

Health and Safety Executive

**Consultation on proposals for an Approved Code of Practice on
Safety in Ports**



A response by the Association of Personal Injury Lawyers

May 2013

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain access to justice they need and deserve. We have around 4,400 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

Alice Warren, Legal Policy Officer

APIL

3 Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX

Tel: 0115 9435428; Fax: 0115 958 0885

e-mail: alice.warren@apil.org.uk

Introduction

APIL welcomes the opportunity to respond to the Health and Safety Executive (HSE)'s consultation on proposals for an Approved Code of Practice on Safety in Ports. The guidance surrounding health and safety law is extremely important in helping employers to understand their statutory duties in this area; thus ensuring that they maintain a safe working environment for employees and workers. In addition, it is important that all health and safety guidance is easily accessible and intelligible to those at work, and their representatives. We are concerned that this draft Approved Code of Practice (ACOP) has numerous flaws which could mean that those working in port and dock areas are left vulnerable, as employers are not provided with sufficiently detailed information to carry out their duties under health and safety law; and that employees, workers and their representatives are not made aware of the duties that employers have.

At 36 pages, this ACOP is much shorter than its predecessor - the Approved Code of Practice for Safety in Docks (COP25) is over 100 pages long. COP25 provided comprehensive guidance for employers and those at work, with the relevant regulations alongside the guidance of the ACOP. The Approved Code of Practice for Safety in Ports is far less detailed. The statutory duties on which the ACOP gives guidance are not set out in the document at all. There are only vague mentions of the actual regulations and duties. For instance, at section 109, it is stated that "employers have duties", but there is no reference to what these duties are or in what set of regulations they can be found. We were previously concerned that whilst COP25 appears to be fairly complex and industry specific and it could be understood why the HSE feels that some simplification of the regulations is needed; it must be borne in mind that docks and ship building continue to remain extremely dangerous places to work. It is essential that through this consolidation and simplification, the protection offered to employees is not reduced in any way.

Failing to include the relevant statutory regulations (or at least a hyperlink to them) alongside the ACOP may mean that the level of protection that the employee receives is diminished. Employers may find it more difficult to comply with the ACOP if they are not familiar with the statutory duty behind it. Alternatively, employers may not comply at all with the ACOP because they view it just as "guidance". Failing to comply with an ACOP is not an offence in itself, and employers may become more lax, as they do not believe that they have a statutory obligation. Equally, employees, workers and representatives may not realise that there is a breach of duty as the ACOP is not sufficiently detailed to provide information on specific statutory obligations.

Recommendations

Content and Scope of this ACOP

In *Content and Scope of this ACOP*, there is a list of “examples of regulations which may also apply to work carried out in ports”. This is far too vague, as it does not state which sections of the regulations are relevant. This list is not helpful to employers who would like more information on their duties, as in order to find out what their specific legal duties are, they would have to trail through all of the regulations until they found the relevant sections. Again, this also presents problems for employees and workers as not only are they left vulnerable, but they may not be aware that a breach of duty has occurred as the guidance does not direct them to the relevant statutory regulations. Additionally, the list is missing some important regulations that are relevant to the safety standards of work carried out in ports.

The Control of Substances Hazardous to Health Regulations (COSHH) is one example. COSHH requires employers to control substances that are hazardous to health. In ports, this includes dust. Therefore in the ACOP, under the section regarding dusty cargoes, there should be a link to the relevant COSHH regulations, and COSHH should be included in the list in the introduction, to ensure that the employer is aware that they have duties under this set of regulations.

The Construction (Design and Management) Regulations 2007 (CMD) are also not included in the list of regulations on page 4 of the ACOP. Whilst we are aware that the CDM is being repealed, this is not taking place until October 2014, and it is important that it is included in the ACOP until it is repealed or replaced. Construction work is common in ports, and as such, these regulations are extremely relevant to ensuring a safe place for employees and workers.

Risk Assessment

Whilst there is general reference to the Management of Health and Safety at Work Regulations 1999 (MHSW) in the introduction to the ACOP, there is no specific mention or reference to the wording of these regulations. For example, on page 6, there is a reference to the duty of risk assessment, but there is no accompanying mention of Regulation 3 of the MHSW, which contains this duty¹.

¹ “Regulation 3(1) every employer shall make a suitable and sufficient assessment of the risks to the health and safety of his employees to which they are exposed whilst they are at work”

We understand that employers would like concise guidance, but distancing this guidance from the actual regulations is likely to be detrimental, as employers may not be aware of all of the statutory duties which they owe.

Lifting Operations

Page 17 of the ACOP is dedicated to lifting operations. In this section there is no mention of, or hyperlink to, either the Lifting Operations and Lifting Equipment Regulations (LOLER) 1998, or to the ACOP on the safe use of lifting equipment. The employer is therefore not being provided with a sufficient level of information for the circumstances, and this could lead to vulnerable workers not receiving the level of protection that they require in a highly dangerous work environment.

Fire Safety

Finally, we have several concerns with how the ACOP addresses fire safety. The risk of fire is a prominent safety concern in a workplace such as a dock, and it is vital that employers and those at work do everything they can to prevent fire. We are disappointed, therefore, to see that the only mention of fire and fire safety is in the “Emergency Planning” section of the ACOP. This section states that the employer must write an emergency plan for if there is a major incident at the workplace. Whilst this is important, there should also be mention of what duties employers have to prevent fires occurring in the first instance, such as those contained in the Management of Health and Safety at Work and Fire Precautions (Workplace)(Amendment) Regulations 2003. These Regulations should also be listed on page 4 of the ACOP, as well as being referenced in the main body of the ACOP.

As mentioned in our previous response, we understand that COP25, at over 100 pages, must be simplified to make it easier to access. However, docks and ports remain extremely dangerous places to work. It is very important that employers have access to, and are aware of, all the necessary information to allow them to comply with their duties under health and safety law. It is equally important that employees, workers and their representatives also have access to comprehensive guidance and the relevant regulations, to ensure that they are aware of their rights, and are able to identify potentially harmful practices. An ACOP that does not mention specific regulations, and does not provide links to the relevant sections of regulations, is inadequate at achieving this goal.

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Association of Personal Injury Lawyers

- ▶ 3 Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX
 - T: 0115 958 0585 ● W: www.apil.org.uk ● E: mail@apil.org.uk