

Health and Safety Executive

**Consultation on Draft Approved Codes of Practice:
Provision and Use of Work Equipment (L22);
Safe Use of Power Presses (L112);
Safe Use of Woodworking Machinery (L114)**



A response by the Association of Personal Injury Lawyers

May 2014

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has around 4,000 members in the UK and abroad who represent hundreds of thousands of injured people a year.

The aims of the Association of Personal Injury Lawyers (APIL) 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; and
- 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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Introduction

We welcome the opportunity to comment on the Health and Safety Executive consultation on draft revised Approved Codes of Practice for the Provision of Work Equipment Regulations (PUWER). We welcome the decision to keep the Approved Codes of Practice separate, and to not impose an arbitrary limit of 32 pages for each ACOP. The information and guidance available to employers should not be limited in such an unnecessary and arbitrary manner.

Overall, we would rate the new ACOPS as good, but do have a number of concerns.

Concerns with the drafts

Layout is unclear

Our main concern is that the layout of the new ACOPs (as set out in the consultation document) is confusing. The original ACOPs had a clear layout, with the ACOP being in bold type, the guidance being in normal type; and indicators down the side of the page to let the reader know that they were either reading the regulation, the code of practice or the guidance. In the new versions, whilst the ACOP is in bold and the guidance is in normal type, it is still not obvious which part is the ACOP and which is the guidance. The layout should reflect the original ACOP, as this was clear. It is important that employers are aware of which text is the code of practice, and which text is guidance, because ACOPs have a special status in law. Although not legally binding, if an employer shows that they have followed the ACOP, this is usually enough to demonstrate that they have complied with the law. The ACOP text is used by the courts to help to interpret the meaning behind the regulations, as demonstrated *Ellis v Bristol City Council*¹. Here, Lady Justice Smith said that a code of practice which is designed to give practical guidance to employers as to how to comply with their duties under statutory regulations can be taken as providing some assistance as to the meaning it was intended those regulations should have. Lord Justice Lloyd commented that the Approved Code of Practice was legitimate to be taken into account by the judge in a case such as this.

Guidance does not have the same special status and is intended to be read as an accompaniment to the code of practice. An employer simply following the guidance would not be fully informed and may not comply fully with their obligations, thus potentially putting workers and employees at risk.

Wording at the beginning of ACOPs

As above, it is important that the difference between ACOPs and guidance is made clear to the employer. The line between guidance and ACOP is further blurred by the wording at the beginning of each new ACOP. This opening section would be the ideal opportunity to make clear the difference between ACOPs and guidance. Instead, the wording reads that “if you do follow the guidance, you will normally be doing enough to comply with the law”. As stated above, ACOPs have a special status, because although they are not in themselves legally binding, if an employer shows that they have followed the ACOP, this is usually enough to demonstrate that they have complied with the law. This special status does not extend to the guidance, and this preamble is therefore misleading.

¹ [2007] EWCA Civ 685

Deleted sections of the ACOPs

L22 Safe Use of Work Equipment, paragraph 172 Consultation with employees

We question why paragraph 172 of the original Approved Code of Practice for Provision and Use of Work Equipment has been removed. This contained information on the duties of employers to consult their employees under the Health and Safety (Consultation with Employees) Regulations 1996 and the Safety Representatives and Safety Committees Regulations 1977. These regulations require the employer to consult their employees on matters which link with the requirements of PUWER, including information, instruction and training on new work equipment. Without this additional information, employers may not be aware of these additional duties to consult, and employees and workers may be ill-informed about training and arrangements relating to health and safety.

L114 Safe use of woodworking machinery, paragraph 40

We also question the removal of an asterisk at paragraph 40 in the ACOP for Safe Use of Woodworking Machinery. This provided additional information that an anti-kick-back device would also be required in cases where a radial arm cross-cut saw is used for ripping operations. We are unsure why this small but important point has been removed from the redraft of the document. It is important that employers receive enough information for them to be able to effectively comply with their duties by providing safe machinery, otherwise employees and workers will be put at risk of an unsafe work environment.

L114 Safe use of woodworking machinery, paragraph 81

We do not see the logic in the change of wording from “cutters flying out from the machine” to “tooling being damaged”.

APIL welcomes the majority of changes

APIL does, however, welcome the majority of the changes to the ACOPs. Whilst most are small, they should ensure that the ACOPs are user friendly and will help employers to comply with their obligations and keep employees and workers safe.

Removal of introductory information

We are unconcerned with the removal of the introductory information at the beginning of each ACOP. The information, whilst helpful in setting out the context of the regulations, was perhaps unneeded in helping employers comply with their obligations. Efforts have been made to reduce the length of the ACOPS and it is preferable that the introductory information is removed, and more room is left for useful guidance on how to comply fully with the regulations.

Changes of terminology

Throughout the ACOPs, “hardware” has been changed to “engineering”, “software” has been changed to “management”, and “residual” has been changed to “remaining”. We believe that these changes will make the ACOPs easier to understand, and therefore easier to comply with. When originally asked for views on revised ACOPs, APIL stated that the codes of practice must allow employers to reasonably assess the safety of a workplace without the

need for consultants to translate any jargon, and that plain English should be used throughout. This change is therefore welcomed, as employers will be better able to comply with their duties, and employees and workers will be protected.

Additional information

We welcome the changes to the ACOP and guidance regarding agriculture/forestry at paragraph 132 of the ACOP for Provision for Use of Work Equipment. The removal of “however, in the agricultural sector, this requirement only applies to first-time users of a chainsaw” will eliminate the difference in the application of the regulations for work with chainsaws in agriculture and forestry – a difference which, in practice, is often hard to distinguish. This will mean that employees in both sectors will receive a higher level of protection, and employers will not have to concern themselves with trying to decide if an activity is agriculture, or forestry.

We also welcome the changes throughout the ACOPs to include provision of information for temporary workers and help for employers whose workers or employees’ first language is not English. This will ensure that a wider spectrum of workers is protected, and that employers fulfil their obligations correctly.

We welcome the change to paragraph 86 of L114, Safe Use of Woodworking Machinery. This has been amended to include guidance on health issues as well as safety issues. This is sensible and will increase protection for the worker. As mentioned on the HSE website, the health consequences of working with wood are less well known than the safety aspects. Machinery can cause permanent hearing damage, and wood dust can lead to asthma, or even a rare form of nasal cancer. We are pleased that the HSE has recognised the need for guidance to protect workers and employees with respect to health as well as safety.

Changes of layout

We welcome the decision to place information regarding regulation 19 of the Management of Health and Safety at Work Regulations in the main body of the ACOP at regulation 9 (training). This was previously in the introduction of the ACOP and may have been overlooked. Here, it is more likely to be taken into consideration by the employer, and will provide helpful background information to help the employer to comply with their duties.

Updating the ACOPs

We are happy with the ACOPs being updated to remove reference to PUWER 92/98. Enough time has passed since the 1992 regulations, and when any employer now sees “PUWER”, they will automatically think of the 1998 regulations. This update will not cause confusion or hinder the employer’s ability to comply with the regulations and protect their employees and workers. We also welcome the removal of time-limited and outdated references to regulations, which would only cause confusion and uncertainty for employers.

We are not concerned with the removal of statistics in the introduction to L114, Safe Use of Woodworking Machinery, relating to current accidents. The ACOPs make clear that the work undertaken is hazardous. The use of up-to-date statistics is not imperative to a useful ACOP. It is far more useful to have detailed, practical guidance, diagrams and worked examples, to aid the employer in compliance.

Further recommendations for improvement

Whilst the ACOPs are illustrated to allow for ease of use, we also suggest that there should be clear practical examples of how to comply fully with the regulations. It would be useful to include any relevant court decisions as working examples. This will enhance the information given, and provide employers with a practical knowledge of when and where an ACOP is applicable.

For example, the facts of cases such as *PRP Architects v Reid*² could help to demonstrate to employers what constitutes “work equipment” for the purposes of PUWER. Here, an employee leaving work at the end of the day had injured her hand when it got trapped in the lift door. It was held that the lift in the shared office complex was work equipment, and that the employee was using it at the time, for the purposes of PUWER.

² [2006] EWCA Civ 1119