Health and Safety Executive

Consultation on Proposals to remove twelve legislative measures

A response by the Association of Personal Injury Lawyers

July 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 4,000 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:

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APIL welcomes the opportunity to comment on the proposals to remove twelve legislative measures, including the remaining sections of the Factories Act 1961. We believe that a number of the measures identified can be removed without a lowering of health and safety standards. The Factories Act 1961 is not widely used by practitioners, with the Provision and Use of Work Equipment Regulations 1998 (PUWER) instead being utilised to bring claims. We do however, have concerns that the removal of certain remaining sections of the Factories Act 1961 will lead to employees being put at risk, as there is not a sufficient amount of detail in the corresponding regulations in PUWER.

It is stated in the consultation document at paragraph 1.3 that s 39 of the Factories Act 1961 can be safely repealed without lowering health and safety protection. With regard to s 39(1), this assertion is true. Regulations 4 and 5 of PUWER adequately replace the requirements in s 39(1). Section 39(1) reads that every gasholder shall be of sound construction and shall be properly maintained. Regulation 4 and 5 PUWER effectively reflect this, and even go further than this requirement. Regulation 4 PUWER requires that "every employer shall ensure that work equipment is so constructed or adapted as to be suitable for the purpose for which it is used or provided", and also employers should have regard to the working conditions and to the risks to the health and safety of persons which exist in the premises or undertaking in which that work equipment is to be used. Regulation 5 requires that every employer shall ensure that work equipment is maintained in an efficient state, in efficient order and in good repair.

We are also satisfied that regulation 7 PUWER imposes the same safety standard as section 39(6) of the Factories Act 1961. Section 39(6) states that "No gasholder shall be repaired or demolished except under the direct supervision of a person who, by his training and experience and his knowledge of the necessary precautions against risks of explosion and of persons being overcome by gas, is competent to supervise such work." Regulation 7 reflects this, by requiring that "where the use of work equipment is likely to involve a specific risk to health and safety, every employer shall ensure that…repairs, modifications, maintenance or servicing of that work equipment is restricted to those persons who have been specifically designated to perform operations of that description (whether or not also authorised to perform other operations)."; and there is also a requirement that those people are adequately trained.

However, we are concerned that there are a number of subsections of section 39 of the Factories Act 1961 that, if repealed, will result in a drop in workplace health and safety

standards, and as such will lead to employees and those at work being put at risk. For example, with regard to section 39(3) of the Factories Act, there is a requirement that in the case of a gasholder of which any lift have been in use for more than twenty years, the internal state of the sheeting shall at least once in every period of ten years, be examined by a competent person by cutting samples from the crown…and a report on every such examination signed by the person making it shall be kept available for inspection. There is no requirement that reflects this in PUWER regulation 6 – only a requirement that inspection should be carried out at "suitable intervals". Because this practice will no longer be enshrined in legislation, employers may no longer carry out inspections as thoroughly, which could lead to dangerous machinery going unchecked and accidents as a result.
It is stated in the consultation document that gaps in the modern legislation can be filled by referring to IGEM technical standards, guidance and approved codes of practice. These standards and codes of practice are not legally binding however, and so employers may only comply with the bare minimum requirements in the regulations, resulting in a drop in safety standards and potentially dangerous workplace practices. Furthermore, if the duty is clearly expressed in the regulation, rather than hidden away in guidance, this will reduce the burden on employers and other duty holders. It will be preferable from the employer's point of view to have the duty clearly set out and easily accessible.

It is stated in the consultation document that the specific requirement in s 39(4) of the Factories Act is no longer required, as PUWER regulations 5 and 6 render it unnecessary. S 39(4) states that: "A record signed by the occupier of the factory or by a responsible official authorised in that behalf showing the date of the construction, as nearly as it can be ascertained, of the oldest lift of every gasholder in the factory shall be kept available for inspection."
As above, regulation 5 PUWER requires employers to keep their equipment in efficient and good working order, and regulation 6 requires inspection at suitable intervals. This should ensure that gasholders are maintained and not dangerous. The combined effect of regulations 5 and 6 are less detailed than s 39(4), however, and this leaves room for employers to move away from the stringent practices that currently prevent accidents.

Section 39(5) reads: "Where there is more than one gasholder in the factory, every gasholder should be marked in a conspicuous position with a distinguishing number or letter." There is no replacement for this section, as the consultation document states that it is not considered that such a specific requirement is necessary, if a business is complying with relevant health and safety legislation and industry guidance. As above, removing the specific

detail from legislation and putting it in the industry guidance could have a dangerous effect on working practices. The guidance is not legally binding, so employers may not feel compelled to act upon it; ignoring the detail and simply complying with the bare minimum requirements in the legislation. A more lackadaisical approach such as this would lead to accidents.

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