so are not relevant to be included in this IA.
46. There are unlikely to be significant familiarisation costs for government. In reality, very little will change for HSE. A small number of sites are being transferred to Local Authorities but HSE does not know at this stage which sites these will be or how many there will be. Maximum costs per LA for familiarisation have been estimated as £100, see paragraph 36 for more details about this potential cost.

##### *Fire and Rescue Services*

47. It is anticipated that there will be familiarisation costs to the Fire and Rescue Services (FRSs) for the time it takes to understand the changes that have taken place to the legal power behind the notifications. Under this option 3 it is proposed that the FRSs will receive the notifications from sites storing AN (as defined in the NIHHS Amendment Regulations 2002) at the specified quantities. As there is a real change for the FRSs, the familiarisation costs will be larger than under option 2. It is assumed that one employee per watch per station will be involved with the familiarisation process, so between 2 and 4 per station and that there are almost 2 thousand stations. Based on consultation with the FRSs, the time taken for familiarisation with such a change is estimated to be around 15 minutes (with a range of +/- 10% added).
48. On the same assumptions regarding the cost of time, (see paragraph 38), the total costs to the FRSs associated with option 3 are estimated to be somewhere between **£16 thousand and £66 thousand** one off costs.

49. There will also be a small cost to the FRSs of processing the notifications received. Currently, AN notifications are processed by a Band 6 administrator in HSE at an hourly cost of £18.50. Internal experts estimate that each notification takes approximately 10 minutes to process, giving a cost per notification of about £3. Assuming that there are approximately 100 notifications received per annum (with a range of 10% either way to allow for the uncertainty in the estimate) the total cost per annum of processing these notifications is estimated to be between £250 and £370 or between £2 thousand and £3 thousand over the ten year appraisal period. It is assumed that an equivalent cost will be borne by the FRSs to process these notifications instead of HSE. Whilst this is not an additional cost to society, it is a transfer between one government body and another, and so is highlighted here.

### **Total costs of Option 3**

Total costs Option 3	Total costs £'000s		
	Low	Likely	High
Familiarisation costs for users of AN	£5	£7	£8
Familiarisation time for FRSs	£16	£36	£66
<b>Total quantified costs</b>	<b>£21</b>	<b>£43</b>	<b>£74</b>
Cost of sites falling under PCA	~£2 per site		
Costs of familiarisation for Las	~ £0.1 per LA		
Health and safety impacts	None noted		

50. The total present value of the costs to business over the appraisal period in option 3 are estimated to be between £5 and £8 thousand.

### **Analysis of Benefits**

#### **Option 1 – Do Nothing**

51. As the Do Nothing option continues with the status quo, there will be no benefits to either businesses or government.

#### **Option 2 – Revoke both sets of NIHHS Regulations and do not make a consequential amendment**

#### **Benefits to Business**

##### *AN Notifications*

52. There will be a benefit to business from no longer having to submit notifications for AN. Based on HSE records, there are approximately 100 notifications submitted each year (with about 70 being new notifications and 30 being re-notifications). At consultation, industry was asked how long it

took to complete new notifications, and only one response was received, given that the majority of respondents do not notify under NIHHS. This response noted that it would take half a day of time per notification. HSE feel this is the highest end of the range of time, and that it is likely to take from between 30 minutes to 3.5 hours (half a day). Given the average full economic hourly wage of a farmer (who would typically be making the notification) is £17.50 the cost saving per new notification not submitted is approximately between £10 and £60. For the 70 new notifications received per annum, this saving equates to between £600 and £5 thousand for all new notifications. Over the 10 year period, the present value of these cost savings is estimated to be between £5 thousand and £41 thousand.

53. In terms of re-notifications, HSE experts estimate that these should take duty holders 2 – 10 minutes to complete. Based on the above assumptions, the expected saving per notification is between £1 and £3 and over 10 years the present value of the savings on re-notifications is between £150 and £800.
54. The total saving against notifications for AN duty holders over a 10 year appraisal period is estimated to be between £5 thousand and £41 thousand.

#### *Other notifications*

55. It is assumed there is virtually no benefit to the rest of business from not having to notify under NIHHS (other than the saving for AN calculated above). Consultation evidence has shown that there are virtually no notifications received under these regulations per annum because the regulations are superseded by the requirement to notify under COMAH. Thus, it has been assumed that there will not be any cost savings to any duty holders other than those required to notify under AN.

#### *On-going familiarisation costs*

56. There could also be a benefit to new businesses around on-going familiarisation costs. Given that most of the requirements under NIHHS are replicated elsewhere very few businesses typically submit notifications for any substances other than AN under NIHHS (so familiarisation costs for new businesses are assumed to be zero). There could be some small saving for new businesses storing AN who would no longer have to familiarise themselves with the requirement, but this cost saving is not likely to be significant and it is not deemed proportionate to attempt to quantify.

### **Benefits to Government**

57. As explained in paragraph 49, HSE is currently incurring costs of between about £250 and £370 per annum or between £2 thousand and £3 thousand over the ten year appraisal period to process AN notifications. Under this option 2 to not make a consequential amendment to NAMOS, then these costs will no longer be required (as AN notifications will not be processed at all) and so will be a real saving to society.
58. There will also be a reputational benefit to Government as they will be streamlining and simplifying notification processes by removing unnecessary regulations that have since been superseded.

**Total benefits of Option 2**

Total benefits Option 2	Total benefits £'000s		
	Low	Likely	High
Time savings for users of AN	£5	£22	£41
Savings to HSE from not processing notifications	£2	£3	£3
<b>Total quantified benefits</b>	<b>£7</b>	<b>£24</b>	<b>£45</b>
Reputational benefit	Significant		
On-going familiarisation for new AN businesses	Not significant		

59. The total present value of the benefits to business over the appraisal period in option 2 are estimated to be between £5 and £ 41 thousand.

**Option 3 – Revoke both sets of NIHHS Regulations and make a consequential amendment to the NAMOS Regulations**

**Benefits to Business**

*Notifications*

60. As with option 2, consultation evidence has shown that there will be virtually no benefit to those businesses that notify under NIHHS as virtually no notifications are received under this regulation per annum because the regulations are superseded by the requirement to notify under COMAH.

61. Under option 3, there will not be any cost savings to duty holders notifying under AN, as they will still have to submit this notification, but it will be under NAMOS and to the FRSs rather than under NIHHS and to HSE. So there will be no real changes in practice for duty holders working with AN (as defined in the NIHHS Amendment Regulations 2002).

*On-going familiarisation costs*

62. As with option 2 it is not expected there will be any on-going saving in familiarisation costs to new businesses. This is because evidence collected has shown that virtually no notifications are received under NIHHS on an annual basis for any substances other than AN. For new businesses storing AN, nothing is changing in this option and so there will be no saving associated with on-going familiarisation.

**Benefits to Government**

63. There will not be any reduction in total notifications received by government, as duty holders working with AN will still have to notify, but the notification will be under NAMOS rather than NIHHS, and the notification will be received by the FRSs rather than HSE.

64. So while there will not be any cost saving in total to government from the proposal, there will be a saving to HSE which is offset by an equal and opposite transfer of the cost to the FRSs. In paragraph 49 it is estimated that the costs of processing the AN notifications to HSE is estimated to be between £2 thousand and £3 thousand over 10 years. Under option 3, this duty to process the notifications will be transferred to the FRSs. Whilst there will not be an additional cost to society, the FRSs will incur the cost of processing the AN notifications when they would not under the do nothing baseline, and so the cost to the FRSs is estimated to be between £2 thousand and £3 thousand over the appraisal period.
65. As with option 2, there could also be a reputational benefit to Government as it will be seen to be streamlining and simplifying the notification process and removing regulations that have since been superseded.

**Health and safety benefits**

66. An additional benefit under this option compared to the baseline is that the FRSs will be aware of sites storing/using AN in the concentrations as defined in the NIHHS Amendment Regulations 2002 and so will be more readily able to ensure the health and safety of fire fighters and help to limit onsite damage if they have to attend an incident at a site where this type of AN is kept.
67. Option 3 will also ensure that the existing level of protection arising from the notification process for sites storing AN at the specified quantities will remain the same. It is not possible to quantify these health and safety benefits however due to the random nature of catastrophic events at such sites and the complexity involved in attributing reduced consequences to the notification process.

**Total benefits of Option 3**

Total benefits Option 3	Total costs £'000s		
	Low	Likely	High
Health and safety benefits	Potentially significant to workers and the public at risk of incidents and business premises		
Reputational benefit	Significant		

**Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)**

68. The analysis in the IA has been supported by evidence collected at consultation from a range of stakeholders, and from HSE experts who understand the NIHHS and NAMOS regulations, and who work with duty holders who fall under the scope of these regulations. The evidence collected supports the expectation that the NIHHS regulations are not largely being applied by industry because they have been superseded by the COMAH Regulations (implementing the Seveso II Directive into national legislation). As the preferred option to revoke both sets of NIHHS regulations and to make

a consequential amendment to NAMOS is not controversial, and will create only small costs and savings due to the fact NIHHS is largely redundant already, the level of analysis in this IA is thought to be proportional.

### **Direct costs and benefits to business calculations (following OIOO methodology)**

69. The total cost to business of option 3 is estimated to be approximately £7 thousand over the 10 year period, being attributable to the familiarisation costs for users of AN. This equates to an EANCB of £800.
70. It is estimated that there could also be a benefit to businesses storing AN (as defined in the NIHHS Amendment Regulations 2002) because if FRSs are aware of the presence of this substance on site, then this will help them to mitigate the consequences of any incidents at these sites, both to people present and to the buildings, equipment and stock. The total benefit achieved over the 10 year period will depend on the number of incidents that occur at such sites and the extent of these incidents. However, it is reasonable to assume benefits would be valued at at least £7 thousand over the 10 year period. Thus it has been assumed that option 3 has a net zero cost for OIOO purposes.
71. N.B In Option 2 the EAN Benefit to business is quantified at £2 thousand. However, there are potential health and safety costs to both sites storing AN and to the wider society from HSE not receiving AN notifications. On balance, it is reasonable to assume that the Equivalent Annual Net Cost to Business would be approximately zero for OIOO purposes also, and this is reflected in the summary sheets.
72. All costs and benefits with an equivalent annual value less than about £5 thousand have been rounded in the summary boxes on page 1 – 4. This is based on BRE guidance and because to report estimates with EAC of less than £5 thousand implies a higher degree of accuracy than exists in the IA estimates.

### **Wider impacts**

#### **Statutory Equalities IA**

73. An Equality Impact Assessment (EIA) has been prepared and confirms there are no groups likely to be impacted by these changes.
74. It is not thought that there will be any wider impacts associated with this proposal in the following areas: competition, small firms, wider environmental issues, health and well being, human rights, justice, rural proofing, sustainable development.

### **Summary and preferred option with description of implementation plan**

75. The preferred option is option 3. The net present value of this option over 10 years is a cost of around £40 thousand, which relates to familiarisation cost for AN duty holders and FRSs. It is estimated that the net cost to business of this

option will be a present value of £7 thousand over the 10 year period. Whilst the changes proposed will impose relatively modest costs on business and society as a whole, it should deliver health and safety benefits to FRSs compared to the baseline. Notifications to the FRSs of AN as defined in the NIHHS Amendment Regulations 2002 will allow them to better deal with incidents on sites and reduce the consequences of such incidents. Although HSE currently receives these notifications, the information is not passed onto the FRSs. The proposal will also streamline a notification system which has gradually been superseded by European legislation.

76. HSE will ensure that industry stakeholders are aware of the changes as a result of the revocation of NIHHS. Communications will include the fact that as part of the revocation a consequential amendment for AN (as defined in the NIHHS Amendment Regulations) has been made to the NAMOS Regulations. It will also need to reflect that a small number of former NIHHS sites where petrol is dispensed (eg for on-site vehicles rather than using a petrol filling station) which are not covered by the COMAH Regulations, will be subject to the petroleum legislation and therefore the licensing regime.

<b>Title:</b> Revocation of the Construction (Head Protection Regulations) 1989 <b>IA No:</b> <a href="#">HSE0069b</a>  <b>Lead department or agency:</b> Health and Safety Executive  <b>Other departments or agencies:</b> None	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 03/08/2012
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
<b>Contact for enquiries:</b> <a href="mailto:Geoff.Lloyd@hse.gsi.gov.uk">Geoff Lloyd - Geoff.Lloyd@hse.gsi.gov.uk</a> <a href="mailto:Maria.Ottati@hse.gsi.gov.uk">Maria Ottati - Maria.Ottati@hse.gsi.gov.uk</a>	

**Summary: Intervention and Options**

**RPC Opinion:** RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£-0.33m	£-0.33m	£-0.037m	Yes   OUT

**What is the problem under consideration? Why is government intervention necessary?**  
 The Construction (Head Protection) Regulations 1989 (CHP) and the Personal Protective Equipment (PPE) at Work Regulations 1992 provide broadly the same requirements on the wearing of head protection. This was recognised by Professor Ragnar Löfstedt in his independent review of health and safety legislation, in which he recommended the revocation of the CHP Regulations 1989, on the grounds that they “largely replicate regulatory responsibilities set out in the later Personal Protective Equipment at Work Regulations 1992” (as long as consultation did not “identify any evidence that this would lead to reduced protection”). The Government has accepted this recommendation. This revocation requires Government intervention.

**What are the policy objectives and the intended effects?**  
 The main objective of this revocation is to implement the Government’s response to the Löfstedt report, by removing from statute books a regulation that is now considered to be unnecessary, as the regulatory responsibilities it sets out are largely replicated in another set of regulations. This would not reduce the level of legal protection. This proposal is part of a larger deregulatory package, so we would expect it to contribute to an improved perception of HSE’s regulatory activity, showing it is sensible and proportionate, without lowering health and safety standards. Additionally, this proposal

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 Option 1: Do nothing: the Construction (Head Protection) Regulations 1989 would remain in force.  
  
 Option 2: Revoke the Construction (Head Protection) Regulations 1989, and rely on the Personal Protective Equipment (PPE) at Work Regulations 1992 to regulate the provision and use of head protection on construction sites. Small amendments would also have to be made to the PPE Regulations, to remove the sections where they currently refer to the CHP Regulations.  
  
*This impact assessment does not identify a preferred option. Rather, it presents the*

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** Month /Year

Does implementation go beyond minimum EU requirements?	No
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Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro Yes</b>	<b>&lt; 20 Yes</b>	<b>Small Yes</b>	<b>Medium Yes</b>	<b>Large Yes</b>
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? <i>(Million tonnes CO<sub>2</sub> equivalent)</i>			<b>Traded: N/A</b>	<b>Non-traded: N/A</b>	

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible  
SELECT SIGNATORY:

Date: \_\_\_\_\_  
e: \_\_\_\_\_

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**Summary: Analysis & Evidence**    Policy Option 10

**Description:** Do nothing

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2011	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

**Description and scale of key monetised costs by 'main affected groups'**

Option 1 would result in no costs to society

**Other key non-monetised costs by 'main affected groups'**

N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

**Description and scale of key monetised benefits by 'main affected groups'**

Option 1 would result in no benefits to society

**Other key non-monetised benefits by 'main affected groups'**

N/A

Key assumptions/sensitivities/risks

N/A

Discount rate (%)

**BUSINESS ASSESSMENT (Option 12)**

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

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**Summary: Analysis & Evidence Policy Option 11**

**Description:** Revoke the Construction (Head Protection) Regulations 1989

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2011	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.26	High: 0.40	Best Estimate: 0.33

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.37	0	0

**Description and scale of key monetised costs by 'main affected groups'**

There would be a £370,000 one-off cost to businesses for time spent familiarising themselves with the fact that the CHP Regulations have been revoked and that in effect, this does not affect head protection requirements.

**Other key non-monetised costs by 'main affected groups'**

If misunderstandings of the effects of the revocation were to lead to more fatal and/or non-fatal head injuries (see 'Key assumptions / sensitivities / risks' below), these would lead to costs. These would be mainly to workers and their families (e.g. in the form of pain, grief and suffering), but also to business (e.g. sick pay, lost production) and government (e.g. processing of benefits).

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	0.075	0.63
High	Optional	0.090	0.77
Best Estimate	0	0.082	0.70

**Description and scale of key monetised benefits by 'main affected groups'**

There would be annual savings to new businesses entering the sector, resulting from not having to familiarise themselves with the CHP Regulations. Our best estimate of these savings is £82,000 a year.

**Other key non-monetised benefits by 'main affected groups'**

Contributing to an improved perception of HSE's regulatory activity, showing it is sensible and proportionate.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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We have gathered extensive evidence to evaluate the extent of the potential risk that the revocation might be misunderstood and this might lead to adverse health and safety outcome (paragraphs 63 to 93). Our overall conclusion is that while it is entirely possible that the level of protection would not be reduced, there is a non-negligible risk that this could happen; and that if it did, the consequences could be more fatal and non-fatal head injuries than would otherwise have occurred.

**BUSINESS ASSESSMENT (Option 13)**

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.040	Benefits: 0.077	Net: 0.037	Yes	OUT

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## **Impact assessment for the revocation of the Construction (Head Protection) Regulations 1989**

### **Introduction**

1. The proposal is to revoke the Construction (Head Protection) Regulations 1989<sup>22</sup> and rely on the Personal Protective Equipment (PPE) at Work Regulations 1992<sup>23</sup> to regulate the provision, use and upkeep of head protection on construction sites.

### **Background**

2. The Construction (Head Protection) Regulations 1989 (CHP) were introduced after non-regulatory interventions failed to reduce the high-level of head injuries taking place at the time in the construction industry<sup>24</sup>.
3. In 1989, the EU introduced a Directive on the use of PPE<sup>25</sup>, which was transposed into UK law through the Personal Protective Equipment (PPE) at Work Regulations 1992.
4. Both these regulations provide broadly the same requirements on the wearing of head protection. This was recognised by Professor Ragnar Löfstedt in his independent review of health and safety legislation, commissioned by the Employment Minister in March 2011. In his report<sup>26</sup>, published in November 2011, Professor Löfstedt recommended the revocation of the CHP Regulations 1989, on the grounds that they “largely replicate regulatory responsibilities set out in the later Personal Protective Equipment at Work Regulations 1992”, as long the consultation process did not “identify any evidence that their revocation would result in reduced protection within the industry”. The Government has accepted<sup>27</sup> this recommendation.

### **Policy objectives and intended effects**

5. The main objective of this revocation is to implement the Government’s response to the Löfstedt report, by removing from statute books a regulation that is now considered to be unnecessary, as the regulatory responsibilities it sets out are largely replicated in another set of regulations. This would not reduce the level of legal protection.
6. This proposal is part of a larger deregulatory package, so we would expect it to contribute to an improved perception of HSE’s regulatory activity, showing it is sensible and proportionate, without lowering health and safety standards.
7. Additionally, this proposal would generate some savings to new businesses, as they would no longer have to spend time familiarising themselves with these particular regulations.

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<sup>22</sup> The regulations can be found at: <http://www.legislation.gov.uk/uksi/1989/2209/contents/made>

<sup>23</sup> The regulations can be found at: <http://www.legislation.gov.uk/uksi/1992/2966/contents/made>

<sup>24</sup> More detail on the evidence available on this issue will be provided later in this impact assessment.

<sup>25</sup> Council Directive 89/656/EEC

<sup>26</sup> See: Reclaiming health and safety for all: An independent review of health and safety legislation, by Professor Ragnar E. Löfstedt - <http://www.dwp.gov.uk/docs/lofstedt-report.pdf>

<sup>27</sup> See the Government’s response to the Löfstedt report: <http://www.dwp.gov.uk/docs/lofstedt-report-response.pdf>

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### **Alternatives to regulation**

8. None have been considered, as this is a deregulatory measure.

### **Options considered**

9. Given the above, we have considered only the following 2 options:
10. Option 1: Do nothing: the Construction (Head Protection) Regulations 1989 would remain in force.
11. Option 2: Revoke the Construction (Head Protection) Regulations 1989, and rely on the Personal Protective Equipment (PPE) at Work Regulations 1992 to regulate the provision and use of head protection on construction sites.
12. A small amendment would also have to be made to the PPE Regulations, to remove the section where they currently refer to the CHP Regulations. We would revoke Regulation 3(3)(f), which currently disappplies certain requirements of the PPE Regulations where the CHP Regulations apply.

### **The Regulations and the duties they impose regarding head protection**

13. The CHP Regulations require the provision of suitable head protection for workers who are engaged in construction work, and place a duty on employers and persons in control of others to ensure, so far as is reasonably practicable<sup>28</sup>, that 'suitable head protection' is worn if there is a foreseeable risk of head injury other than by falling. The duty to provide 'suitable head protection' covers any type of head protection that provides appropriate protection against the risks of head injury present in particular circumstances and includes forms of head protection such as bump caps as well as the more normal safety helmets. The CHP Regulations also provide for the making of rules and directions where it is necessary to ensure that head protection is worn, and a duty on workers to wear head protection where such rules and directions require it.
14. The CHP Regulations are prescriptive, with no element of assessing the risks of head injury and deciding on the best form of controlling those risks in relation to the duty to provide head protection. The only assessment of risk is in the duty to ensure that the head protection is worn. This requires employers, self-employed and employees who have control over others, to ensure that head protection is worn "unless there is no foreseeable risk of injury to the head other than by falling".
15. The assumption is that, in almost all cases, head protection should be worn when working on construction sites (the Guide to the Regulations<sup>29</sup> says that the circumstances "where there is no foreseeable risk of head injury from falling or swinging objects or striking the head against something will be very limited.").
16. There is also a duty on employees (and the self-employed) to wear head protection in accordance with rules or directions made by employers or those in control. These rules or directions may be made in order to comply with the requirement to ensure that head protection is worn.

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<sup>28</sup> See: <http://www.hse.gov.uk/risk/theory/r2p2.pdf>

<sup>29</sup> This Guidance document can be found at: <http://www.hse.gov.uk/pubns/priced/1102.pdf>

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17. The Personal Protective Equipment (PPE) at Work Regulations are much less prescriptive and more objective-setting, covering all types of PPE and the wide range of workplace risks where the provision and use of PPE might be needed.
18. In the PPE Regulations, the requirement on employers to provide PPE (including head protection) is conditional on two things: that there is a risk to the health and safety of their employees and the extent to which those risks are not already adequately controlled by other means which are equally or more effective than the provision of PPE.
19. The Guide to the PPE Regulations<sup>30</sup> makes clear that in the provision and use of PPE, employers should use a hierarchy of controls and that PPE should be regarded as the last resort to protect against risks to health and safety: that engineering controls and safe systems of work should be considered first.
20. The PPE Regulations also put a duty on employers to take reasonable steps to ensure that any PPE provided to employees is properly used, including providing such information, instruction and training as is adequate and appropriate to enable the employee to know the risks the PPE protects against and how to use and maintain it properly. Additionally, there is a duty on employees to use the PPE in accordance with any information, training and instructions given them.
21. The main differences between the regulations are therefore the following:
  - a. their scope – CHP applies only to the construction industry and to head protection, while PPE is wider, covering all industries and a large variety of personal protective equipment.
  - b. their approach – CHP’s approach is a prescriptive one. Under the CHP regulations, if there is a foreseeable risk of head injury other than by falling, head protection must be worn. The employer (or self-employed person) does not make the decision of which is the best way of controlling that risk. In contrast, the PPE regulations use an objective-setting approach, with the employer (or self-employed person) assessing which the best way of controlling the risk is and only using PPE as a last resort, when the risk cannot be adequately controlled in another way.
22. In practice, however, in spite of the different approach used by each of the regulations, HSE considers that the end result would be the same in terms of legal requirements. Having analysed the legal requirements and the reality of construction sites, our conclusion is that both regulations place on employers and the self-employed the same requirements in terms of when head protection should be provided and used. In short, the nature of the risks of head injury in construction work is such that, in order to comply with the PPE Regulations, the use of head protection would be needed in the same circumstances as it would be needed to comply with the CHP Regulations. The site rules that tend to apply in larger sites, and which (as we will show later) have a significant impact on the wearing of head protection, would not need to change to comply with the PPE Regulations.

## **Consultation and qualitative research**

23. This IA takes account of the information gathered from public consultation, as well as qualitative research which was carried out in parallel.

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<sup>30</sup> This Guidance document can be found at: <http://www.hse.gov.uk/pubns/indg174.pdf>

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### *Public consultation*

24. On April 3<sup>rd</sup> 2012, HSE published a consultation document<sup>31</sup> on proposals to remove 14 legislative measures, amongst them the CHP regulations. This consultation document included a supporting consultation-stage IA for this measure, and invited interested parties to comment on the proposals, as well as on some of the assumptions made in the IA.
25. Public consultation ran for a 12-week period, ending on July 4<sup>th</sup> 2012. HSE received a total of 77 responses which answered some or all of the questions regarding the revocation of the CHP regulations. 66 of them came via the consultation questionnaire and the rest were narrative responses received through other channels. Responses were received from a range of stakeholders including industry, trade associations, trade unions, consultants, local government, and academics. Of the 77 responses received the greatest percentage of responses was from industry (26%) and consultancies (17%). Half of respondents replied to the consultation in their capacity as health and safety professionals.
26. There was substantial support for the proposal amongst respondents, with approximately three quarters of all respondents in favour. These respondents mainly come from 3 groups: those who categorise themselves as ‘industry’, ‘health and safety consultants’ or from local government. A few who agreed, did so while stating that any potential misunderstanding that the revocation removes requirements for the provision and wearing of head protection would need to be vigorously counteracted through publicity.
27. The background of respondents who disagree is more varied and includes two trade unions (UCATT and Unite) and respondents from pressure groups, industry, trade associations, government, health and safety consultants, academics, a training provider and a member of the public. The main concern they raise is that revocation would reduce safety standards. They refer to the fact that Professor Löfstedt’s recommendation for revocation is conditional on consultation not identifying any evidence that would lead to reduced safety standards. They believe that it is the simple, prescriptive approach of the CHP Regulations that explains its past success in reducing the number of head injuries on construction sites and that the PPE Regulations are less straightforward. There are particular concerns that revocation would lead to a misunderstanding that the provision and wearing of head protection was no longer required. They also question the benefits of revocation if the estimated costs of the change seem to be more than those if the Regulations were left in place. Lastly, they question the adequacy of HSE’s publicity plans to ensure there is no misunderstanding over the need to continue providing and wearing head protection, should the revocation go ahead.
28. A small number of those who submitted written responses do not explicitly express support one way or the other and include three trade unions (the TUC, GMB and CWU) and a trade association. Analysis shows that they express similar concerns to those who disagree, but say that, should the Regulations be revoked, there should be significant action to publicise the fact that this will not change the need for employers to provide, and workers to wear, head protection.

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<sup>31</sup> See: <http://consultations.hse.gov.uk/gf2.tif/16450/427653.1/pdf/-/CD239.pdf>

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29. The consultation document also posed some specific questions referring to the assumptions used in the consultation-stage IA, to how the proposal might affect the level of provision and use of head protection in the construction industry and to HSE's communications plans for this proposal. The responses to these questions will be presented later on in this IA, in the sections containing the relevant analysis.

### *Qualitative research*

30. The issue of the impact on health and safety of potential misunderstandings of the effects of the revocation on requirements was one that was raised in the consultation-stage IA. Existing evidence was not conclusive, and HSE stated plans to gather the views of stakeholders on the issue. This was done through public consultation, as mentioned above, but it was felt that supplementary qualitative research would be appropriate to best explore the issue. This was for two main reasons: 1) current sector knowledge suggested that any issues would mainly manifest themselves in the smaller end of the sector, a segment that, experience shows, does not usually send responses to public consultations, and 2) the complexity of the causal links in this issue was such that, it was felt, it would benefit from more in depth exploration, through conversation with a researcher.
31. For these reasons, HSE carried out a piece of qualitative research parallel to the formal, public consultation. This was done internally, by HSE analysts, and involved 15 telephone interviews with individuals from the construction industry. This was deemed to be a sufficient number of interviews, once the interviews started to bring up a consistent range of issues.
32. The original intention was to concentrate mainly on dutyholders from small businesses. In practice, it proved extremely difficult to recruit such individuals, and the bulk of the interviews ended up being with people who perform health and safety roles in medium to large-sized organisations. However, conversation with these individuals made it clear that they had excellent knowledge of the segment we were concerned about, as their projects invariably involved a number of subcontractors, many of whom were very small. The conversations therefore focused on their experience with these contractors and their knowledge of the segment. It should be noted that, had we spoken to small contractors themselves, we would also have focused on their experience of the behaviour of others in the sector (asking them about their own behaviour would have been susceptible to social desirability bias, and their interest in participating in the research could have indicated that these participants were more likely to be engaged in health and safety than the wider target audience). Therefore the findings provide a useful insight into the views of a subset of the target population.
33. The conclusions of this research are presented later on in this IA, in the section containing the relevant analysis.

## **Costs and benefits**

### Option 1: Do nothing

34. Option 1 would continue with the status quo, and therefore has no cost or benefit implications.

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### Option 2: Revoke the CHP Regulations 1989

#### *Coverage*

35. The CHP Regulations place duties on employers and the self-employed in the construction sector. Latest figures from the Department for Business, Innovation and Skills (BIS)'s Business Population Estimates (BPE)<sup>32</sup> indicate that there are approximately 875 thousand enterprises in the sector. Of those, 725 thousand are individuals who are self-employed with no employees, with the remaining 150 thousand having 1 or more employees (98% of them have between 1 and 49).
36. We also considered the Inter Departmental Business Register (IDBR)<sup>33</sup> as a possible source of data. It shows a much smaller number of businesses for the construction sector (260 thousand in 2011). However, after consultation with HSE statisticians, it was decided that the BPE were a more reliable source for this particular sector. This is because our knowledge of the sector indicates that microbusinesses and the self-employed are very common in it, and the BPE incorporate them to their estimates. The BPE take data from IDBR, which contains businesses operating VAT and/or PAYE schemes and then add an estimate for the very small, unregistered enterprises also operating in the sector.

#### *Period of analysis*

37. We have chosen to analyse the costs and benefits of the proposal over a period of 10 years, following the Impact Assessment Toolkit's guidance<sup>34</sup> to use a 10-year period when there is not a more appropriate appraisal period, relating to the life of the policy.

#### *Costs to business*

38. As described in the previous section, although the two regulations in question are different in approach, the provision of head protection would be required in the same circumstances. Existing businesses in the construction sector would therefore have to take no action regarding the provision and use of head protection and would incur no compliance costs.
39. A number of businesses, however, would incur some one-off familiarisation costs as they spend time understanding what the change has been and what it means for them. HSE is putting plans in place to communicate the changes effectively, aiming to ensure that businesses clearly understand that they need take no further action, and that they can understand this message efficiently, without spending undue time. This communication effort will also focus on preventing the unintended consequence of businesses misinterpreting the implications of the change and assuming they need not provide head protection any longer –we analyse this possibility in the *Risks and Uncertainties* section of this impact assessment.
40. Our initial estimates in the consultation-stage IA were based on HSE's knowledge of the sector. This indicated that very few of the self-employed and only a small proportion of those with employees would spend time on this, as the culture of the industry is so familiar with the need to wear head protection. Our estimate was that approximately 5% of the self-employed and 25% of businesses with employees

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<sup>32</sup> Business Population Estimates for the UK and Regions 2011 - <http://stats.bis.gov.uk/ed/bpe>

<sup>33</sup> IDBR: <http://www.ons.gov.uk/ons/about-ons/who-we-are/services/unpublished-data/business-data/idbr/index.html>

<sup>34</sup> See: <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/i/11-1112-impact-assessment-toolkit.pdf>

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would spend any time on this activity, and we stated that we would be seeking views on whether this was a reasonable assumption during consultation.

41. Using low estimates was supported both by the qualitative research (the general view was that awareness of the revocation would be low throughout industry) and by respondents to the formal consultation. The specific questions in the consultation document gathered approximately 60 responses. A substantial majority thought our estimates were reasonable. Of those who thought it was not, most thought they should be even lower (especially for the estimate of 25% for businesses with employees), stating that most self-employed would only hear of this through larger sites where they worked, and that most employers do not keep close track of regulatory changes. A number of respondents, however, thought the estimates should be higher, due to the subject matter. One respondent, for instance, argued that although compliance in the construction sector is normally low, “something as fundamental as head protection is likely to have a higher take-up”. Having considered these responses, and that, on the whole, respondents thought the original assumptions reasonable, and that those who did not were relatively split on whether the estimates should be higher or lower, we will continue to use the 5% and 25% assumptions.
42. HSE will work with the industry so that the change and its implications are effectively communicated - to the smaller end of the construction industry in particular. This should minimise the time that businesses take to understand the change. The consultation-stage IA provided an estimate of no more than 10 minutes. This estimate was also checked with consultees, the great majority of whom agreed it was reasonable (although a small number made the point that it could be higher, and that it would depend on the individual and how well we communicated the message). Having considered the responses, we will continue to use the original estimate.
43. We assume the familiarisation would be undertaken by a construction manager, at a full economic cost of approximately £30 per hour<sup>35</sup>. Using the assumptions described, this results in a cost of £5 per person undertaking familiarisation.
44. We assume one manager in each of those businesses would undertake familiarisation at an hourly full economic cost of £30<sup>35</sup>. We recognise that for larger companies, more than one manager would engage in this activity. However, the vast majority of businesses in this sector are very small. As mentioned earlier, the BPE show that 98% of employers in the sector have between 1 and 49 employees. For this issue it is also useful to consider evidence from the IDBR, as it provides a more detailed breakdown for the businesses it covers (even though we know it does not include most of the smallest businesses in the sector),. 81% of these businesses have fewer than 5 employees, and 92% have fewer than 10 (the proportion for fewer than 50 is 99%, which coincides with the BPE). Based on this, we judge the assumption of one manager per business to be reasonable.
45. The assumptions described above would result in a one-off cost to businesses of £370 thousand in the first year.
46. In the consultation-stage IA, we judged it unlikely that there would be a significant number of businesses needing to familiarise themselves with the PPE Regulations as a result of the proposed revocation. This was based on the experience of HSE’s

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<sup>35</sup> Source: Annual Survey of Hours and Earnings (ASHE) 2010, Office for National Statistics. Salary for SOC category 1122 (Managers in construction), uprated by 30% to account for non-wage costs.

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Construction Division, which told us that businesses complying with the CHP Regulations will generally be familiar with and complying with the PPE Regulations for other types of protective equipment needed on construction sites. The small amendments needed to remove references to the CHP Regulations would be very minor, and not expected to result in businesses feeling the need to refamiliarise themselves with the PPE Regulations. We asked a question relating to this assumption in the consultation, and a large majority of respondents agreed that it was a reasonable assumption to make. Of those who answered that they did not agree with the assumption and provided additional comments, only one suggested a different estimate, which was very high. We will therefore continue to use this assumption.

### *Cost savings to business*

47. New businesses entering the construction sector would now not have to spend time familiarising themselves with the CHP Regulations, and that would represent a cost saving to them. The CHP Regulations are not very long, so we estimated in the consultation-stage IA that it currently takes someone approximately half an hour to read and understand them. We asked a question relating to this assumption in the consultation, and a majority of respondents thought the assumption was reasonable. Of those who felt it was not, there was a mix between those who thought it took longer, those who thought it took less time and those who thought it depended on the individual. We will therefore continue to use this assumption.
48. Changes to the PPE Regulations (needed as a result of revoking the CHP Regulations) would shorten and simplify them slightly, so the new version would probably take a slightly smaller amount of time to read. We will not attempt to quantify this minor time saving.
49. If familiarisation was undertaken by a construction manager, at a full economic cost of approximately £30 per hour<sup>35</sup>, this results in a cost saving of £15 per person undertaking familiarisation in a new business entering the construction sector. As before, we will assume one person per business undertaking familiarisation.
50. The only official figures for new businesses entering the construction sector come from the Office for National Statistics<sup>36</sup>, and indicate that for the period 2008-2010, an average of 32 thousand new businesses entered the construction sector each year. However, these figures are based on data from the Inter Departmental Business Register, and therefore, as explained above, do not include many of the smallest businesses, especially the self-employed, which is a significant issue in the construction sector. We therefore conclude that 32 thousand new businesses per year is a considerable underestimate of the real number. During the consultation period we explored whether we could get more reliable official figures, but were unsuccessful. We have therefore decided to use a figure that comes from extrapolating from the data provided by the BPE and IDBR. Even though there is uncertainty in the figures we reached using this method (which we have taken into account by using ranges), we believe this is likely to be closer to reality than the figures based solely on IDBR.
51. As mentioned in paragraphs 35 and 36, the number of businesses estimated in the IDBR for the entire construction sector is over three times smaller than the estimate provided by the BPE, and it is reasonable to think that this would be similar for the estimates of new businesses (we might even expect the ratio to be larger, as on the

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<sup>36</sup> Business Demography 2010 - <http://www.ons.gov.uk/ons/rel/bus-register/business-demography/2010/stb---business-demography-2010.html>

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whole, start-ups tend to be smaller than established businesses). Applying the appropriate ratio, which is approximately 3.4, gives an estimate of new businesses entering the construction sector each year of approximately 110 thousand. Due to the uncertainty inherent in arriving at this figure, we will use a range for our estimates: 95 to 120 thousand new businesses per year.

52. We will assume the distribution between employers and the self-employed is the same as for the total number of businesses in the sector (although we acknowledge that a larger proportion of self-employed might be expected amongst new entrants to the market. However, we have no data that would allow us to make this adjustment).
53. In the consultation-stage IA, we used the same assumptions as above for employers and the self-employed to estimate what proportion of new businesses actually familiarise themselves with the CHP Regulations. The rationale was that it might be expected that this proportion will not be too dissimilar to the proportion of existing businesses spending time familiarising themselves with the implications of the revocation.
54. However, we asked questions relating to these assumptions at consultation, and although all respondents supported using low estimates for this, proportion (this was also supported in the qualitative research carried out internally), responses on whether our estimates were the right ones were split.
55. Approximately half of respondents thought the assumptions were reasonable, but the other half thought they should be lower. Many respondents expressed the opinion that, on the whole, not many new businesses read these regulations at all and their use and provision of head protection arises mainly from what might be called “knowledge creep”: seeing the way things are done in industry generally, as well as site rules in sites in which they work as contractors (a respondent from a trade association stated that in their experience, new entrants to the industry tend to act as sub-contractors). Respondents who thought the estimates should be lower made some convincing arguments, and we will therefore adjust our estimates downward. Unfortunately, not many alternate estimates were suggested, but based on the approximate averages, we have decided to change the estimate for the self-employed from 5% to 3%, and that for the employers from 25% to 15%.
56. Using these assumptions, new businesses would save approximately £75 to £90 thousand (best estimate: £82 thousand) a year from not having to familiarise themselves with the CHP regulations. This results in a 10-year present value of £630 to £770 thousand (best estimate: £700 thousand).

### *Annual equivalent net cost to business and One-In, One-Out (OIOO)*

57. The previous sections have identified a one-off cost to business of £370 thousand in the first year and annual savings to business of £75 to £90 thousand in the first 10 years. This represents annual equivalent net savings to business of £30 to £47 thousand, with a best (central) estimate of £39 thousand. Expressed in 2009 prices (as required for OIOO), this would be an ‘Out’ of £37 thousand under OIOO.

### *Costs to HSE*

58. The main cost to HSE of taking forward this initiative is likely to be related to work on communicating the change. Plans presented in the consultation-stage IA were for

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publicising it through Construction Infonet<sup>37</sup>, HSE's email bulletin for the construction industry, which would reach many of those in the sector interested in health and safety, as well as press releases to ensure accurate coverage and changes to the website (including reinforcing the guidance to the PPE Regulations).

59. Consultation identified that many of those who were opposed to, or had concerns about, the proposal, thought that HSE's plans for publicity set out in the CD were inadequate. However, many of those who were in favour of the proposal made useful suggestions and offers of help to publicise the change. These included providing toolbox talks and placing posters on site, including publicity in newsletters, provision of advice from health and safety consultants, inclusion of the message in training courses and help in distributing, or drawing attention to, any guidance that HSE produces. Others suggested ways of publicising the change that HSE should carry out in co-ordination with the industry.
60. Based on this feedback, we have made amendments to our communications plans. Final details are still being approved, but the intention is to add to our original plans: taking up the offers of help from stakeholders, publication of a "Busy Builder" leaflet that can be used both by stakeholders and through the Working Well Together<sup>38</sup> (WWT) system and including head protection as a priority area for action (alongside asbestos, working at height and good order) during the course of next year's intensive inspection initiative on refurbishment. This would help target our communication efforts at the part of the industry where, as we will explain later, evidence suggests there could be misunderstanding of the change.
61. These activities would not have significant additional costs either on HSE (as they would be taken forward by current staff) or on stakeholders who made those offers (most of whom already carry out activities around the promotion of health and safety as part of their roles).

### *Benefits*

62. There is a potential, speculative benefit in relying on regulations that are goal-setting rather than prescriptive, and that is that the former are more future-proof and potentially more economically efficient. The change from a prescriptive to a goal-setting legislative framework could be seen as both a positive or negative aspect of the revocation. Goal-setting legislation allows dutyholders to choose the most appropriate methods or equipment available to meet the legal requirements, though it can be seen as introducing a level of uncertainty. As we mentioned, businesses are already complying with a range of goal-setting regulations, not least the PPE regulations, so removing prescriptive legislation should assist dutyholders in that they have to comply with only one, goal-setting, framework.

### *Impact on health and safety*

63. The revocation of the CHP Regulations would not lower the legal protection of workers, as it would not result in changes in when head protection needs to be provided and used in construction. Accordingly, employers and workers would not need to alter their behaviour in any way, and, provided the change is properly understood, this would result in no impacts on health and safety from the proposal.

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<sup>37</sup> See: <http://www.hse.gov.uk/construction/infonet.htm>

<sup>38</sup> [An industry campaign which is supported by HSE. See: http://www.wwt.uk.com/](http://www.wwt.uk.com/)

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64. However, HSE recognises that there is a risk that some businesses might misunderstand the change and think that they need not provide head protection for their workers any longer (or that some self-employed might think that they need not use theirs). This possibility and its potential consequences are explored in detail in the next section, on “Risks and Assumptions”. The main conclusion that can be drawn from our analysis is that, although evidence is not conclusive enough for us to predict the effects of the proposal with certainty, the risk described above is one that a number of people in the industry consider to be a real one.
65. Based on this, we judge it is possible (but not certain) that the proposal might lead to a lowering of health and safety standards, and that this is more likely to happen on the small end of the market and/or in small or domestic projects. The evidence available does not allow us to estimate the extent of this risk (much less quantify expected health and safety effects). The next section presents the evidence available for decision-makers to consider.

### **Risks and assumptions**

#### Misunderstanding of the effects of the revocation

66. The main risk in taking forward this initiative and revoking the CHP Regulations is that some firms would stop providing and requiring the use of head protection to their workers and that individuals (whether the self-employed or employees) would stop wearing head protection. This would be caused by a misunderstanding of the change, with dutyholders or workers thinking the requirement to provide and use head protection is no longer in force. If this happened in sufficient numbers, it could lead to an increased number of fatalities and injuries.
67. This is a risk that is recognised by Professor Löfstedt in his report, where he says that he only recommends revoking the regulations “provided that the consultation process does not identify any evidence that their revocation would result in reduced protection within the industry.”

#### *Issue 1: Does increased provision and use of head protection lead to better health and safety?*

68. Prior to the introduction of the 1989 CHP Regulations, concerted efforts were made to increase the voluntary use of head protection in the construction industry through non-regulatory means. This included initiatives such as Working Rule Agreements between employers and employees in 1981<sup>39</sup>. Research was conducted in 1982 to evaluate their effectiveness, and found they had not succeeded in increasing the use of head protection.
69. The 1982 study was a survey<sup>40</sup> which found that only a third of sites visited had registered any improvement in wearing of head protection, and that even in those which had improved, only about a third of workers were wearing head protection. This was very low in comparison to other countries, such as the US, which registered almost 100% wearing of head protection in construction.

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<sup>39</sup> Safety helmets on construction sites. HSC Discussion Document 1979.

<sup>40</sup> Working Rule Agreement six month survey by HMFI in *Measuring the Effectiveness of HSE's field activities*. HSE occasional paper OP 16. HMSO 1985.

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70. Based on the results of this evaluation, it was concluded that self-regulation had failed. Consequently, it was agreed the risk to injury to the head in construction would be reduced if there were specific duties in legislation requiring the provision and use of head protection on construction sites.
71. The CHP Regulations came into force in early 1990. Two years later, HSE carried out a survey, which found that on 69% of the sites visited, between 80% and 100% of workers wore suitable head protection and the majority of employers had adequate mechanisms to ensure the wearing of safety helmets where necessary. This was a marked improvement on the results found by the 1982 survey.
72. An evaluation of the effectiveness of the regulations was carried out in 1994<sup>41</sup> (the 1992 survey was an input into it), and found that the regulations had been very effective. It found, for instance, that in the period 1986-1993 there had been significant reductions in accident (especially fatal accident) rates, both for employees and the self-employed.
73. The available statistics on head injuries in construction are consistent with this finding on the effectiveness of the CHP Regulations (although of course the statistics are affected by other factors too). In our pre-consultation IA, we presented the figures in Annex 1, which show the number of reported head injuries to employees and the self-employed in Construction before and after the introduction of the regulations, from 1986/87 to 2010/11(p)<sup>42</sup>. It can be appreciated that non-fatal major head injuries have shown a downward trend over the years, albeit with year-on-year variations. They have fallen from an average of 165 a year in the period 1986/87 to 1989/90, to an average of 122 in the next 4 years and 130 in the most recent 4 years (2007/08 to 2010/11(p)). A more dramatic reduction happened with fatal injuries. Comparing the same periods, the average number of head injury deaths in construction sites fell from 48 a year (4 years to 1989/90) to 28 (4 years from 1991/92) and 14 (latest 4 years).
74. These figures, it should be noted, include all the kinds of head injuries taking place in the construction sector. These include injury types that might be prevented by wearing head protection (such as injuries incurred through a falling object striking the head), but also some types that would not (for instance, a worker falling from a great height and hitting their head against the ground). During the consultation period, HSE statisticians have conducted a more in-depth examination of the data, differentiating between injuries where the wearing of head protection would have been relevant, and where it would not.
75. Unfortunately, data detailed enough to perform this analysis was not available for the period before the introduction of the regulation, or for the period immediately afterwards, so the figures presented in Annex 2 start in 1996/97, some 7 years after the introduction of the regulations. This means that we cannot draw from them a clear picture of what effect the regulations might have had. However, the figures we do have show that, in the period analysed: a) the types of fatalities and injuries which might have been prevented by the wearing of head protection are only a proportion of total head fatalities and injuries. Over the period, these fatalities averaged 3 a year (about 10%-15% of all fatal head injuries) and injuries averaged approximately 45 a

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<sup>41</sup> "A study of the effectiveness of the Construction (Head Protection) Regulations 1989", 1994. Safety Policy Division, HSE.

<sup>42</sup> (p) = 2011 figures are provisional

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year (about a third of all major head injuries); b) there is not as clear a trend in them as in the figures in Annex 1 (fatal injuries have remained level during the period analysed, while major injuries show no clear trend, and if anything, might be higher in recent years).

76. In our consultation-stage IA, we stated that “All the evidence available points to the regulations having been highly efficient in increasing the wearing of head protection, and to this having prevented a large number of deaths or major injuries.”. These new figures show that the number of deaths and injuries prevented is lower than previously presented, but do not cast doubt on the conclusion itself: it should be remembered that we have no data for the period immediately before the introduction of the regulations, or for the 7 years straight after that. Any effects of the regulations would have been expected to be felt then, and the regulations to have become mature by 1996/97.
77. In conclusion, **there is still evidence to conclude that if the wearing of head protection decreased, we could expect an increase in head injuries, including fatal ones.**

### Issue 2: Would misunderstanding the effects of the revocation lead to less wearing of head protection?

78. We concluded above that if provision and use of head protection decreased, there would be negative effects on health and safety. The next question is whether a misunderstanding about what the revocation means in terms of the legal requirements would lead to less wearing of head protection.
79. Based on HSE’s Construction Division’s experience, we know that site rules requiring the use of head protection are crucial to making sure workers are protected. Evidence presented by Helander (1991)<sup>43</sup> suggests this was not happening before the regulations came in. Reporting on the situation then (when head injuries in construction were high), Helander found that in 25 out of 29 sites visited, the decision to wear a safety helmet was left to the individual worker.
80. Initial industry feedback presented in the consultation-stage IA indicated that there is a culture of wearing head protection in the construction industry. There is a requirement the Construction (Design and Management) Regulations 2007<sup>44</sup> to draw up site rules, and these usually cover the need to wear head protection. This suggested that businesses would not necessarily change the requirements they make of their workers if they misunderstood the effect of the revocation of the regulations.
81. Both the qualitative research and responses to the formal consultation found some evidence to support this. Use of head protection was felt to be widely accepted within the construction industry. It was described as ‘second nature’, particularly among larger companies and was largely thought to be driven by many sites taking a zero tolerance approach and good practice being cascaded from larger companies. However, there was also a perception that head protection is not always worn by individual workers, even on larger sites, and is less likely to be worn by smaller ‘domestic’ builders.

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<sup>43</sup> Helander, M. G. (1991). “Safety hazards and motivation for safe work in the construction industry”. International Journal of Industrial Ergonomics, vol. 8, no. 4, 205-223

<sup>44</sup> See: <http://www.legislation.gov.uk/ukxi/2007/320/contents/made>

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82. A small number of respondents to the public consultation referred to businesses reducing provision of head protection. Additionally, several participants in the qualitative research raised concerns that individual workers may use news about the revocation ‘as an excuse’ not to wear head protection, and there is some evidence that in some cases, workers might, if they can, choose not to wear head protection. Recent research<sup>45</sup> commissioned by HSE amongst ‘hard-to-reach’ small construction site operators found that in some cases, individuals would not comply with some regulations. It found that these individuals might not wear head protection in some circumstances due to reasons like discomfort (“A tall guy walking on a scaffold with a helmet you bang your head everywhere”, it’s hotter under the helmet), or pride (not liking being told what to do).
83. We also analysed responses from employers to the Fit3 survey, a large-scale survey of workplaces which HSE carried out in 2008. The most relevant question was regarding which factors the respondent considered to be important in driving changes to health and safety in their organisation<sup>46</sup>. They could choose up to three. In construction, 68% of respondents selected “Health and safety regulations”, which would suggest that if they believed a regulatory requirement was no longer in force, they might change their behaviour. This was the most selected option. However, a large number of respondents also cited other factors: “Sickness absence” (55%) and “Customer requirements” (53%), which could point in the opposite direction. It should also be noted that this question did not refer to head protection specifically, but to general “changes in health and safety”, so we might not necessarily be able to apply its conclusions directly to requirements to wear head protection.
84. From the available evidence we can conclude that **on larger sites and for larger companies, where the provision and use of head protection is likely to be more ingrained, a misunderstanding about the effects of the revocation is unlikely to have an effect on the provision and wearing of head protection. However, for self-employed or small contractors working in domestic or other small sites, it could potentially have an effect.**

*Issue 3: Would the revocation lead to misunderstandings about whether head protection should still be worn?*

85. The risk of businesses misunderstanding the nature of this change was one raised spontaneously by many respondents in the qualitative research, who were concerned that people might think they do not need to wear head protection anymore or could use it as an excuse not to provide or wear appropriate protection. It was also mentioned by several respondents to the formal consultation, who thought the revocation would “create confusion” in the industry.
86. This is a problem that could be mitigated by HSE putting efforts into communicating effectively and making use of the very constructive feedback received from stakeholders both in the formal consultation and the qualitative research (for instance, that the communication be framed around the idea of removing duplication, rather than revoking a regulation, as well as suggestions of several channels through which

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<sup>45</sup> Report of qualitative research amongst ‘hard to reach’ small construction site operators, HSE (2009): <http://www.hse.gov.uk/research/rrpdf/rr719.pdf>

<sup>46</sup> The question asked was: “Please could you say which two or three (of the following options) are most important in driving changes to health and safety in your organisation?”

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particularly difficult groups could be reached). If the revocation went ahead, HSE would take this feedback into account.

87. However, several of the participants in the qualitative research mentioned the possibility that news about the revocation might reach individuals through channels unrelated to HSE. They saw the potential for confusion as directly linked with the risk that the proposal could attract media publicity, which could send out incorrect messages about head protection requirements. Some respondents also mentioned word-of-mouth. On being asked whether, for instance, seeing a headline in a newspaper would lead individuals in the industry to find out more, several respondents were sceptical, and thought most individuals in the industry would take the headline at face value.
88. The extent of the confusion and misunderstandings will depend on how many people become aware of the news. Formal consultation responses to questions enquiring about the proportion of businesses spending time understanding the changes to the regulations suggested relatively small percentages would spend time doing that (see paragraphs 40 and 41). It would, of course, also depend on whether there is any publicity and coverage in the media of the issue.
89. When asked whether any segments of the industry might be particularly susceptible to confusion in this area, participants in the qualitative research generally agreed that it would be at the smaller end, where the self-employed or small contractors are less likely to be aware of regulations or regulatory change, perhaps because they are less likely to employ dedicated health and safety professionals, and instead take a lead from larger contractors when they are sub-contracted by larger sites. Larger businesses tend to have individuals dedicated to health and safety, and participants thought this meant the risk of confusion was very small amongst them.
90. In conclusion, **the evidence collected suggests that there is some risk of misunderstandings, especially for the smallest businesses in the sector. It also suggests that although HSE can take actions to mitigate that risk, the existence of other channels of communication through which individuals might hear about the change could mean that HSE's efforts are not enough.**

### General view

91. As stated above, the general conclusion that can be drawn from the evidence presented in this section is that it is possible (but not certain) that the proposal might lead to a lowering of health and safety standards, and that this is more likely to happen at the small end of the market and/or in small or domestic projects.
92. It must also be noted, however, that the formal consultation included a question that enquired about potential effects on the level of provision and use of head protection, and a substantial majority of respondents answered that they thought the current standard would be maintained.
93. As previously noted, Professor Löfstedt's recommendation to revoke the CHP Regulations was conditional on "the consultation process ... not identify[ing] any evidence that their revocation would result in reduced protection within the industry." Our overall conclusion from the consultation and associated qualitative research is that while it is entirely possible that the level of protection would not be reduced, there is a non-negligible risk that this could happen; and that if it did, the

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consequences could be more fatal and non-fatal head injuries than would otherwise have occurred.

### Concern from the Sikh community

94. The removal of the Regulations may lead to concern from the Sikh community believing the exemption for turban-wearing Sikhs to wear head protection on construction sites no longer exists. However, the provisions contained in Section 11 of the Employment Act 1989 provide the exemption of any requirement to wear a safety helmet on a construction site at any time when he is wearing a turban. Section 12 of the Employment Act 1989 would provide protection of Sikhs from racial discrimination in connection with the requirements as to wearing of safety helmets. Both these provisions will continue to apply.
95. The exemption for turban-wearing Sikhs may arouse resentment among others whose traditional head dress (or hairstyle e.g. Rastafarians), or medical problems make the wearing of head protection difficult.
96. Any changes to the Regulations may highlight the distinction between the requirement in EC Directive 89/656/EEC (which the PPE Regulations implement) to provide head protection and the exemption for turban wearing Sikhs in sections 11 and 12 of the Employment Act 1989. Legal advice indicates *it is unlikely that the European Commission would consider the exemption as under-implementing the Directive, in light of other European legislation prohibiting discrimination on grounds of race.*

### ***Post-implementation review***

97. *We would not formally review the revocation of the CHP Regulations, but health and safety in the construction industry, including the numbers of head injuries reported, is closely monitored by HSE. If numbers were to suddenly start changing, we would carry out a detailed analysis of what caused it, to determine if the revocation of the CHP Regulations had an effect.*

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Annex 1

**Number of head injuries to employees and the self-employed in construction**

	Fatal Injuries	Non-Fatal Major Injuries
1986/87	44	142
1987/88	62	138
1988/89	42	180
1989/90	42	201
1990/91	30	141
1991/92	24	136
1992/93	25	107
1996/97	32	104
1997/98	26	124
1998/99	26	114
1999/00	26	120
2000/01	33	122
2001/02	24	139
2002/03	15	109
2003/04	21	108
2004/05	18	115
2005/06	15	148
2006/07	21	158
2007/08	16	174
2008/09	16	138
2009/10	11	111
2010/11 (p)	13	96

(p) = 2010/2011 figures are provisional

**Note: data from 1993/94, 1994/95 and 1995/96 are not available, but definitions did not change during the period, and the numbers are consistent.**

Annex 2

**Number of head injuries to employees and the self-employed in construction, of the type where the wearing of head protection would have been relevant**

	Fatal Injuries	Non-Fatal Major Injuries
1996/97	2	39
1997/98	3	47
1998/99	1	36
1999/00	6	38
2000/01	3	40
2001/02	2	52
2002/03	2	35
2003/04	3	26
2004/05	4	42
2005/06	3	60
2006/07	3	55
2007/08	2	66
2008/09	3	56
2009/10	0	34
2010/11 (p)		

(p) = 2010/2011 figures are provisional

<p><b>Title:</b> Revocation of Docks Regulations 1988 and replacement of Safety in Docks ACOP (COP25) with a shorter, simplified ACOP publication</p> <p><b>IA No:</b> <a href="#">HSE0069h</a>)</p> <p><b>Lead department or agency:</b> Health and Safety Executive</p> <p><b>Other departments or agencies:</b> None</p>	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 08/04/2013
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
<p><b>Contact for enquiries:</b> <a href="#">Hayley Ford</a> - <a href="mailto:Hayley.ford@hse.gsi.gov.uk">Hayley.ford@hse.gsi.gov.uk</a> <a href="#">Tara McNally</a> <a href="mailto:tara.mcnelly@hse.gsi.gov.uk">tara.mcnelly@hse.gsi.gov.uk</a></p>	

**Summary: Intervention and Options**

**RPC Opinion:** Awaiting Scrutiny

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
0	0	0	Yes	Zero Net Cost

**What is the problem under consideration? Why is government intervention necessary?**  
Parts of the Docks Regulations 1998 have already been revoked by more recent goal setting legislation. In response to the Lofstedt review and Red Tape Challenge, HSE has identified the remaining parts of the Docks Regulations as also having been superseded by more modern legislation. Revoking the Docks Regulations will simplify the legislation that relates to dock work while maintaining the same standards of protection for those affected by dock activities. If the Docks Regulations are revoked the current supporting Approved Code of Practice (ACOP) will have no legal basis and will also need to be withdrawn. HSE proposes to replace the existing ACOP with a shorter, simplified version of the ACOP.

**What are the policy objectives and the intended effects?**  
The policy objective of this work is to streamline the legislative framework by removing outdated prescriptive legislation. The remaining regulatory requirements of the Docks Regulations are largely replicated in other sets of more modern, goal-setting regulations. This proposal is part of a larger deregulatory programme that we would expect to contribute to an improved perception of HSE's regulatory activity, showing it to be sensible and proportionate without lowering health and safety standards.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
Option 1 - Do nothing - the Docks Regulations 1988 would remain on the statute book.  
Option 2 - As originally proposed in the public consultation document: Revoke the Docks Regulations 1988 and withdraw the existing ACOP and guidance (Safety in Docks-COP25). We would then rely on other regulations to ensure the same standard of health and safety requirements in docks.  
Option 3 -Amended option 2: largely the same as the original proposal but provide shorter, simplified version of the ACOP. Policy Option 3 is preferred as it addresses concerns raised through the consultation process while not creating an additional burden on business. Policy option 3 results in a net cost of zero to business compared to option 2 which generates a small "in". This is because option 3 reduces the size of

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** Month /Year

Does implementation go beyond minimum EU requirements?	No
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Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro Yes</b>	<b>&lt; 20 Yes</b>	<b>Small Yes</b>	<b>Medium Yes</b>	<b>Large Yes</b>
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? <i>(Million tonnes CO<sub>2</sub> equivalent)</i>			<b>Traded:</b>	<b>Non-traded:</b>	

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible  
SELECT SIGNATORY:

Date:

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Summary: Analysis & Evidence Policy Option 12

Description: Do Nothing

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 2010	Time Period Years 1	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

This is the status quo / baseline option and as such costs are zero

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

This is the status quo / baseline option and as such benefits are zero

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks

Discount rate (%)

na

BUSINESS ASSESSMENT (Option 14)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0	No	NA
Benefits: 0		
Net: 0		

**Description:**

Revoke Docks Regulations 1988]

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2010	PV Base Year 2010	Time Period Years 1	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: -0.23

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0.12	0	0.12

**Description and scale of key monetised costs by 'main affected groups'**

The main one-off costs would fall on industry in terms of familiarisation (approximately £17 thousand) and updating training and internal guidance (approximately £100 thousand). There would be negligible costs to industry in terms of printing training materials and negligible costs to industry and HSE in terms of updating HSE guidance. Such materials are likely to be reproduced on a regular basis already.

**Other key non-monetised costs by 'main affected groups'**

Consultation highlighted the costs from potential confusion and the potential for a reduction in level of health and safety standards. However, the revocation of the Docks Regulations would not lower the legal protection of workers, as it would not result in changes to current duties or the ability for HSE to enforce these duties. Accordingly, employers and workers would not need to alter their behaviour in any way, and this would result in no impacts on health and safety from the proposal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

**Description and scale of key monetised benefits by 'main affected groups'**

**Other key non-monetised benefits by 'main affected groups'**

The removal of these sets of regulation will contribute towards streamlining the Health and Safety legislative framework. There will also be ongoing annual benefits to industry from the reduction in materials they need to be familiar with.

Key assumptions/sensitivities/risks	Discount rate (%)	na
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**BUSINESS ASSESSMENT (Option 15)**

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0.01      Benefits: 0      Net: -0.01	Yes	IN

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**Summary: Analysis & Evidence**      Policy Option 3

**Description:** Amended policy option 2 with shorter simplified ACOP

**FULL ECONOMIC ASSESSMENT**

Price Base Year 2010	PV Base Year 2010	Time Period Years 1	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

**Description and scale of key monetised costs by 'main affected groups'**

There would be no familiarisation costs to industry, as the ACOP would not be removed. There would be negligible costs to industry in terms of printing training materials and negligible costs to industry and HSE in terms of updating HSE guidance. Such materials are likely to be reproduced on a regular basis already.

**Other key non-monetised costs by 'main affected groups'**

Consultation highlighted the costs from potential confusion and the potential for a reduction in level of health and safety standards. However, amended policy option 2 with a shorter ACOP would not lower the legal protection of workers, as it would not result in changes to current duties or the ability for HSE to enforce these duties. Accordingly, employers and workers would not need to alter their behaviour in any way, and this would result in no impacts on health and safety from the proposal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

**Description and scale of key monetised benefits by 'main affected groups'**

**Other key non-monetised benefits by 'main affected groups'**

The removal of these sets of regulation will contribute towards streamlining the Health and Safety legislative framework. There will also be ongoing annual benefits to industry from the reduction in materials they need to be familiar with. The sign-posting format of the ACOP will also mean dutyholders not re-reading the same materials. While this hasn't been quantified, sector experts believe that this will, as a minimum, mitigate any costs of deregulation.

Key assumptions/sensitivities/risks	Discount rate (%)	na
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**BUSINESS ASSESSMENT (Option 16)**

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0      Benefits: 0      Net: 0	Yes	Zero net cost

## **Evidence Base**

### **Revocation of Docks Regulations 1988 and replacement of Safety in Docks ACOP (COP25) with a shorter, simplified ACOP**

#### **Problem under consideration;**

150. HSE has identified a number of health and safety related Statutory Instruments (SIs) that are redundant or that have been overtaken by more modern legislation or do not deliver their intended benefits. This work will remove redundant legislation and is only one small element of a much wider programme of work to make the legislative framework simpler and easier to understand, while maintaining the same standards of protection for those in the workplace or affected by work activities.
151. Parts of the Docks Regulations 1998 have already been revoked by more recent goal setting legislation. In addition, HSE officials believe that the remaining parts of the Docks Regulations have been superseded by the legal general requirements of other recent legislation. This includes the general requirements of the Management of Health & Safety at Work Regulations 1999 (MHSWR) and the Workplace (Health, Safety & Welfare) Regulation 1992 along with the more specific requirements of the Provision and Use of Work Equipment Regulations 1998, Lifting Operations and Lifting Equipment Regulations 1998 and the Work at Height Regulations 2005. Revocation of the Docks Regulations will make the legislative framework relevant to docks simpler and easier to understand whilst maintaining the same standards of protection for those working in docks or affected by dock activities.
152. The Docks Regulations are supported by an Approved Code of Practice (ACOP) and guidance (Safety in Docks COP25). If the Docks Regulations are revoked then the current ACOP will have no legal basis and will need to be withdrawn. HSE originally consulted on withdrawing the ACOP and replacing it with industry guidance. The HSE Board, following concerns raised by some stakeholders, has decided to retain a shorter, simplified ACOP based on duties under the Health & Safety at Work etc Act 1974 and relevant statutory provisions. HSE have completed a second consultation on the text of this ACOP that will also signpost more detailed guidance already being produced by the Ports industry (planned for completion by April 2014). It is proposed that the Docks Regulations will be revoked in October 2013 with a coming into force date of April 2014. The current Safety in Docks ACOP (COP25) will then be replaced by a shorter, simplified version in April 2014. The new publication will also incorporate the guidance from two other HSE publications (INDG 446 - A Quick Guide to Health and Safety in Ports and HSG177 - Managing Health and Safety in Dockwork).

#### **Background**

153. Professor Löfstedt's independent review of health and safety legislation 'Reclaiming health and safety for all' (<http://www.dwp.gov.uk/docs/lofstedt-report.pdf>) was published in November 2011. In response to this, and the Red Tape Challenge, HSE has identified a number of health and safety regulations that are either redundant, have been overtaken by more modern legislation or

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do not deliver their intended benefits. This includes the Docks Regulations 1988. Without any intervention these would remain in force and contribute to the impression that health and safety law is extensive, complex and out of date.

154. The public were given the opportunity to comment on Regulations under the Government's Red Tape Challenge initiative – those that work well and those that do not. This exercise was launched on 7 April 2011 with a new theme in the spotlight on the website every three weeks. Workplace Health and Safety is a cross cutting theme and open to challenge throughout the initiative. It was also in the spotlight from 30 June for 3 weeks. Some 197 Regulations were in scope for the Workplace Health and Safety theme. All Red Tape Challenge comments are collated to provide a clearer picture for Government of which Regulations should stay, which should go and which should change. All the Health and Safety Theme comments received were considered by HSE.
155. The Docks Regulations 1988 were conceived as a single set of regulations which addressed port-specific activities and risks at a time when there was limited published guidance and standards for docks and the ship/shore interface, and accident rates were very high.
156. The Approved Code of Practice and guidance (Safety in Docks COP25) was introduced to support the Docks Regulations. The ACOP and guidance give advice on how to comply with the law. The ACOP has a special legal status in that if companies follow the advice in it, they will be doing enough to comply with the law in respect of those specific matters. They may also use alternative methods to those set out in the Code in order to comply with the law. The ACOP is accompanied by guidance which does not form part of the Code and has a different legal status. Following the guidance is not compulsory and you are free to take other action. But if you follow the guidance you will normally be doing enough to comply with the law.
157. If the Docks Regulations are revoked then the current ACOP (COP25) will have no legal basis and will need to be withdrawn. HSE originally consulted on withdrawing the ACOP and replacing it with industry guidance but following concerns raised by some stakeholders the HSE Board has decided to retain a shorter, simplified ACOP based on duties under the Health & Safety at Work etc Act 1974 and relevant statutory provisions.
158. HSE has completed a second consultation on the text of a shorter, simplified ACOP. This ACOP will also signpost a suite of more detailed Safety in Ports guidance documents being produced by the Ports industry (planned for completion by April 2014). The replacement ACOP would be based on duties under the Health & Safety at Work etc Act 1974 and relevant statutory provisions, and would be published in April 2014 when the revocation of the Docks Regulations will come into force. The new publication will also incorporate the guidance from two other HSE publications (INDG 446 - a quick guide to health and safety in ports and HSG177 - managing health and safety in dockwork).

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159. It is proposed that the Docks Regulations 1988 are removed and the supporting Approved Code of Practice, Safety in Docks COP25 withdrawn and replaced with a shorter, simplified ACOP and guidance publication.

**Rationale for intervention;**

160. Intervention is necessary to implement the Government response to the above mentioned Red Tape Challenge and Löfstedt Review. The requirements under the prescriptive Docks Regulations 1988 have been superseded by more modern goal-setting legislation. Although these Regulations have been used in enforcement action over recent years, all of the deficiencies identified would also fall under parallel legislation. This work will make the legislative framework relevant to docks simpler whilst maintaining the same standards of protection for those working in docks or affected by dock activities.
161. The removal of duplicate legislation removes the need for dutyholders to spend resource on reading and understanding the additional legislation, it would also save dutyholder resource by reducing the uncertainty and complexity of the health and safety legislative framework. Deregulation, on the whole, reduces barriers to entry and fixed start-up costs thus making markets more contestable. This theory is supported by anecdotal evidence from consultation, for example:

*“I am in favour of revoking these measures and in particular seeing the resultant removal of burden on small businesses.”*

**Policy objective and intended effects;**

162. The policy objective of this work is to contribute to the streamlining of the legislative framework by removing one set of Regulations and the associated Approved Code of Practice that are no longer needed to support the control of health and safety risks in the workplace. Without any intervention the Docks Regulations would remain in force and contribute to the impression that health and safety law is complex, confusing and out-of-date.
163. This work forms part of HSE’s programme of wider reforms to help employers understand quickly and easily what they need to do to manage workplace risks.

**Alternatives to regulation**

164. No alternatives to regulation have been considered because this is a deregulatory measure.

**One In Two Out (OITO)**

165. This deregulatory measure is within scope of One In Two Out. This impact assessment has monetised one off costs in terms of familiarisation and changes to training materials which have been confirmed by industry. It has not been possible or deemed proportionate to quantify the ongoing benefits from the reduced annual familiarisation and the contribution to the reduction to the perception that health and safety legislation is complex. However, it is

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expected that the ongoing benefits would, as a minimum mitigate the one off costs and therefore we present this deregulatory measure as a zero net cost

### **Description of options considered (including do nothing);**

166. Option 1 – Do nothing - the Docks Regulations 1988 would remain on the statute book.
167. Option 2 - As originally proposed in the public consultation document: Revoke the Docks Regulations 1988 and withdraw the existing ACOP and guidance (Safety in Docks-COP25). We would then rely on other regulations to ensure the same standard of health and safety requirements in docks.
168. Option 3 – Amended option 2: Revoke the Docks Regulations 1988 and replace the existing ACOP & guidance (Safety in Docks- COP25) with a shorter, simplified version of the ACOP. The Docks Regulations should be revoked in October 2013 with a coming into force date of April 2014. We would then rely on other regulations to ensure the same standard of health and safety requirements in docks. The new ACOP & guidance would signpost detailed guidance produced by the Ports industry (planned for completion by April 2014). The replacement ACOP would be published in April 2014 when the revocation of the Docks Regulations comes into force.
169. In light of the consultation feedback, specific aspects of the consultation proposal represented by Option 2 have been modified. These modifications are presented as Option 3, and represent HSE's considered proposal following consultation;
170. HSE originally consulted on a option 2 which proposed the revocation of the Docks Regulations and the withdrawal of the ACOP. Option 3 is a revised version of option 2 that was developed following representation from some stakeholders during the original public consultation process. Paragraphs 25-27 and annex 1 summarise the responses to the first consultation. The analysis of the costs and benefits has been updated to reflect the current, revised option which is a movement back towards the baseline option.
171. It is important to note that as the underlying legal duties have not changed then the ACOP will not change behaviour. In addition the replacement ACOP will be a simplified version of the existing ACOP so redundant and outdated text will be removed and guidance text inserted to signpost readers to current industry and HSE guidance.

### **Consultation and data analysis**

172. Consultation consisted of both formal and informal elements. The first formal consultation on the original proposal to revoke the Docks Regulations and withdraw the supporting ACOP took place between 3 April 2012 and 4 July 2012 and the results are summarised below.
173. Thirty three (33) responses were received which answered at least one of the questions in the CD in relation to the Docks Regulations. In addition 6

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written responses were received that commented on the Docks Regulations but didn't specifically answer the given questions.

174. Annex 1 provides more detail of formal consultation responses. Table 1 summarises the organisations that responded and the proportion of the respondents within these organisations compared to total responses. Table 2 gives a summary of the responses to the specific questions in the consultative document. The results were that:

- Question 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 COP25

Of the 33 responses to the question, 28 (over 80%) said Yes and 5 said No. There were also six written responses that did not directly answer any of questions 5.1, 5.2 or 5.3. Three of these responses appeared to disagree with the proposal.

Of the 28 respondents to this question that said 'Yes', 3 made qualified comments. Of these 2 said 'Yes' provided there is no lowering of health and safety standards. One also highlighted the need for an appropriate awareness-raising and communication exercise.

Of the 5 respondents to this proposal that said 'No', 4 made qualified comments. In addition, comments were received in the six written responses.

The following reasons were given either by direct response to this question or via the general written responses:

- It would result in the Docks Regulations being replaced with guidance
- Contravenes HSWA, S.1(2) as there will be a reduction in standards
- Use of more general regulations will result in difficulties in interpretation
- Revocation might send out signal that wider safety culture promoted by Regulations and ACOP is being relaxed.
- Docks should have specific regulations due to their hazardous nature.
- Significant enforcement is undertaken using the Regulations so they are still relevant.

There was also a concern raised by 7 responders that there was a lack of evidence in the CD about what will replace the Docks Regulations and ACOP to make a reasoned judgement.

- Question 5.3 Would this revocation and the withdrawal of the ACOP have any implications (positive or negative) for business, workers or others that HSE has not identified?

Of the 26 responses we received on this question, 23 (almost 90%) said No and 3 said Yes. Written responses also included comments that could be considered under this question (also Q5.1)

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Implications identified include:

- It might send out a signal that the wider safety culture promoted by the existence of the Regulations and ACOP is being relaxed.
- Safety standards could be affected with no clear guidelines for employers managers and employees
- It will take time for an employer to read and understand the revocations and introduce general confusion.
- It will be especially beneficial as regards medical fitness.
- After revocation, regulations affecting ports will be Goal-Seeking instead of Prescriptive, which allow greater flexibility to provide management interventions that work for each individual situation.

At the time, the responses to the consultation show that the significant majority of the respondents agree with HSE's view that this legislation is no longer required. However concerns continue to be raised about the loss of information following the withdrawal of the ACOP. The docks industry have completed a gap analysis to identify where the withdrawal of the ACOP will leave a gap in guidance and are currently working in conjunction with HSE to publish new guidance.

175. Analysis also included examining HSE records on the use of these sets of Regulations over the last 13 years. During this time, the Docks Regulations have been cited 56 times on Notices and 38 times in approved prosecution activity. However the use of the Docks regulations is often in conjunction with other sets of regulations. In the instances where the Docks Regulations alone have been cited in enforcement action, there are other existing legal provisions that would cover the circumstances. Furthermore analysis shows that the enforcement action taken under the Docks Regulations is mainly historic, the majority of which occurred more than 5 years ago. It should also be noted that over the last 13 years, legislation other than the Docks Regulations has been used extensively in enforcement action against companies in the Docks industry.

176. In order to obtain information for this impact assessment, a presentation and information gathering exercise was conducted at a meeting of the Port Skills and Safety (PSS) Group. PSS are a trade association that is open to all port related organisations. PSS has an extensive membership amongst the ports industry. The aim of PSS is to encourage and promote high standards of health and safety and a highly skilled workforce within the ports industry. The PSSG meeting concerned attracted approximately 50 delegates from the ports industry. Analysis presented in this impact assessment was largely derived from feedback from that group.

177. Following representation from some stakeholders during the first consultation, the HSE Board decided to retain a shorter, simplified ACOP based on duties under the Health & Safety at Work etc Act 1974 and relevant statutory provisions. The second consultation took place between 9th April 2013 and 22<sup>nd</sup> May 2013 and focussed on the text of the shorter, simplified ACOP.

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178. An overview of the responses is attached at Annex 2. The CD was structured to allow stakeholders to consider and comment on the areas of the proposed ACOP that interested them so the number of responses for each section does vary. Of the 25 responses received, the majority agreed that the proposed ACOP text provides a clear and appropriate representation of a preferred method of compliance (working practice) in a modern port or dock environment. There were however concerns from significant stakeholders on some of the detail. A summary of these and HSE's initial analysis of them is attached at Annex 2.

**Monetised and non-monetised costs and benefits of each option  
(including administrative burden);**

*General Assumptions*

179. Costs and benefits are not assessed over 10 years as all one-off costs are anticipated to occur in year 1.

180. No discount rate is used due to all monetised costs occurring in year 1 and any benefits / cost savings being monetised.

181. The year of analysis is 2013. The regulatory change would come into force in October 2013 (subject to Board approval) but it is expected that any one-off costs will take place in 2013 as dutyholders familiarise themselves with the changes in advance of the regulatory changes.

182. Industry costs per hour are assumed to be approximately £30. This is based on costs presented in the Annual Survey of Hours and Earnings (Table 14 - 2010) (Office for national statistics)<sup>47</sup> and up-rating by 30% to allow for non-wage costs (in accordance with the Green Book)

183. Figures presented in this IA are, in general, rounded to two significant figures; however, calculations are based on non-rounded numbers. Given this, some figures presented may not add up to the totals presented.

184. Time estimates (for example, familiarisation and changes to training) presented within the evidence base have been derived through consultation with industry as detailed in paragraph 26.

185. Option 1: do nothing - Option 1 would maintain the status quo and so would have no cost or benefit implications.

186. Option 2 would result in one-off costs to industry in terms of familiarisation and changes to training and material and benefits / cost-savings in terms of ongoing familiarisation and reducing the perception that health and safety legislation is complex and over burdensome.

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<sup>47</sup> See <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-200444>

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187. Option 3 would have no costs to industry in terms of familiarisation and minimal costs in terms of changing training materials as the ACOP will still exist, albeit in a shorter and simpler format. The costs from updating training materials will therefore be smaller than those associated with option 2.
188. The evidence for this assessment is set out below. Evidence was gathered based on the original proposal (option 2) therefore; sector experts were consulted to triangulate the evidence based on option 2 to present a proportionate assessment of the impacts of option 3.

***Evidence on the current level of use of the SI***

189. HSE's initial assessment was that this SI is currently used by businesses and so its revocation would impose one-off costs. This initial assessment was presented to the industry via the Port Skills Safety group meeting detailed in paragraph 27 where there was general support and agreement with the assessment. The following costs to business estimates have been based on information received from this meeting (and triangulated with sector expert opinion and responses from IA specific questions at consultation).
190. Although a consultation stage IA was not produced for assessing the impacts of the removal of the Docks Regulation, formal consultation was used to gather information for the analysis presented here.
191. While consultation responses are undoubtedly biased, those that responded are likely to be the more engaged and most likely to know/use the statutory instruments analysed in this IA. Hence, this group would be the most likely to know details of the costs to business.

***Costs to business***

***Option 2***

192. For option 2 there will be costs to business in terms of one-off familiarisation and for updating training courses and training materials.
193. In formal consultation, respondents were asked to estimate the time it would take for affected dutyholders to read and understand the proposed changes. Responses ranged from "zero" to "30 - 40 hours". The majority of respondents said it would take 40 minutes or less, with the modal response being 20 minutes, we use this estimate for our calculations. This is also consistent with time estimates collected at consultation for the revocation of the Ship-building and Ship Repair Regulations.
194. Using the ***Inter-Departmental Business Register (IDBR - premises)***, we estimate that there are in the region of 2900 dutyholders that would need to familiarise themselves with the changes (see table 1 below for SIC codes used). This is on the basis that one person from each site would need to get up to speed with the changes and communicate this to the rest of the business. However, on the basis of the number of SMEs in the industry who are unlikely to know about the regulation or the proposed changes and communication that has already happening with industry, we estimate that

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approximately 40% of these will not familiarise themselves with the changes. Therefore if approximately 1700 dutyholders spend 20 minutes on familiarisation at a cost of £30 per hour (see paragraph 29 for hourly cost assumption), there would be a one-off familiarisation cost in the region of £17 thousand.

Table 1: Standard Industrial Classifications

SIC	Description
5010	Sea and coastal passenger water transport
5020	Sea and coastal freight water transport
5030	Inland passenger water transport
5040	Inland freight water transport
5222	Service activities incidental to water transportation (harbours, locks, lighthouse)
5224*	Cargo handling

195. SIC code 5224 includes cargo handling for water transport activities but also for air and land transport activities where there is no available breakdown for the number of premises; therefore this is an overestimate for the number of dutyholders that the regulation applies to. However, the use of this SIC code is consistent with official figures used in Docks reports.

196. Industry would also need to update current training courses and training materials. Industry estimated (at the meeting described in paragraph 29) that it would take, on average, two hours to revisit materials and make the relevant changes and that each business location would need to up-date their training material. Using the same assumptions as for familiarisation, this would result in a one-off cost in the region of £100 thousand.

197. Training materials would need to be printed on a regular basis and therefore the costs associated with this are deemed to be negligible.

198. There will also be updates to HSE guidance which HSE do in consultation with industry, however, this is an ongoing process which would have happened irrespective of the revocation of the Docks Regulations and therefore, we anticipate that their removal will have a negligible impact.

199. Total one-off costs to business are therefore expected to be in the region of £120 thousand.

**Option 3**

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200. HSE do not expect there to be any costs in terms of familiarisation as the ACOP associated with the regulation will not be removed. This means that dutyholders will continue with their normal practice in terms of determining their duties. There will however, be a change in the text of the ACOP which will be shorter, simpler and act as a sign-post to detailed guidance. This could imply a small cost-saving for new dutyholders who will no longer have duplicate guidance to read, as well as to existing businesses, if they need to refer back to the ACOP periodically..
201. HSE expect that there will still be some dutyholders that update training courses and materials; however, this will require a much lower level of input and is more likely to be as part of a regular review and update. While costs have not been calculated for this, it is expected to be substantially lower than the £100 thousand estimated under option 2.
202. HSE expect that there will be a negligible overall costs associated with option 3.

***Costs to HSE: options 2 and 3***

203. HSE will be involved in updating guidance and ensuring that industry is suitably informed of the proposed changes. HSE is not planning a large scale communications campaign and any work resulting from the revocation would form part of HSE ongoing work in the sector, therefore, there will be no additional costs to HSE as a result of revoking the Regulations.

***Benefits and impact on health and safety: options 2 and 3***

204. As previously described, these are redundant SIs and therefore are not intended to have any impact on health and safety protection as such, their removal will have no impact on health and safety protection. When appropriate, adequate controls are maintained through more modern legislation.
205. There is also an overarching benefit which is to simplifying the legislative framework and the movement from prescriptive to goal setting legislation was quoted as also being a benefit.
206. HSE's initial consultation also highlighted the costs from potential confusion and the potential for a reduction in level of health and safety standards. However, it was a small minority of respondents who raised that issue, with most stakeholders consulted (both at that stage and on dialogue with industry) not considering this a problem.
207. Additionally, the revocation of the Docks Regulations would not lower the legal protection of workers, as it would not result in changes to current duties or the ability for HSE to enforce these duties. Accordingly, employers and workers would not need to alter their behaviour in any way, and this would result in no impacts on health and safety from the proposal.
208. HSE recognises that some people see the risk to health and safety standards as a real issue of this revocation. The concerns highlighted in

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consultation and HSE's response to these are considered in the "Risks and Assumptions" section.

209. Given that the ACOP associated with the regulation is going to be replaced with a shorter, simplified one that does not alter their legal duties, it could be expected that dutyholders may benefit from small time savings (see paragraph 49). These savings would be an annual benefit. The text for the ACOP will not be finalised until just before it is published in April 2014. Therefore is not possible to estimate the savings it creates. However, it is expected that, over a ten year period it would be greater than the costs of this deregulatory proposal.

**Rationale and evidence that justify the level of analysis used in the IA (proportionality approach);**

210. Although a consultation stage IA was not produced for assessing the impacts of the removal of the Docks Regulation and associated ACOP, formal consultation was used to gather information for the analysis presented here.
211. Analysis of HSE records and consultation (internal and external) both identified the proposed SIs as redundant or have been overtaken by more modern legislation. A proportionate cost analysis has been presented above.
212. While consultation responses are undoubtedly biased, those that responded are likely to be the more engaged and most likely to know/use the statutory instruments analysed in this IA. Hence, if there were any costs to business, this group would be the most likely to know about it. Furthermore, consultation responses have been triangulated with responses from informal consultation and a comprehensive discussion with industry representatives as detailed in paragraph 29.
213. There remain some uncertainties of the impacts of the policy proposal that it would not be proportionate to estimate, these are detailed in the following section.

**Risks and assumptions;**

214. HSE's initial assessment was that these legislative measures were either redundant or had been overtaken by other more modern regulation so there would be no risk associated with them being revoked. This assessment was agreed with at the time by those industry representatives at the Port Safety and Skills group meeting described in paragraph 27.
215. The majority of those who responded to the consultation question on the Docks Regulations agreed with the proposals.
216. However, when specifically asked if there were any other impacts of the removal, the following issues were raised:
- The proposal results in a move away from prescriptive methods to goal-seeking. This could lead to difficulties of interpretation and "waiting to hear the right answer" from court cases

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- Communication needs to take pace to ensure people are aware that duties still remain, it is just elsewhere in legislation
- Will always be some level of confusion – example given that some people still refer to previous acts that were removed
- HSE need to ensure that the standard of health and safety is maintained

The change from a prescriptive to goal setting legislative framework has been raised as both a positive and negative aspect of the revocation proposals.

217. Goal setting legislation allows duty holders to chose the most appropriate methods or equipment available to meet the legal requirements (though it can be seen as introducing a level of uncertainty). Businesses are already complying with a range of goal setting Regulations such as the Lifting Operations and Lifting Equipment Regulations (LOLER) so removing prescriptive legislation should assist dutyholders (once they are familiar with the changes) because they have to comply with only one, goal setting, framework.

218. Concerns in terms of communication and confusion should be addressed through the ongoing communication HSE has, and will continue to have, with industry.

219. Thus, although it is not possible to estimate the extent of the impact, we would expect the long term overall impact of moving to goal-seeking regulation to be positive.

**Direct costs and benefits to business calculations (following OIOO methodology);**

220. This deregulatory measure is within scope of One In Two Out and is deemed as being a zero net cost.

**Wider impacts**

221. There would be no wider impacts as a result of this simplification.

**Summary and preferred option with description of implementation plan.**

The preferred option is Option 3 . This is based on the analysis of, and the responses to both the first and second consultations. It is considered that the Docks Regulations 1988 can be revoked without any lowering of health and safety standards in workplaces.

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## **Annex 1 – Responses to first consultation**

**Table 1**

### **a) Type of organisation**

<b>Option</b>	<b>Number of respondents</b>	<b>Percentage of total (%)</b>
Academic	4	12
Consultancy	0	0
Local government	5	15
Industry	12	36
Trade association	3	9
National government	0	0
Non-departmental public body	2	6
Charity	2	6
Trade union	0	0
Non-governmental organisation	0	0
Member of the public	0	0
Pressure group	0	0
Other (please specify)	0	0
Not stated	5	15
<b>Total</b>	<b>33</b>	

In addition to the breakdown of the responses above, of the 6 written responses we received, 5 were from Trade Unions and 1 was from a Trade Association.

### **b) Capacity of respondent**

<b>Option</b>	<b>Number of respondents</b>	<b>Percentage of total (%)</b>
Health and Safety professional	5	15
An employer	12	36
An employee	0	0
Trade union official	0	0
Training provider	4	12
Other (please specify)	7	21
Not stated	5	15
<b>Total</b>	<b>33</b>	

In addition to the breakdown of responses above, of the 6 written responses we received, 5 were from Trade Union Officials and 1 was from a Trade Association.

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Table 2

Question 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 COP25

<b>Option</b>	<b>Number of respondents</b>	<b>Percentage of total %</b>
Yes	28	85
No	5	15
<b>Total</b>	<b>33</b>	<b>100</b>

In addition six written responses were received that did not specifically answer Question 5.1. Two of these expressed the view that these Regulations should not be revoked. A further three call for a revision of the regulations and retention of those parts that are still required to maintain current legal standards.

#### **Comments made to support the responses**

##### **‘Yes’ respondents’ comments**

We received 3 additional comments both via the questionnaire and written responses. Amongst these comments, these key points were raised:

- Yes provided there is no lowering of health and safety standards – 2 responses
- Need to ensure that there is an appropriate awareness-raising and communication exercise – 1 response

##### **‘No’ respondents’ comments**

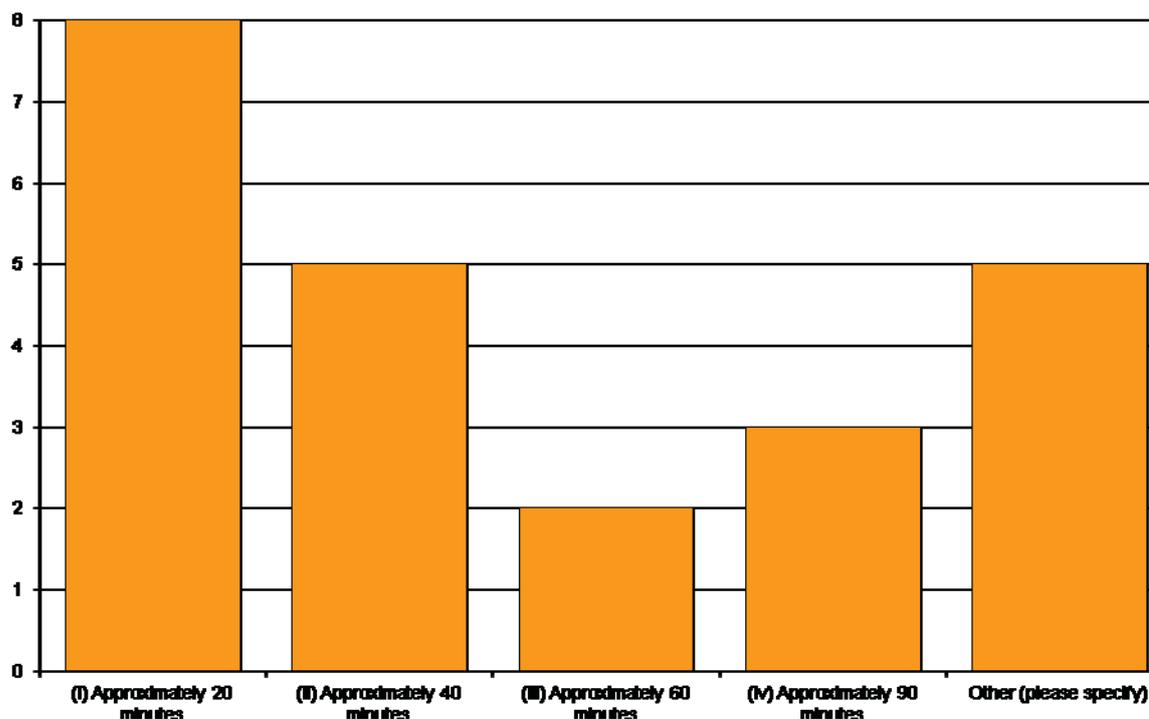
We received 10 comments both via the questionnaire and written responses that were against revocation.

Amongst these comments, these key points were raised:

- Lack of evidence to allow responders to make a judgement – 7 responses
- Docks Regulations will be replaced by guidance – 8 responses
- Contravenes HSWA, S.1(2) as there would be a reduction in standards – 1 response
- Use of more general regulations will result in difficulties in interpretation – 3 responses
- Docks should have specific regulations due to their hazardous nature – 9 responses
- Revocation might send out the signal that the wider safety culture promoted by Regulations and ACOP is being relaxed – 4 responses
- Significant enforcement is undertaken using the Regulations so they are still relevant – 5 responses

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**Question: Q.5.2 To help HSE prepare the Impact Assessment please consider how long you estimate it will take for an employer to appreciate that this revocation will not change their day to day operations?**



**Comments made to support the responses**

Within the “Other” category, the following responses were received:

- None - 2 responses
- Not applicable – 1 response
- No experience – 1 response
- 2-3 hours – 1 response

**Question: Q.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?**

Option	Number of respondents	Percentage of total %
Yes	23	88
No	3	12
<b>Total</b>	<b>26</b>	

**Comments made to support the responses**

‘Yes’ respondents’ comments

- it will take time for an employer to read and understand the revocations and introduce

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general confusion.

- Safety standards could be affected with no clear guidelines for employers managers and employees
- it will take time for an employer to read and understand the revocations and introduce general confusion.
- it will be especially beneficial as regards medical fitness.
- After revocation, regulations affecting ports will be Goal-Seeking instead of Prescriptive, which allow greater flexibility to provide management interventions that work for each individual situation.

### **‘No’ respondents’ comments**

- No comments received

### **Other comments received in written form**

- It might send out a signal that the wider safety culture promoted by the existence of the Regulations and ACOP is being relaxed.
- If it is proposed to replace the ACOP with an industry code, could have an 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.

## **Annex 2 – Responses to second consultation**

The consultation received 25 responses. The majority agreed that the proposed ACOP text provides a clear and appropriate representation of a preferred method of compliance (working practice) in a modern port or dock environment. There were however concerns from significant stakeholders on some of the detail.

Table 1 summarises the type of organisations that responded as well as the capacity of the respondents.

Table 2 summarises the proportion of respondents that agreed that the ACOP text is a clear and appropriate representation of a preferred method of compliance (working practice) in a modern port or dock environment for each particular topic.

**Table 1**

### **a) Type of organisation**

<b>Option</b>	<b>Total</b>	<b>Percentage of total (%)</b>
Academic		
Consultancy	3	12
Local government		
Industry	9	36
Trade association	4	16

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National government	3	12
Non-departmental public body	1	4
Charity		
Trade union	1	4
Non-governmental organisation		
Member of the public		
Pressure group		
Other (please specify)		
Not stated	4	16
<b>Total</b>	<b>25</b>	<b>100%</b>

**b) Capacity of respondent**

<b>Option</b>	<b>Total</b>	<b>Percentage of total (%)</b>
Health and Safety professional	8	32
An employer	2	8
An employee		
Trade union official	1	4
Training provider	2	8
Consultant	1	4
Not stated	11	44
<b>Total</b>	<b>25</b>	<b>100%</b>

**Table 2 - Question 1 - Do you agree that the ACOP text is a clear and appropriate representation of a preferred method of compliance (working practice) in a modern port (or dock) environment in each of the following areas?**

	<b>YES</b>	<b>NO</b>
	<b>Number &amp; percentage of respondents</b>	<b>Number &amp; percentage of respondents</b>
<u>a) Workplace transport</u>	7 (58%)	5(42%)
<u>b) Working at height</u>	7(54%)	6(46%)
<u>c) Lifting operations</u>	9(69%)	4(31%)
<u>d) Slips and trips</u>	12 (100%)	0

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<u>e) Transport by Water</u>	10(77%)	3(23%)
<u>f) Rescue and lifesaving</u>	7(54%)	6(46%)
<u>g) Personal protective equipment</u>	11(85%)	2(15%)

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**Analysis of response content:**

Amongst the text comments, some key points raised included:

- Level of detail - 4 respondents noted that there was not enough detail in the ACOP, however 2 other respondents liked the shorter format.
- Need for new ACOP paragraphs - One respondent felt that additional ACOP paragraphs should be included to cover other relevant hazards e.g. securing of loads.
- One respondent felt that one particular ACOP paragraph restricted the enforcement activities of another Government agency.
- Three particular ACOP paragraphs were felt to conflict with other legislation namely Lifting Operations and Lifting Equipment Regulations 1998 and The Provision and Use of Work Equipment Regulations 1998
- Two responses felt that the ACOP did not reflect a modern port and the ACOP phrases needed modernising. One respondent provided examples of possible updated paragraphs.
- A number of respondents felt that the current text in some areas was too generic in its current form and needed to better reflect the workings and specific issues found whilst working in ports/docks;
- Nine respondents identified additional topics that they felt should be included. These included noise, offshore wind industry, training, mooring, ionising radiation (3 responses), working time, fatigue, fire safety and chemical hazards.
- One respondent raised a concern regarding the clarity and inter-relationship between guidance and ACOP phrases.
- One respondent commented that the ACOP would not provide a reference document for the ports industry.
- One respondent felt that the ACOP principally covered safety in ports and should be re-titled 'Health & Safety in Ports'
- One respondent was concerned about the short timescale to introduce a new ACOP.

In addition to these, a number of drafting and editorial comments were put forward by the respondents, which will be incorporated into subsequent drafts of the ACOP.