

HBF Health & Safety Committee
HSE consultation on revocation of Head Protection & Tower Crane
Notification Regulations: Summary

Proposals to remove fourteen legislative measures

Annex 2 - Construction (Head Protection) Regulations and
Notification of Conventional Tower Cranes Regulations

Construction (Head Protection) Regulations 1989 (S.I. 1989/2209)

<http://www.legislation.gov.uk/ukxi/1989/2209/contents/made>

Background

2.1 The proposal to revoke the Construction (Head Protection) Regulations 1989 ('the CHP Regulations') arises from recommendations contained in Professor Löfstedt's report *Reclaiming Health and Safety For All*. He notes that these Regulations largely replicate the Personal Protective Equipment at Work Regulations 1992 ('the PPE Regulations') and that the latter could be relied on to regulate the use of head protection on construction sites.

2.2 If the proposal is approved the revoking Statutory Instrument will do this by revoking Regulation 3(3)(f) of the PPE Regulations (which disappplies certain requirements relating to the provision and use of PPE where the CHP Regulations applies) so that the requirement to wear head protection will be within the scope of the PPE Regulations and all of the requirements will be applicable to head protection.

2.3 The proposals make no changes to sections 11 & 12 of the Employment Act 1989, which exempts turban-wearing Sikhs from wearing head protection whilst on construction sites. This exemption applies to any statutory provision, so would continue to apply to the provisions of the PPE Regulations.

Construction (Head Protection) Regulations 1989

2.4 The CHP Regulations came into force on 1 April 1990 with the objective of reducing the number and severity of head injuries in the construction industry. Prior to their introduction, concerted efforts to increase the voluntary use of head protection had been made, but with little effect.

2.5 The CHP Regulations require the provision of suitable head protection for workers who are engaged in construction work¹ 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 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.

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¹ Construction work means the carrying out of any building, civil engineering or engineering construction work and is defined in regulation 2(1) of the Construction (Design and Management) Regulations 2007.

2.6 The introduction of the CHP Regulations led to a substantial reduction in the level of reported head injuries in the construction industry. From the period 1986/87-1989/90 to the last 4 years, non fatal major head injuries fell from an average of 165 to an average 130 a year. A more dramatic reduction has happened with fatal injuries. Comparing the same periods, the average number of deaths from head injury per year on construction sites fell from 48 a year to 14. The wearing of head protection has subsequently become culturally embedded in most parts of the industry, and its use is generally a site rule. The use of the CHP Regulations to enforce the provision and use of head protection on construction sites has been limited² (and more so in recent years). This calls into question the need for sector-specific controls.

² The CHP Regulations have been cited 33 times on Notices issued in the previous 13 years and 3 times in approved prosecution activity in the same period.

Rationale for revocation

2.7 Revoking the CHP Regulations would not reduce the level of legal protection for workers in an industry well known to be high risk. The PPE Regulations require the provision and use of head protection as part of a hierarchy of control measures to protect workers against head injury. Taken together, these control measures provide at least an equivalent level of protection against head injury as those contained in the CHP Regulations.

2.8 This, together with regulation 22 of the Construction (Design and Management) Regulations 2007 (which provides for the drawing up of site rules used widely to ensure that those working on construction sites should wear hard hats) should ensure that there is no reversal in the improvements in safety that have been made in this regard. On the contrary, revocation should benefit construction dutyholders, in particular, small contractors, by simplifying the regulatory framework in relation to the wearing of head protection on construction sites

2.9 HSE estimates that the costs and benefits to industry of the proposal are small and at least roughly balance each other (with a likelihood that there would be some net savings to business). **The Impact Assessment (IA) - (Appendix A)** estimates that businesses would incur an initial, one-off cost of £370,000 arising from the need to familiarise themselves with the revocation and understand what it implies for them. This is balanced over a 10 year period by yearly savings of £40,000 to new businesses entering the construction industry which would not need to familiarise themselves with the CHP Regulations. These savings are likely to be an underestimate, due to

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issues with the data available on new businesses, so, on balance, net savings to businesses are likely. HSE would like feedback from consultees about a number of assumptions that have been made in the IA and would be grateful for responses to the questions set out below.

2.10 HSE recognises that it will be important to publicise the proposed change so that the construction industry understands the effect of revoking the CHP Regulations: that there will still be a requirement for employers to provide, and for workers to wear, head protection where there is a risk of head injury. HSE also proposes to review and update existing guidance (either published or on its website) on compliance with the PPE Regulations to ensure it adequately covers the provision and use of head protection on construction sites.

Q.2.1 *Do you agree with the proposal (as outlined in the Annex) to revoke the Construction (Head Protection) Regulations 1989?*

Q.2.2 *If the proposal is agreed, HSE plans to publicise the change to help ensure the construction industry understands that it will still require employers to provide, and workers to wear, head protection where there is a risk of head injury. Can you suggest ways in which you/industry could help achieve this?*

Q.2.5 *HSE believes that the proposed change will maintain the high level of provision and use of head protection that the construction industry has already achieved. Do you agree?*

(other questions relate to impact assessment)

The Notification of Conventional Tower Cranes Regulations 2010 (S.I. 2010/333)

<http://www.legislation.gov.uk/ukxi/2010/333/contents/made>

Notification of Conventional Tower Cranes (Amendment) Regulations 2010 (S.I. 2010/811)

<http://www.legislation.gov.uk/ukxi/2010/811/contents/made>

Background

2.11 The proposal to revoke the Notification of Conventional of Tower Cranes Regulations 2010 (the “Regulations”), together with amending Regulations³ arises from recommendations contained in Professor Löfstedt’s report *Reclaiming Health and Safety For All*. Revocation of the Regulations would also require revocation of regulation 21 and Schedule 16 of the Health and Safety (Fees) Regulations 2012, which set a fee for each notification made under the Tower Crane Regulations.

³ The Notification of Conventional Tower Cranes (Amendment) Regulations 2010 (S.I. 2010/811)

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2.12 The Regulations were introduced following a series of incidents involving tower cranes in which eight people (including one member of the public) were killed and more were seriously injured. These incidents led to calls for further improvements in tower crane safety.

2.13 In its 2008 report, the House of Commons Work and Pensions Select Committee Inquiry into the work of HSE raised concerns about the number of incidents and fatal injuries involving tower cranes on construction sites. It called on HSE to bring forward proposals to improve the safe use of tower cranes through the introduction of a tower crane register, which the HSE Board agreed to. In parallel, HSE continued with a substantial programme of work with industry to better understand the causes of structural failures of tower cranes, and to develop comprehensive guidance aimed at those erecting, dismantling, examining and operating tower cranes.

2.14 The Regulations came into force in April 2010. They were amended at the same time by the amendment Regulations, which clarified the scope of the substantive Regulations. The Regulations require employers who have primary responsibility for the safety of cranes to notify certain information to HSE. This includes name and address of the crane owner and the site address, as well as sufficient information to identify the crane and the date of its last thorough examination. This information is recorded on a database within a separate website (<http://www.craneregister.org.uk> – ‘the Tower Crane Register’).

2.15 The scope of the Regulations was restricted to conventional tower cranes (those whose erection is not automated) rather than self-erecting tower cranes. Self-erecting tower cranes are often present on construction sites for such short periods that their inclusion within the scope of the Regulations was considered to be impractical.

Rationale for revocation

2.16 In his report Professor Löfstedt noted that, when these Regulations were put into place, the Impact Assessment (IA) carried out then did not predict that they would have “direct health and safety benefits, i.e. reductions in injury or ill-health”, but that the main benefit of a tower crane register would be “an increase in public assurance”. He commented that it is not clear that a statutory requirement to register tower cranes is the most appropriate way to provide public assurance and suggests that non-regulatory methods should be explored.

2.17 **The IA (Appendix B)** supports Professor Löfstedt’s comments. It includes a reassessment of the estimated costs and benefits found in the earlier IA in light of the operation of the Regulations and associated Register since they were put in place. In summary, it finds that:

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there is no evidence that the intended effects are being realised in any significant way - neither in terms of raising safety standards in the use of tower cranes through better targetting, or in providing reassurance to members of the public. For example, only three members of the public have asked for information about tower cranes from the Register in that period; costs to both dutyholders and to HSE have been higher than were estimated in the original IA.

2.18 The findings of the IA suggest that revocation of the Regulations will:

- have little effect on public perception of risk to their safety arising from the use of tower cranes;

- not reduce safety standards required when erecting, using or dismantling tower cranes on construction sites;

- remove a source of cost and burden on the industry. The IA estimates savings of £51,000 per year for the industry arising from no longer being required to register tower cranes. This saving is partially offset by a small one-off cost of £4,600 in the first year arising from the need for the industry to familiarise themselves with the change.

2.19 HSE would like feedback from consultees on a number of assumptions made in the IA and would be grateful for responses to the questions set out below.

2.20 HSE will continue its work with the industry as part of wider efforts to raise safety standards. There is now a comprehensive suite of guidance published by the Strategic Forum for Construction Plant Safety Group (PSG) and the Construction Plant-hire Association Tower Crane Interest Group (TCIG) which represent the interests for almost all tower crane companies in the UK including the UK Contractors Group. Topics covered include: the competence of those erecting and dismantling tower cranes; thorough examination, inspection and maintenance of tower cranes; and the management of the installation and dismantling process. The guidance is well established and HSE Inspectors will continue to use it to check that the risks from tower cranes are being managed effectively.

2.21 HSE continues to influence the standards to which tower cranes are manufactured. HSE's membership of the industry groups referred to above facilitates monitoring and revision of guidance and the development and promotion of any new practical standards should it be required. HSE endorses a TCIG-led industry notification system of Technical Information Notes which enable the industry to disseminate information on new or emerging issues

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Q.2.7 Do you agree with the proposal (as outlined in the Annex) to revoke the Notification of Conventional Tower Cranes Regulations 2010 and the Notification of Conventional Tower Cranes (Amendment) Regulations 2010?

Q.2.8 In addition to HSE's continued work with the industry to improve standards can you suggest cost-effective, non-regulatory ways in which the public could be reassured that tower cranes on construction sites are being used to high standards of safety?

(other questions relate to impact assessment)